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C(2020) 9617 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State Aid SA.59240 (2020/N) – Slovakia – COVID-19 – Aid to airport operators

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts,¹ on 21 December 2020 Slovakia notified an aid in the form of a direct grant to airport operators in Slovakia (the “measure” or the “aid scheme”). The aid was notified under three legal bases: (a) a damage compensation scheme falling under Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”) (the “Damage compensation” or the “Measure 1”)); (b) an aid scheme under Section 3.1. of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework²”) (the “ Limited amounts of aid” or the

¹ Slovakia pre-notified the measure on 27 October 2020. During the pre-notification phase, there were several telephone conferences between the Slovak authorities and the Commission services. On 24, 27 and 30 November, and 1, 3, 9, 11, 15, 16 and 17 December 2020, the Slovak authorities submitted additional information.

² Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the

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“Measure 2”) and (c) an aid scheme under Section 3.12 of the Temporary Framework (the “Support for uncovered fixed costs” or the “Measure 3”).

- (2) Slovakia exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958³ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. The travel restrictions linked to the COVID-19 outbreak

- (3) On 11 March 2020, the government of Slovakia declared an extraordinary situation for the territory of Slovakia effective from 12 March 2020 in relation to the threat to public health due to transmittable disease COVID-19⁴. On 15 March 2020, the government of Slovakia declared a state of emergency in Slovakia for 90 days effective from 16 March 2020. The objective of the state of emergency was to create the conditions for taking the necessary measures to prevent and mitigate the consequences of the public health emergency due to COVID-19 caused in the territory of Slovakia.
- (4) With the aim of preventing the spread of infections by the COVID-19 into the territory of Slovakia from other countries, the national authorities suspended the international transport connections in air, bus, rail and inland waterways transport with stops in the territory of Slovakia from 13 March 2020.
- (5) From 13 March 2020, temporary border controls have been introduced at border crossing points with almost all neighbouring countries. Anyone with a permanent residence or temporary residence in Slovakia returning to Slovakia had to undergo a mandatory 14-day quarantine.
- (6) The authorities prolonged the suspension of air transport from 10 June 2020. They banned civil flights departing from the territory of another State and landing in the territory of Slovakia from 10 June to 24 October 2020. This did not however apply to the following flights:
 - (a) flights with aircraft of less than 20 seats with passengers on board with permanent or temporary residence in Slovakia in non-scheduled air transport departing from the territory of Poland and landing at the Airport M. R. Štefánika Bratislava (“Bratislava Airport”), Airport Košice (“Košice Airport”) and Airport Poprad-Tatry (“Poprad-Tatry Airport”),

Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the 4th Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 340I, 13.10.2020, p. 1.

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁴ A first case of COVID-19 disease on the territory of Slovakia was confirmed on 6 March 2020.

- (b) general aviation flights with passengers on board with permanent or temporary residence in Slovakia from the territory of Poland and landing at Bratislava Airport, Košice Airport and Poprad-Tatry Airport,
- (c) all flights departing from Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Greece, Croatia, Iceland, Liechtenstein, Lithuania, Latvia, Hungary, Malta, Germany, Norway, Austria, Slovenia or Switzerland and landing in the territory of Slovakia.
- (7) Because the changes of the ban specified in recital (6) were notified to aviation personnel (including aircraft operators, air operators and air carriers) by NOTAM⁵ of 10 June 2020, air carriers could not offer flights to the destinations listed in recital (6)(c) as part of scheduled commercial air transport immediately after 10 June 2020.
- (8) The ban specified in recital (6) was not applied from 20 June to 24 October 2020 to countries specified therein plus to Faroe Islands, Monaco, Montenegro and Poland.
- (9) Because the changes of the ban specified in recital (8) were notified to aviation personnel (including aircraft operators, air operators and air carriers) by NOTAM⁶ of 20 June 2020, air carriers could not offer flights to the destinations listed in recital (8) as part of scheduled commercial air transport from 20 June 2020. Moreover, containment measures taken by other countries were diverse and changing rapidly.
- (10) As stated by the Slovak authorities, air carriers need generally several weeks to be in a position to reschedule flights after being informed of the cancellation of a flight ban.
- (11) The number of flights operated in June was limited (see Table 1). The passengers in commercial air transport (scheduled, non-scheduled) in June 2020 (from 10 to 30 June 2020) were mainly people returning home as repatriates.

Table 1: Overview of flights in scheduled commercial air transport operated in Slovakia in June and July 2020 and comparison with 2019

<i>Scheduled commercial air transport</i>	Operated flights	Operated flights	Passenger traffic	Passenger traffic	Passenger traffic	Passenger traffic
	June 2020	July 2020	June 2020	June 2019	July 2020	July 2019
Bratislava Airport	16	157	1949	235 192	16 155	330 460
Košice Airport	12	56	621	61 928	5 424	96 040
Piešťany Airport	0	0	2	2 967	14	3 054

⁵ NOTAMR A/C0941/20. NOTAM (a notice to airmen) is a notice filed with an aviation authority to alert aircraft pilots of potential hazards along a flight route or at a location that could affect the safety of the flight.

⁶ NOTAMR A/C1019/20.

Sliač Airport	0	0	0	6 499	10	13 439
Poprad-Tatry Airport	0	NA	0	7 722	684	17 365

- (12) Despite the possibility to fly to certain destinations as of 10 June 2020, there was no significant resumption of commercial air transport operations before 1 July 2020.
- (13) Further to the evolution of the COVID-19 outbreak and the declaration on 11 March 2020 of the pandemic by the World Health Organization (the “WHO”), on 16 March 2020, the Commission recommended⁷ Member States to apply a coordinated restriction on non-essential travel from third countries into the Union, for an initial period of 30 days, subsequently extending it twice until 15 June 2020. That recommendation, as well as the one issued by the Commission on 11 June 2020⁸ to prolong it until 30 June 2020, applied to all Schengen Member States (as well as Bulgaria, Croatia, Cyprus, and Romania) and the four Schengen Associated States (Iceland, Liechtenstein, Norway, and Switzerland).⁹
- (14) During that period (13 March to 30 June 2020), in order to prevent and limit the spread of the COVID-19 virus on the territory of Slovakia, in addition to flight bans, the Slovak authorities adopted various containment measures. They included limitations related to the free movement of people, travel and gatherings, schools, and the carrying out of commercial activities. On 7 September 2020, the flight ban was lifted.
- (15) At the moment of the notification, the extraordinary situation as well as some of the COVID-19 restrictions are still in place.

2.2. The impact of the travel restrictions on airport operators in Slovakia during March-June 2020

- (16) In order to contain the spread of COVID-19, between 13 March and 30 June 2020, air commercial transport was suspended in Slovakia with some exceptions (recitals (6) to (9)). During that period from 13 March to 30 June 2020, almost no flights operated in Slovakia.¹⁰
- (17) Table 2 shows the progressive downwards evolution of passenger traffic at the airport operators during March-June 2020 (compared to the same months in 2019).

⁷ Communication from the Commission COM(2020) 115 final of 16 March 2020 – COVID-19: Temporary Restriction on Non-Essential Travel to the EU.

⁸ Communication from the Commission COM(2020) 399 final of 11 June 2020 on the third assessment of the application of the temporary restriction on non-essential travel to the EU.

⁹ Source: https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic_en

¹⁰ The flights that were operated were mainly cargo and postal flights, flight engaged in a search and rescue mission (SAR flights), fire-fighting flights (FFR flights), rescue operations flights in emergencies, flights operating on a humanitarian mission (HUM flights), medical flights declared by medical authorities, etc.

Table 2 – Number of passengers in 2019 and 2020 and the comparison¹¹

Month	Number of passengers					
	Year	Bratislava	Košice	Piešťany	Poprad	Sliac
March	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-71,99%	-78,50%	-100,00%	-71,20%	-62,03%
April	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-99,05%	-100,00%	-100,00%	-100,00%	-100,00%
May	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-99,56%	-100,00%	-100,00%	-100,00%	-100,00%
June	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-99,17%	-99,00%	-99,93%	-100,00%	-100,00%
July	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-95,11%	-94,35%	-99,54%	-96,06%	-99,93%
August	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-85,31%	-82,56%	-98,94%	-82,77%	-99,68%
September	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-90,47%	-80,62%	-98,94%	-61,83%	-99,87%
October	2019	[...]	[...]	[...]	[...]	[...]
	2020	[...]	[...]	[...]	[...]	[...]
	change	-94,08%	-84,30%	-40,00%	-94,70%	-91,53%

- (18) While the flight ban was progressively lifted as of 10 June 2020, the data provided by Slovakia indicates that, due to the various restrictions, containment measures in place and a necessary minimum period to restart commercial flights, commercial air traffic remained almost non-existent throughout June 2020. Until 30 June 2020, no scheduled international commercial flights took place at Piešťany, Poprad and Sliac airports, (see Table 3). There were 14 flights from Bratislava and 12 flights from Košice. The average load factor was very low,

¹¹ Žilina Airport is not included in Table 2, because there was almost no commercial traffic in 2019 and 2020. There were only 10 commercial passengers in April 2020 and 10 commercial passengers in July 2020.

illustrating the difficulty of restarting a route rapidly.¹² Air traffic data show that in June 2020 only up to 1% of passengers were handled compared with June 2019 (see Table 2).

Table 3 – Number of scheduled flights in Slovakia from June to September 2020

N. of flights per airport	June	July	August	September
Bratislava	14	157	373	211
Košice	12	56	88	26
Piešťany	0			
Poprad - Tatry	16			
Sliač	0			

2.3. Objective of the measure

- (19) The objective of Measure 1 is to make good the damage suffered by Slovak airport operators as specified in recital (41) due to the imposition of travel restrictions and other containment measures linked to the COVID-19 outbreak (“the COVID-19 restrictions”). As set out in more detail in recital (27), the damage is calculated as the EBIT shortfall in the period 13 March - 30 June 2020, compared to the same period in 2019, due to the loss of revenues resulting from the COVID-19 restrictions.
- (20) The objective of Measure 2 and Measure 3 is to ensure air connectivity and broadly support the general economy and development of Slovakia by providing support to airport operators. The measure forms part of an overall package of measures¹³ and aims at remedying the liquidity shortage faced by undertakings and ensuring that the disruptions caused by the COVID-19 outbreak do not undermine their viability.

2.4. Legal basis and administration of the measure

- (21) The national legal basis for the aid scheme is the Act No. 213/2019 Coll. On Fees and Charges and Providing Contributions in Civil Aviation and on Amendments to Certain Acts as amended by Act No. 341/2020 Coll. [§ 25b (5) (b)], together with the Act no. 358/2015 on the regulation of certain relations in the field of state aid and aid *de minimis* and on the amendment of certain laws (Act on State aid). The aid will be implemented via schemes to support the provision of the

¹² For example on the route Bratislava – Sofia, the load factor in June 2020 was between 13% and 37%.

¹³ For example: SA.58054 COVID 19:ESFI Liquidity Support State Aid Scheme for Innovative Companies with Limited Access to Credit Facilities, SA.57485 Covid-19 ESIF Basic Level Liquidity Needs Support State Aid Scheme – SIH, SA.57484 Covid-19 Government Resources Basic Level Liquidity Needs Support State Aid Scheme – SIH, SA.56986 COVID-19 TF aid to preserve employment and self-employment during the health crisis.

necessary air accessibility of the territory of the Slovak Republic during the crisis situation declared in connection with the COVID-19 disease.

- (22) The Ministry of Transport and Construction of Slovakia is responsible for granting and administration of the aid.

2.5. Form, budget, duration and modalities of the aid scheme

- (23) The aid takes the form of direct grants. The funds will be allocated from the Slovak State budget to beneficiaries by the Ministry of Transport and Construction of Slovakia.
- (24) The overall estimated budget of the aid scheme is EUR 29 800 000.
- (25) The Slovak authorities confirm that the scheme will not enter into force nor will any aid be paid out before the Commission's approval.

2.5.1. Damage compensation scheme (Measure 1)

- (26) The scheme compensates the beneficiaries (airport operators that handled more than 200 000 passengers in 2019 – see recital (42)) for the damage incurred during the period from 13 March to 30 June 2020 as a direct consequence of the COVID-19 restrictions described in recitals (3) to (18). The total estimated budget for the Damage compensation scheme is EUR 10 000 000. The aid will be granted at the latest by 31 December 2021.
- (27) The net losses (actual damage) correspond to the loss of aeronautical and non-aeronautical revenues, minus avoided costs and plus the additional costs incurred in relation to COVID-19, during the compensation period (13 March – 30 June 2020). In practice, the damage is calculated, for each eligible airport, as the difference between the EBIT (Earnings before Interest and Taxes) obtained in the period 13 March - 30 June 2020 and the EBIT in the same period in 2019. Table 4 provides an estimation of the damage for each eligible airport, resulting in a total estimated damage of EUR 9 191 907.

Table 4: Estimated damage per airport (EUR)

Airport	13 March – 31 March 2020	April 2020	May 2020	June 2020	Total estimated damage (EUR)
Bratislava	[...]	[...]	[...]	[...]	[...]
Košice	[...]	[...]	[...]	[...]	[...]
Total estimated damage	492 220	1 323 524	2 274 703	5 101 460	9 191 907

- (28) The damage estimation set out in Table 4 is based on data provided by the airport operators detailing their costs and revenues in the relevant months of 2019 and 2020. The Slovak authorities performed a first verification of the data submitted, including by crosschecking 2019 figures with the respective certified profit and

loss statement.¹⁴ Furthermore, the relevant granting authority (see recital (22)) will carry out more in-depth checks based on independent audit reports of the beneficiaries' financial statements. Aid received in excess of the actual damage calculated in line with the methodology set out in recital (27) will have to be repaid including interest.

2.5.2. *Limited amounts of aid scheme (Measure 2)*

- (29) Measure 2, like Measure 3, aims at mitigating the negative impact of the COVID-19 outbreak on the air connectivity of Slovakia and to do so it provides grants to airport operators in Slovakia.
- (30) The expected estimated budget for the aid provided under Measure 2 is EUR 800 000 for 2020 and EUR 4 000 000 for 2021. The aid under that scheme will be granted no later than 30 June 2021. The aid per undertaking will not be more than EUR 800 000.
- (31) State aid under the Measure 2 can be granted for the period:
 - (a) From 1 July 2020 until 30 June 2021, as a whole or a part of it, if the beneficiary operated more than 200 000 passengers in 2019;
 - (b) From 13 March 2020 until 30 June 2021, as a whole or a part of it, if the beneficiary operated 200 000 passengers or less in 2019.
- (32) Considering the exceptional situation that generated serious disturbances of the economy, the notified aid measure is aimed at supporting the seriously affected airport operators. Given that airport operators are an essential infrastructure to maintain air connectivity, the granting of State aid to them will help reduce the negative effects of the COVID-19 outbreak.

2.5.3. *Support for uncovered fixed costs (Measure 3)*

- (33) The expected estimated budget for the aid provided under Measure 3 is EUR 4 000 000 for 2020 and EUR 11 000 000 for 2021.
- (34) State aid under Measure 3 can be granted for the same periods specified in recital (31).
- (35) Measure 3 envisages that the Slovak authorities contribute to the uncovered fixed costs of those undertakings for which the COVID-19 outbreak resulted in the suspension or reduction of their business activity.
- (36) As confirmed by Slovak authorities, the aid may be granted no later than 30 June 2021 and cover uncovered fixed costs incurred during the period as specified in recital (31), including such costs incurred in part of that period.
- (37) According to the Slovak authorities, the aid under Measure 3 may only be granted to undertakings that suffer a decline in turnover during the eligible period of at

¹⁴ The financial data of financial year 2019 are from audited annual accounts (financial statements) of beneficiaries.

least 30% compared to the same period in 2019, a comparison made for a period in 2020 or 2021 with the respective period in 2019. The turnover decline must be substantiated and confirmed by the applicant when submitting an application.

- (38) Uncovered fixed costs are defined in the Act no. 213/2019 on compensations and the provision of contribution in civil aviation as amended, whereby:
- (a) Fixed costs are those costs which are:
 - incurred by undertakings during the period defined in recital (31),
 - during the same period not covered by the profit contribution (i.e. revenues minus variable costs) and
 - not covered by other sources, including insurance, temporary aid measures granted under the Temporary Framework or support from other sources.
 - (b) Uncovered fixed costs are the losses of undertakings resulting from their financial statements during the eligible period defined in recital (31).
- (39) As confirmed by the Slovak authorities, the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies (within the meaning of Annex I of the GBER), where the aid intensity will not exceed 85% of the uncovered fixed costs.
- (40) According to the Slovak authorities, overall aid from Measure 3 will not exceed EUR 3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge.

2.6. Beneficiaries

- (41) The beneficiaries of the aid scheme are airport operators¹⁵ operating in Slovakia fulfilling the eligibility criteria.
- (42) There following are the airport operators in Slovakia: Bratislava Airport, Košice Airport, Piešťany Airport, Sliač Airport, Poprad-Tatry Airport and Žilina Airport.
- (43) Aid may be granted only to undertakings that were not already in difficulty within the meaning of the General Block Exemption Regulation (the “GBER”)¹⁶ on 31 December 2019.

¹⁵ As specified in § 1 of Act no. 136/2004 Coll. on airport companies and on the amendment of Act no. 143/1998 Coll. on Civil Aviation (Aviation Act) and on Amendments to Certain Acts, as amended by Act no. 37/2002 Coll. as amended.

¹⁶ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

2.6.1. *Damage compensation scheme*

- (44) The beneficiaries of Measure 1 are airport operators that handled more than 200 000 passengers in 2019. They are Bratislava Airport and Košice Airport.
- (45) Furthermore, the conditions as specified in the schemes to support the provision of the necessary air accessibility of the territory of the Slovak Republic during the crisis situation declared in connection with the COVID-19 disease must be met.¹⁷

2.6.2. *Limited amounts of aid and Support for the uncovered fixed costs*

- (46) Aid under Measures 2 and 3 can be granted to the beneficiaries as specified in recital (41).

2.7. Commitments, cumulation and reporting

2.7.1. *Damage compensation scheme*

- (47) The Slovak authorities confirmed that:
 - (a) Each beneficiary will be required to submit an audit report of its financial statements, allowing the Slovak authorities to verify that the compensation received does not exceed the actual damage suffered. The Slovak authorities will provide a report no later than one year after the date of the present decision, specifying the amounts of compensation provided under the current scheme.
 - (b) Any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered including interest.
 - (c) Aid under Measure 1 cannot be cumulated with other aid for the same eligible costs.
 - (d) 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.

¹⁷ The aid notified under Article 107(2)(b) TFEU (Measure 1) can be granted to beneficiary: (a) who does not or does not request or draw on European Union funds or other funds from any other public authority or other person managing State budget funds for the same purpose as that referred to in point 2.2.1 of the scheme, b) to whom the aid agreement has not been terminated in the last three years following the application for State aid, (c) not in liquidation, (d) against whom there is no execution proceeding and enforcement of the decision, (e) which is not the subject of insolvency proceedings which are not subject to restructuring and against which the application for a declaration of insolvency has not been rejected on the grounds of lack of assets; (f) whose account with a bank or a branch of a foreign bank is used only for the purpose of receiving and using State aid, (g) which provides assistance in the national civil aviation statistical survey or provides statistical and other data relating to its activity or its participation in civil aviation, (h) which is not obliged to repay the aid following a previous decision of the European Commission declaring the aid illegal and incompatible with the internal market, (i) which is entered in the register of public sector partners if it is a person who has the obligation to register in the register of public sector partners; (j) which does not have the force of res judicata against a prohibition on receiving subsidies or subsidies, receiving assistance and support from European Union funds, participation in public procurement procedures, (k) which was not an undertaking in difficulty under specific legislation on 31 December 2019.

- (e) 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.
- (f) The Slovak authorities will provide a report no later than one year after the date of the present decision, specifying the amounts of compensation provided under the current scheme.

2.7.2. *Limited amounts of aid and Support for uncovered fixed costs*

- (48) The Slovak authorities confirmed that:
 - (a) Any payment exceeding the final amount of the aid must be recovered.
 - (b) A beneficiary of the aid scheme may also benefit from other measures under the Temporary Framework and/or from *de minimis* aid¹⁸ and/or from aid under the GBER. The Slovak authorities have however confirmed that insofar as a beneficiary may benefit from multiple measures under the Temporary Framework and/or from *de minimis* aid and/or from the GBER, the maximum aid amounts per beneficiary, as specified in the Temporary Framework, in the *de minimis* Regulation and in the GBER, will be respected.
 - (c) They will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework.
 - (d) All the information regarding the granting of aid must be maintained for 10 years from the moment of granting of the aid.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (50) 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.

¹⁸ Granted in line with Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (the “*de minimis* Regulation”) (OJ L 352, 24.12.2013, p. 1).

- (51) The measure is imputable to the State since it is based on a law (recital (21)). In addition, the Ministry of Transport and Construction of Slovakia will administer the measure and grant the aid (recital (22)). The measure is financed through State resources since it is funded from the budget of the State (recital (23)).
- (52) The measure confers an advantage on the beneficiaries in the form of direct grants (recital (23)). The advantage corresponds to the amount of grants paid under the measure to each of the beneficiaries. The measure thus relieves the beneficiaries of costs that they would have to bear under normal market conditions.
- (53) The advantage granted by the measure as described in section 2 of the present decision is selective as it is awarded only to certain undertakings active in Slovakia, in particular airport operators as specified in recital (41).
- (54) The measure is liable to distort competition, since it strengthens the competitive position of the beneficiaries. It also affects trade between Member States, since the beneficiaries are active in the airport sector, in which intra-Union trade exists.
- (55) 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 Measure 1

- (56) Since the damage compensation described in detail in section 2.5.1 of the present decision involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that Measure 1 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

- (57) 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-law¹⁹ has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (58) 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 field²⁰. In that regard, the following indicators relating to the event concerned

¹⁹ 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.

²⁰ 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).

must be cumulatively met: (i) unforeseeable or difficult to foresee²¹; (ii) significant scale/economic impact²² and (iii) extraordinary²³.

3.3.2. COVID-19 as an exceptional occurrence

- (59) 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.
- (60) The WHO declaration of a pandemic²⁴, 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 disruption²⁵. 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

²¹ Commission Decision of 1 August 2011 on case SA.32163, Remediation of damage to airlines and airport operators caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, paragraph 31, OJ C 135, 9.5.2012, p. 1.

²² 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; 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).

²³ 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.

²⁴ 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>.

²⁵ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social hardship and severe economic consequences, containment measures needed to be adopted.

- (61) 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.
- (62) 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 market²⁶.
- (63) The Commission therefore concludes that the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.3. *Causal link between Measure 1 and the COVID-19 outbreak*

- (64) The Commission has examined Measure 1 pursuant to Article 107(2)(b) TFEU, in particular as regards the duration of the compensation period from 13 March to 30 June 2020. That assessment has led to the following observations.
- (65) As described in recitals (3), (4), (6), (14) and (15), the Slovak authorities adopted several sequential containment measures in response to the COVID-19 outbreak starting in March 2020.
- (66) With regard to containment measures starting on 13 March 2020, the Slovak authorities ordered the suspension of commercial flight operations across all airport operators in Slovakia. There were exceptions gradually inserted to the flight ban:
 - (a) On 10 June 2020, the exception to the flight ban was introduced for Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Croatia, Iceland, Liechtenstein, Lithuania, Latvia, Hungary, Malta, Germany, Norway, Austria, Slovenia and Switzerland.
 - (b) As of 20 June 2020, in addition to countries specified in letter (a), the exception to the flight ban was introduced for Montenegro, Faroe Islands, Monaco and Poland.
- (67) On 7 September 2020, the flight ban was lifted.

²⁶ 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.

- (68) While the flight ban was progressively lifted as of 10 June 2020, the data provided by Slovakia indicate that there was almost no air traffic between 10 June and 30 June 2020. Airlines were informed of the possibility to fly to certain destinations only on 10 June, and needed time to restart commercial flights. From 10 to 30 June 2020, only the route to Sofia was operated from Bratislava Airport, with 14 flights. In comparison, in July 2020 airlines had the necessary time to adjust their organisation and 17 routes were operated from Bratislava Airport, with 157 flights. Similarly, in June 2020 only 12 flights were operated at Košice Airport, vs. 56 flights in July 2020 (Table 1).
- (69) Air traffic data show that in June 2020 only up to 1% of passengers were handled compared with June 2019 (recital (18)).
- (70) The Commission therefore considers that the causal link between the COVID-19 outbreak and the damage can be established for the period starting on 13 March 2020, when Slovakia introduced the flight ban (recital (4)), and ending on 30 June 2020.
- (71) The Commission observes that Measure 1 aims to cover the net losses of the beneficiaries caused by the suspension of flights as a direct effect of the COVID-19 restrictions.
- (72) The Commission thus concludes that the Damage compensation scheme is directly linked to the COVID-19 outbreak, which qualifies as an exceptional occurrence.

3.3.4. Proportionality of the aid measure

- (73) 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.
- (74) To effectively ensure proportionality, it is necessary to analyse the assumptions and evidence on which the calculation of damage for the factual scenario is based. In particular, it is necessary to look at how the exceptional occurrence has actually and directly affected the operations of beneficiaries and what actual impact it has had on their costs and revenues.
- (75) Firstly, the Commission notes that the aid is strictly limited to compensation for the damage directly caused by the COVID-19 outbreak during the period from 13 March to 30 June 2020 (“the compensation period”).
- (76) As explained in recital (27), the damage is calculated by comparing the EBIT of the relevant airport operator during the compensation period with the EBIT that it would have expected absent the COVID-19 restrictions. The proxy for that counterfactual is the EBIT during the same months of the previous year (13 March 2019 - 30 June 2019).
- (77) The Commission further notes that, as described in recital (27), the net losses (actual damage) are calculated by taking into account the loss of revenues, additional costs and avoided costs during the compensation period by comparing the results of the beneficiaries during that period with the results during the same months of the previous year.

- (78) The Commission notes that the avoided costs correspond to all the costs the beneficiaries would have incurred if its activity had not been affected by the COVID-19 restrictions, and that the beneficiaries have not actually incurred in the compensation period due to its suspended activities.
- (79) On the one hand, that exceptional circumstance led to the interruption of operations and to a significant loss of revenue between 13 March and 30 June 2020 compared to the same period in 2019. On the other hand, the interruption of operations allowed the beneficiaries to avoid significant costs between 13 March and 30 June 2020 compared to the same period in 2019, which are taken into account in the calculations by the Slovak authorities.
- (80) Based on the data submitted by the Slovak authorities (see Table 2), the Commission takes note that the COVID-19 restrictions led to a near standstill of airport operations, causing in turn a significant revenue shortfall between 13 March and 30 June 2020 compared to the same period in 2019 (see recitals (20) and (19)). On the other hand, due to the halt of activities airport operators made cost savings between 13 March and 30 June 2020 compared to the same period in 2019, which the Slovak authorities take into account in their calculations. Furthermore, as explained in recital (47)(a), each beneficiary will be required to submit an audit report of its financial statements, allowing the Slovak authorities to verify that the compensation received does not exceed the actual damage suffered.
- (81) For the above reasons the Commission concludes that the notified compensation by Slovakia to the beneficiaries does not exceed the damage caused to the beneficiaries by the exceptional occurrence as quantified as the difference between the lost revenues and the avoided costs between 13 March and 30 June 2020.
- (82) The Commission therefore concludes that the notified measure provides for compensation that does not exceed what is necessary to make good the damage.
- (83) Moreover, as described in recital (47)(a), the Commission notes that the Slovak authorities have put in place the 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.
- (84) Therefore, the Commission concludes that the damage compensation is proportionate.
- (85) In view of the above, the Commission considers that Measure 1 is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

3.4. Compatibility of Measure 2

- (86) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (87) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be*

declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”.

- (88) The objective of Measure 2 is to ensure that the disruptions caused by the COVID-19 outbreak, in particular the liquidity shortage faced by airport operators, do not undermine the financial stability of those undertakings and to ensure the recovery of air connectivity of Slovakia.
- (89) Measure 2 forms part of the measures adopted by the Slovak authorities to remedy a serious disturbance in their economy. The measure forms part of an overall package of measures and aims at remedying the liquidity shortage faced by undertakings and ensuring that the disruptions caused by the COVID-19 outbreak do not undermine their viability. Furthermore, the Measure 2 has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid”) described in section 3.1 of the Temporary Framework.
- (90) Measure 2 meets all the conditions provided for in point 22 of the Temporary Framework. In particular:
- i. The aid will be granted in the form of a grant of maximum EUR 800 000 per undertaking. The maximum aid amount per undertaking under Measure 2 will not exceed the ceiling set out in point 22(a) of the Temporary Framework (recital (30));
 - ii. Measure 2 is granted on the basis of a scheme with an estimated budget of EUR 800 000 for 2020 and EUR 4 000 000 for 2021; hence the condition set out in point 22(b) of the Temporary Framework is met (recital (30));
 - iii. The aid under Measure 2 will not be granted to undertakings that were already in difficulty on 31 December 2019 (within the meaning of the GBER), hence the condition set out in point 22(c) of the Temporary Framework is met (recital (43));
 - iv. The aid will be granted no later than 30 June 2021; therefore the condition set out in point 22(d) of the Temporary Framework is met (recital (30));
 - v. The aid does not concern undertakings active in the processing and marketing of agricultural products²⁷, hence the condition set out in point 22(e) of the Temporary Framework is not applicable.
- (91) The Commission accordingly considers that Measure 2 is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of Slovakia and meets all the relevant conditions of the Temporary Framework.

²⁷ As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

- (92) The Slovak authorities have committed to comply with all the monitoring and reporting provisions laid down in section 4 of the Temporary Framework. The Commission may request additional information regarding the aid granted, to verify whether the conditions laid down in the present decision have been met.
- (93) The Slovak authorities have confirmed that they will respect cumulation rules regarding combination with *de minimis aid* and/or other aid.
- (94) In view of the above, the Commission considers that Measure 2 is compatible with the internal market in accordance with Article 107(3)(b) TFEU.

3.5. Compatibility of Measure 3

- (95) The principles as stated in recitals (86) and (87) apply *mutatis mutandis*.
- (96) Measure 3 forms part of the measures adopted by the Slovak authorities to remedy a serious disturbance in their economy. The measure forms part of an overall package of measures and aims at remedying the liquidity shortage faced by undertakings and ensuring that the disruptions caused by the COVID-19 outbreak do not undermine their viability. Furthermore, Measure 3 has been designed to meet the requirements of a specific category of aid (“Aid in the form of support for uncovered fixed costs”) described in section 3.12 of the Temporary Framework.
- (97) The Commission considers that Measure 3 is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of section 3.12 of the Temporary Framework, for the following reasons:
 - (a) Aid is granted under Measure 3 no later than 30 June 2021 and covers uncovered fixed costs incurred during the period between 13 March 2020 and 30 June 2021, including such costs incurred in part of that period (recital (36)). Measure 3 therefore complies with point 87(a) of the Temporary Framework;
 - (b) Aid is granted under Measure 3 on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (37)). Measure 3 therefore complies with point 87(b) of the Temporary Framework;
 - (c) Uncovered fixed costs are defined under Measure 3 in accordance with point 87(c) of the Temporary Framework and the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies²⁸, where the aid intensity will not exceed 85% of the uncovered fixed costs (recital (39)). The losses of undertakings from their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs. The aid under Measure 3 may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts or, with appropriate justification provided by the Member State to the Commission

²⁸ Within the meaning of Annex I of the GBER.

(for example in connection with the characteristics or size of certain type of undertakings) on the basis of tax accounts. Moreover, Slovakia also commits that any payment exceeding the final amount of the aid must be recovered (recital (48)(a)). Measure 3 therefore complies with point 87(c) of the Temporary Framework;

- (d) The aid takes the form of grants (recital (23)). The overall nominal value of grants will not exceed EUR 3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (40)). Measure 3 therefore complies with point 87(d) of the Temporary Framework;
 - (e) Aid may not be granted under Measure 3 to undertakings that were already in difficulty on 31 December 2019 (recital (43)). Measure 3 therefore complies with point 87(f) of the Temporary Framework.
- (98) The Slovak authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (48)(c)). The Slovak authorities further confirm that the aid under Measure 3 may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recital (48)(b)).
- (99) The Commission therefore considers that Measure 3 is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

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) and 107(3)(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>.

Your request should be sent electronically to the following address:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

