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C(2020) 6778 final

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**Subject: State Aid SA.58212 (2020/N) – Poland - COVID-19: Aid scheme for Polish airports**

Excellency,

**1. PROCEDURE**

- (1) On 31 July 2020, Poland pre-notified to the Commission an aid scheme for operators of Polish airports related to the COVID-19 pandemic (“the scheme”)<sup>1</sup>.
- (2) By electronic notification of 23 September 2020, Poland notified the scheme on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”).
- (3) Poland exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958<sup>2</sup> and accepts to have this Decision adopted and notified in English.

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<sup>1</sup> The Polish authorities submitted additional information on 1, 15 and 22 September 2020.

<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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## **2. DESCRIPTION OF THE SCHEME**

### **2.1. The COVID-19 outbreak in Poland and the containment measures taken by the Polish authorities**

- (4) The first case of the infectious disease SARS-CoV-2 (COVID-19) in Poland was confirmed on 4 March 2020. At the time of the notification, the number of COVID-19 cases in Poland was around 80 000.
- (5) As in other countries, Poland has taken sequential mitigation measures to prevent the spread of COVID-19 in the country. As submitted by Poland, such measures have been primarily directed towards reducing citizens' activities and subjecting individuals at risk to quarantine requirements. The activities of many institutions and entities, both public and private, have been subject to various restrictions.
- (6) On 13 March 2020, the Polish authorities declared a state of epidemic emergency in Poland from 14 March onwards. That state of epidemic emergency meant, in practice, that it was possible to cross the Polish border with other Member States only at designated places. There were further restrictions on the entry of foreign nationals into Poland at the Union's external borders. From 15 March 2020 onwards, Poland suspended border traffic at some border crossings with Russia, Belarus and Ukraine. All Polish citizens who were abroad could return to Poland, although after crossing the border they were subject to a mandatory 14-day home quarantine (with limited restrictions for cross-border workers).
- (7) On 20 March 2020, the Polish authorities introduced various measures, including limiting freedom of movement (e.g. affecting persons returning from abroad), the marketing and use of certain items (such as personal protective equipment, masks, coveralls) and the functioning of certain activities (e.g. the serving of food and beverages in restaurants, the organisation of events, the functioning of sports, entertainment, cultural and religious activities, etc.). On 24 March 2020, they took further measures limiting mobility and the possibility to leave the place of residence (with certain exceptions), measures that applied until 11 April 2020.
- (8) With specific regard to air traffic restrictions ("the containment measures"), on 15 March 2020 the Polish government banned international and domestic air passenger services. There were limited exceptions, including repatriation flights, state missions, humanitarian flights, medical operations, etc. The Polish authorities reviewed those flight restrictions thereafter every two weeks. For domestic flights, a full ban was in place until 31 May 2020. For international connections, the Polish authorities lifted the air traffic ban as of 17 June 2020 in relation to flights from airports located in the EU/EEA (except for Sweden and Portugal) and Switzerland. As of 1 July 2020, the Polish authorities allowed international flights to designated countries outside the EU/EEA and Switzerland. For instance, on 15 July 2020, they authorised flights from Montenegro, Georgia, Japan, Canada, Albania, South Korea and Ukraine. Poland observed that certain air traffic restrictions still applied at the time of the notification and that it revises them every two weeks on the basis of COVID-19 infection rates.

### **2.2. The economic impact of the containment measures on Polish airports**

- (9) According to the Polish authorities, due to the containment measures (see recital (8)), air traffic was extremely low between 15 March and 30 June 2020, with air

carriers generally resuming flights as of early July. Indeed, until the end of June, there were travel warnings, travel bans and flight restrictions for several countries (including some Member States, such as Sweden and Portugal, as well as the United Kingdom). At the same time, numerous third countries continued to apply their travel bans and flight restrictions.

- (10) Consequently, air traffic started to resume very slowly in June and more markedly only as of July. Air traffic statistics provided by Poland show that in June 2020 the number of airport operations were 17% and the number of passengers 2% of the respective figures recorded in June 2019. In contrast, between July and August 2020, about 40 000 air operations were carried out, which represents 48% of the traffic registered in the corresponding period in 2019.
- (11) The containment measures severely affected the aviation sector in Poland. The rapid closure of borders and the suspension of air traffic resulted in the cancellation of flights and the suspension of airport operations.
- (12) According to the Polish authorities, the negative effects of the restrictions began to materialise as early as March 2020, when a 43% drop in air traffic was registered compared to March 2019. In the following three months, the drop in traffic was even greater and amounted to about 90%, compared to April-June 2019<sup>3</sup>. The reduction in air traffic caused in turn a decrease in the revenues and financial results of airports throughout Poland. While revenues have decreased proportionally to the reduction in air traffic, airports could not reduce their costs to the same extent. Such costs largely resulted from cargo operations and repatriation flights (which were generally linked to strategic functions that airports continued to perform in the interest of the State) as well as preventive health measures imposed by governmental regulations.
- (13) Table 1 shows in more detail the impact of the containment measures on the number of operations in March-June 2020 at the various Polish airports, with a combined decrease of 80% compared to the same period in 2019.

**Table 1: number of operations per airport in 2019 vs. 2020 (March-June)<sup>4</sup>**

<b>Airport</b>	<b>No. of operations March-June 2019</b>	<b>No. of operations March-June 2020</b>	<b>% difference 2020/2019 (March-June)</b>
Warsaw Chopin	63 724	12 228	-81%
Krakow	20 755	3 903	-81%
Gdańsk	15 008	3 072	-80%
Katowice	12 085	2 433	-80%
Wrocław	10 449	2 096	-80%
Poznan	7 564	1 891	-75%
Warsaw Modlin	6 924	1 095	-84%
Rzeszów	2 928	548	-81%
Łódź	1 254	522	-58%

<sup>3</sup> The aggregate decrease in the number of operations (for all Polish airports) was 43% in March, 93% in April, 93% in May and 85% in June.

<sup>4</sup> Source: notification.

Szczecin	1 896	549	-71%
Bydgoszcz	1 397	333	-76%
Lublin	1 008	206	-80%
Zielona Góra	347	173	-50%
Olsztyn-Mazury	529	149	-72%
<b>Total</b>	<b>145 868</b>	<b>29 198</b>	<b>-80%</b>

### 2.3. Objective of the scheme

- (14) The scheme aims at compensating airport operators in Poland for the damage suffered as a direct effect of the containment measures adopted by the Polish authorities (see recital (8)). As set out in more detail in recital (23), the damage consists in the EBIT shortfall in the period 15 March-30 June 2020 (compared to the same period in 2019) due to the loss of revenues resulting from the containment measures.

### 2.4. The nature and form of the aid

- (15) The aid takes the form of direct grants financed by the Polish COVID-19 Counteraction Fund. The aid will be paid out through *Bank Gospodarstwa Krajowego*, which is a Polish State-owned national development bank

### 2.5. Legal basis

- (16) The legal basis for the scheme is the “Regulation of the Minister of Infrastructure on the settlement and documentation of costs of maintaining the minimum operational readiness of an airport”, which will enter into force upon approval of the scheme by the Commission.

### 2.6. Administration, budget and duration of the measures

- (17) The measure is granted and administered by the Polish Minister of Infrastructure.
- (18) The overall estimated budget of the scheme is PLN 142 million (ca. EUR 32 million).
- (19) The scheme provides compensation to the beneficiaries for damage suffered during the period between 15 March 2020 and 30 June 2020. Beneficiaries may submit monthly applications for aid covering the eligible costs described in recital (24). The Polish authorities estimate that aid payments under the scheme, up to the maximum damage amount, should end by 31 December 2020.
- (20) The Polish authorities confirm that the aid scheme will not enter into force nor will any aid be paid out before the Commission’s approval.

### 2.7. Beneficiaries and scope of the scheme

- (21) The potential beneficiaries of the scheme are all operators of airports in Poland<sup>5</sup>, to the extent that they can demonstrate that they suffered COVID-19 related damages

<sup>5</sup> Bydgoszcz, Warsaw Chopin, Gdańsk, Katowice, Krakow, Lublin, Łódź, Olsztyn-Mazury, Poznań, Rzeszów, Szczecin, Warsaw Modlin, Wrocław and Zielona Góra.

in line with the methodology set out in section 2.8. Accordingly, the scheme applies to the whole territory of Poland.

## 2.8. Eligible costs and modalities for compensation

- (22) The scheme compensates the beneficiaries for up to 100% of the damage incurred during the period 15 March 2020 to 30 June 2020 as a direct consequence of the containment measures described in section 2.1.
- (23) The net losses (actual damages) correspond to the loss of aeronautical and non-aeronautical revenues, minus avoided costs, during the compensation period (15 March 2020 – 30 June 2020). In practice, the damage is calculated, for each airport, as the difference between the operating result (EBIT) obtained in the period 15 March-30 June 2020 and the operating result (EBIT) in the same months in 2019. Table 2 provides an estimation of the damage for each airport, resulting in a total estimated damage of ca. PLN 450 million (approx. EUR 100 million).

**Table 2: Estimated damages by airport (PLN)<sup>6</sup>**

<b>Airport</b>	<b>EBIT 15 March-30 June 2019</b>	<b>EBIT 15 March-30 June 2020</b>	<b>Estimated damage</b>
Bydgoszcz	[...]	[...]	[...]
Gdańsk	[...]	[...]	[...]
Katowice	[...]	[...]	[...]
Krakow	[...]	[...]	[...]
Warsaw Chopin	[...]	[...]	[...]
Lublin	[...]	[...]	[...]
Łódź	[...]	[...]	[...]
Olsztyn-Mazury	[...]	[...]	[...]
Poznań	[...]	[...]	[...]
Rzeszów	[...]	[...]	[...]
Szczecin	[...]	[...]	[...]
Warsaw Modlin	[...]	[...]	[...]
Wrocław	[...]	[...]	[...]
Zielona-Góra	[...]	[...]	[...]
<b>Total estimated damage</b>			<b>-449 795 321</b>

- (24) Poland submitted that, while compensation under the scheme is capped at the damage amount calculated in line with the methodology above, the eligible costs are the costs incurred by the individual airport operator to ensure the minimum operational readiness of the relevant airport<sup>7</sup>. Such costs include only the cost items

<sup>6</sup> Source: notification.

<sup>7</sup> According to the Polish authorities, the obligation for Polish airports to ensure the minimum operational readiness of the relevant airport is in force since 16 June 2020 and will remain in place until the end of the COVID-19 related state of epidemic emergency in Poland.

specified in the scheme's legal basis (see recital (16)), which are grouped in two main categories: (a) the minimum manning of operational staff necessary to operate the planned number of take-offs and landings at the relevant airport<sup>8</sup>; and (b) the costs incurred to maintain the necessary airport infrastructure<sup>9</sup>, which also depend on the planned number of take-offs and landings.

- (25) The Polish authorities explained that calculating the eligible costs according to that method helps prevent unjustified and excessive public expenditure, while at the same time ensuring transparency in the use of public funds, since airport operators are obliged to keep appropriate accounting records of the eligible costs.
- (26) To obtain compensation under the scheme, beneficiaries will be required to submit monthly applications<sup>10</sup> detailing, for each of the eligible cost items, the costs incurred in the preceding month, as well as the damage suffered in the period 15 March-30 June 2020 in accordance with the methodology described in recital (23). Further, each beneficiary will be required to submit to the Polish authorities an audit report of its financial statements, including the amount of damage actually suffered, within 14 days of receiving the report from a certified auditor, but no later than 30 April of the year following the financial year to which the damage relates.
- (27) In a first step, the Polish authorities will check the information provided in each monthly application and will be able to correct the data, including the damage amount. Subsequently, the Polish authorities will verify that the aid amounts paid out to each airport do not exceed the damage actually suffered based on the audit report mentioned in recital (26).

## **2.9. Commitments, cumulation and reporting**

- (28) The Polish authorities confirmed that the following safeguards will be put in place to avoid overcompensation:
  - (a) Any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered.
  - (b) Any payment made to beneficiaries under the scheme will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
  - (c) The benefit of the aid is excluded for any applicant that is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damages.

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<sup>8</sup> Such costs include only the basic remuneration (without allowances, bonuses, awards, etc.) together with obligatory write-offs resulting from generally applicable laws.

<sup>9</sup> Namely, costs for utilities, waste removal, fuel consumption, the purchasing of firefighting materials and equipment as well as the purchasing of basic medical equipment and personal protective equipment used to prevent the spread of COVID-19.

<sup>10</sup> Poland explained that the monthly frequency of the aid requests corresponds to the customary monthly frequency used to present financial data. A significant part of the costs incurred (e.g. remuneration of the operating personnel) is incurred on a monthly basis.

- (d) Aid under the scheme cannot be cumulated with other aid for the same eligible costs. That condition is clearly stipulated in the legal basis (see recital (16)), which provides, in essence, that aid under the scheme can only be granted in relation to costs that are not covered by other aid measures within the meaning of Article 107(1) TFEU.
- (e) The Polish authorities will provide a report no later than 1 year after the date of the present decision, specifying the amount of compensation and recoverable advances granted.

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measure**

- (29) By notifying the measure before putting it into effect, the Polish authorities have respected their obligations under Article 108(3) TFEU.

#### **3.2. Existence of State aid**

- (30) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (31) The measure is imputable to the State since it is based on a legal act from the Polish Minister of Infrastructure, as set out in recital (16). In addition, the measure is granted and administered by the Polish Minister of Infrastructure. The measure is financed through State resources, since it is funded by the Polish COVID-19 Counteraction Fund and paid through the State-owned *Bank Gospodarstwa Krajowego*, as set out in recital (15).
- (32) The measure confers an advantage on the beneficiaries in the form of direct grants under Article 107(2)(b) TFEU. The advantage corresponds to the amount of compensation paid under the measure to each of the beneficiaries. The measure thus relieves those beneficiaries of costs that they would have to bear under normal market conditions.
- (33) The advantage granted by the damage compensation described in section 2.8 of the present decision is selective as it is awarded only to airport operators and more particularly to those operators that can demonstrate damage caused directly by the COVID-19 outbreak and the resulting containment measures.
- (34) The measures under the scheme are liable to distort competition, since they strengthen the competitive position of the beneficiaries. They also affect trade between Member States, since the beneficiaries are active in the airport sector, in which intra-Union trade exists.
- (35) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU.

### 3.3. Compatibility of aid under Article 107(2)(b) TFEU

- (36) Since the damage compensation described in detail in section 2.8 of the present decision involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market and in particular with Article 107(2)(b) TFEU.

#### 3.3.1. *The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU*

- (37) Article 107(2)(b) TFEU provides that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU, nor other Union legislation contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law<sup>11</sup> has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (38) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field<sup>12</sup>. In that regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee<sup>13</sup>; (ii) significant scale/economic impact<sup>14</sup> and (iii) extraordinary<sup>15</sup>.

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<sup>11</sup> Judgment of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, in Joined Cases C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

<sup>12</sup> Exceptional occurrences that have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

<sup>13</sup> Commission Decision of 1 August 2011 on case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, paragraph 31, OJ C 135, 9.5.2012, p. 1.

<sup>14</sup> Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire, France, OJ C 380, 30.12.2000, p. 9), or because of the number of dead or injured people (Commission Decision of 11 April 2012 on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, paragraph 35, available at [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_33487](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33487); Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, paragraph 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, paragraph 36), the amount of material damage, despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, paragraph 19, OJ C 170, 16.7.2002, p. 16).

<sup>15</sup> In its Decision of 19 May 2004 on case C-59/2001 concerning the aid scheme that Italy plans to implement for poultry farms — AIMA programme for the poultry industry, OJ L 32, 6.2.2007, p. 14 the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination did not in itself constitute an exceptional occurrence. Even though it was an unforeseeable event, it formed part of the normal commercial risks to which an undertaking is exposed.



### 3.3.2. COVID-19 as an exceptional occurrence

- (39) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Wuhan municipality in China at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak rapidly evolved, affecting not only other parts of China but also spread to the majority of countries worldwide, including all Member States. Outbreaks of novel virus infections among people are always a public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (40) The WHO declaration of a pandemic<sup>16</sup>, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread of the virus can cause enormous consequences both in terms of fatal outcomes in risk groups and in terms of economic and societal disruption<sup>17</sup>. The necessity to adopt and encourage observance of measures aimed at interrupting transmission chains stems from that acknowledgement. According to WHO reports and observations of the current situation, such measures can result in far-reaching disruption of various economic sectors. That disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures needed to be adopted.
- (41) From March 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travel, closure of borders, closure of non-essential shops, obligation for companies to organise working from home for every position where to do so was possible and various social distancing measures.
- (42) In view of the above, the Commission considers that this event qualifies as an exceptional occurrence as it was not foreseeable, as it is clearly distinguishable from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market<sup>18</sup>.
- (43) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

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<sup>16</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>17</sup> ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

<sup>18</sup> See for instance Commission Decision of 12 March 2020 on case SA.56685, Compensation scheme for cancellation of events related to COVID-19, Denmark, OJ C 125, 17.4.2020, p. 1, and Commission Decision of 31 March 2020 on case SA.56765, COVID-19 Moratoire sur le paiement de taxes et redevances aéronautiques en faveur des entreprises de transport public aérien sous licences d'exploitation délivrées par la France, France, OJ C 294, 4.9.2020, p. 1.

### *3.3.3. Causal link between the notified measure and the COVID-19 outbreak*

- (44) The Commission has examined the notified aid scheme pursuant to Article 107(2)(b) TFEU. That assessment has led to the following observations.
- (45) As described in recital (8), the Polish authorities adopted several sequential containment measures in response to the COVID-19 outbreak starting in March 2020.
- (46) With specific regard to air traffic restrictions, Poland introduced a total ban on international and domestic air passenger services on 15 March 2020. The flight ban was progressively lifted:
- On 1 June 2020, the ban was lifted for domestic flights;
  - As of 17 June 2020, the air traffic ban was lifted for flights from airports located in the EU/EEA (except for Sweden and Portugal) and Switzerland;
  - As of 1 July 2020, the Polish authorities introduced the possibility to lift the flight ban for international flights to designated countries outside the EEA and Switzerland. For instance, on 15 July 2020, flights from Montenegro, Georgia, Japan, Canada, Albania, South Korea and Ukraine were authorised.
- (47) While the flight ban was progressively lifted as of 1 June 2020, the data provided by Poland indicate that, due to the various restrictions in place, there was very limited air traffic until 30 June 2020, as air carriers generally resumed flights only at the beginning of July. Air traffic data show that in June 2020 only 17% of air operations were recorded compared with June 2019 and only 2% of passengers were handled compared with June 2019. This is notably due to the fact that, as in other Member States, travel warnings, travel bans and flight restrictions remained in place for some Member States (such as Sweden and Portugal) and numerous third countries; in the same vein, numerous third countries continued to apply their travel bans and flight restrictions so that air traffic started to resume noticeably only as of July.
- (48) The Commission therefore considers that the causal link between the COVID-19 outbreak and the damage can be established for the period starting on 15 March 2020, when Poland introduced a ban on international and domestic air passenger services, and ending on 30 June 2020, when - following the lifting of the various restrictions previously in place - air traffic started to resume to a certain extent.
- (49) The Commission thus concludes that the notified measure is directly linked to the COVID-19 outbreak, which qualifies as an exceptional occurrence.

### *3.3.4. Proportionality of the aid measure*

- (50) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of that damage; it should only make good the damage caused by the exceptional occurrence.
- (51) As explained in recital (23), the damage is calculated by comparing the operating result (EBIT) of the relevant airport operator during the compensation period (15

March 2020 – 30 June 2020) with the operating result (EBIT) that it would have expected absent the containment measures. The proxy for that counterfactual is the EBIT during the same months of the previous year (15 March 2019 - 30 June 2019).

- (52) Based on the data submitted by the Polish authorities (see Table 2), the Commission considers that the total aid amount notified by Poland, i.e. a damage compensation of up to PLN 142 million (ca. EUR 32 million), is significantly below the estimated damage (ca. PLN 450 million or EUR 100 million) suffered by Polish airports as a direct consequence of the containment measures set out in recital (8). On the one hand, the latter measures led to a near standstill of airport operations, causing in turn a significant revenue shortfall between 15 March and 30 June 2020 compared to the same period in 2019 (see section 2.2). On the other hand, the halt of activities allowed airport operators to achieve cost savings between 15 March and 30 June 2020 compared to the same period in 2019, which the Polish authorities take into account in their calculations. Furthermore, as explained in recital (25), each beneficiary will be required to submit an audit report of its financial statements, allowing the Polish authorities to verify that the compensation received does not exceed the actual damage suffered.
- (53) The Commission therefore concludes that the notified measure provides for compensation that does not exceed what is necessary to make good the damage.
- (54) Moreover, as described in recital (28), the Commission notes that the Polish authorities have put in place the following additional safeguards to ensure that compensation under the scheme does not exceed what is necessary to make good the actual damage suffered and thus meets the abovementioned criteria.
- i) Any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered.
  - ii) Any payment made to beneficiaries will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
  - iii) The benefit of the aid is excluded for any applicant that is responsible for the damage suffered and/or did not conduct his activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damages.
  - iv) Aid under the scheme cannot be cumulated with other aid for the same eligible costs.
  - v) The Polish authorities will provide a report no later than 1 year after the date of the present decision, specifying the amount of compensation and recoverable advances granted.
- (55) Therefore, the Commission concludes that the damage compensation is proportionate.

### 3.3.5. *Conclusion on compatibility of aid*

(56) In view of the above, the Commission concludes that the damage compensation described in detail in section 2.8 of the present decision is compatible with Article 107(2)(b) TFEU.

## 4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Articles 107(2)(b) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President