



Brussels, 26.7.2021
C(2021) 5730 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>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.56867 (2020/N, ex 2020/PN) – Germany
Compensation for the damage caused by the COVID-19 outbreak to
Condor Flugdienst GmbH**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 24 April 2020, Germany notified aid for Condor Flugdienst GmbH (“Condor” or “the company”) in the overall amount of EUR 550 million under Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”) in accordance with Article 108(3) TFEU. Germany planned to grant the aid as compensation for the damage suffered by Condor in the period from 1 March to 31 December 2020 and directly linked to the COVID-19 outbreak as a result of the imposition of travel restrictions and other containment measures.
- (2) During the pre-notification phase, several telephone conferences between the German authorities and representatives of the Commission took place. On 29 and 30 March and 1, 2, 3, 4, 7, 8, 9, 10, 13, 15, 17, 21, 22 and 23 April 2020, the German authorities submitted information.
- (3) On 26 April 2020, the Commission adopted Decision C(2020) 2795 final in State aid case SA.56867 (2020/N, ex 2020/PN) – Germany – Compensation for the damage caused by the COVID-19 outbreak to Condor (the “Annulled decision”),

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by which it approved State aid on the basis of Article 107(2)(b) TFEU as damage compensation for the period 1 March to 31 December 2020¹. The aid measure took the form of two loans provided by the German public development bank Kreditanstalt für Wiederaufbau (“KfW”) for a total amount of EUR 550 million backed by a State guarantee. The loans consisted of the following three tranches:

- Loan 2: EUR 20.2 million;
- Loan 1 tranche A: EUR 256 million;
- Loan 1 tranche B: EUR 273.8 million.

(4) The Commission found in the Annulled decision that the aid was proportionate as the aid element of the measure (EUR 267.1 million) did not exceed the estimated damage of EUR 276.7 million. The Commission calculated the aid element based on the probabilities of repayment of the respective tranches as well as the available collaterals and seniorities at that point in time. As a result, it found the aid amount in the tranches to be as follows:

- Loan 2: EUR 1.4 million;
- Loan 1 Tranche A: EUR 18.9 million;
- Loan 1 Tranche B: EUR 246.8 million.

(5) The Commission calculated the estimated damage by comparing the pre-COVID 19 and COVID-19 monthly EBT² forecasts 2020 for the period from 1 March 2020 to 31 December 2020. In addition to that estimated damage, Germany had added EUR 17 million as costs of the prolonged insolvency proceedings due to the withdrawal of Condor’s investor from the investment agreement because of the COVID-19 outbreak, and the Commission accepted that addition as legitimate. Germany committed to submit for prior approval by the Commission the methodology that would be used to quantify the actual damage caused by the COVID-19 outbreak and suffered by Condor and to do so no later than 31 December 2020, before conducting the quantification of the damage suffered. Germany committed further to submit an ex post assessment of the damage by no later than 31 March 2021, based on the methodology approved by the Commission. Germany also committed to ensure that Condor would repay within one month any possible overcompensation if the ex post assessment were to show that the total aid received by Condor to compensate the damage caused by the COVID-19 outbreak exceeded the total amount of the damage ultimately suffered by Condor.

(6) KfW provided the loans on 27 April 2020. Loan 1 Tranche B is a revolving credit facility, which Condor has drawn in different amounts since then.

¹ Commission decision of 26.4.2020 C(2020)2795 final in case SA.56867 (2020/N) – Germany – Compensation for the damage caused by the COVID-19 outbreak to Condor Flugdienst GmbH, (OJ C 310, 18.9.2020, p. 5).

² Earnings before taxes.

- (7) On 6 November 2020, Ryanair DAC ('Ryanair') lodged an action for annulment against the Annulled decision and by decision of 2 December 2020 the General Court accepted the request of Ryanair to treat the case under an expedited procedure.
- (8) On 29 December 2020, Germany submitted for prior approval by the Commission the methodology that it would use to quantify the damage caused to Condor by the COVID-19 outbreak.
- (9) On 30 March 2021, Germany submitted an *ex post* assessment of Condor's damage. According to that calculation, Germany claimed that damage in the amount of EUR -353.83 million could be directly linked to the COVID-19 outbreak and the travel restrictions that had a direct impact on Condor's flights in the period 1 March to 31 December 2020. Based on that submission, the Commission started reviewing the *ex post* damage calculation that was based on more than 37 000 flights. The damage calculated provided by Germany included costs for the prolonged insolvency proceedings. Detailed information on the damage calculation is contained in section 2.8 of the present decision.
- (10) On 25 May 2021, Germany pre-notified the Commission of its intention to grant Condor aid in the form of a partial write-off of EUR 60 million from tranche B of loan 1 as damage compensation under Article 107(2)(b) TFEU for the period 1 January 2021 to 31 May 2021.
- (11) Furthermore, on the same day, Germany pre-notified the Commission of further aid measures in the form of a write-off of EUR 90 million from tranche B of loan 1 and a restructuring of the remaining EUR 400 million loans³ as restructuring aid under the R&R Guidelines.⁴
- (12) By judgment of 9 June 2021 (hereinafter "the judgment"⁵) the General Court annulled the Annulled decision due to a breach of the duty to state reasons. The General Court found that the Commission had not explained how the additional costs incurred in connection with the extension of Condor's insolvency proceedings were directly caused by the cancellation or rescheduling of its flights as a result of the travel restrictions imposed in the context of the COVID-19 pandemic. The General Court suspended the effects of the annulment by two months from the date of delivery of the judgment to allow the Commission to adopt a new decision under Article 108(3) TFEU and a reasonable further period if the Commission decides to initiate the procedure under Article 108(2) TFEU.
- (13) On 19 July 2021, after several exchanges between the Commission and Germany and following the judgment, Germany submitted an updated *ex post* damage quantification for the period from 17 March 2020 to 31 December 2020.

³ The EUR 550 million loans as explained in recital (3) minus the intended write-offs of overall EUR 150 million, i.e., EUR 60 million subject to the approval of the Commission in its decision of 26 July 2021 on SA63617 – Germany – COVID-19: Condor damage compensation II, not yet published (the "Condor II decision") and EUR 90 million subject to the approval of the Commission in its decision of 26 July 2021 on SA.63203 – Germany – Restructuring aid for Condor, not yet published (the "Restructuring decision"), both adopted today with this decision.

⁴ Those measures are requested by Condor's new investor Attestor Ltd administrated fond as part of a purchase deal that will allow Condor to implement a restructuring plan.

⁵ Judgment of 9 June 2021, *Ryanair v Commission*, T-665/20, EU:T:2021:344.

- (14) On 23 July 2021, Germany notified aid to Condor in the form of a partial write-off of EUR 60 million from tranche B of loan 1 as damage compensation under Article 107(2)(b) TFEU for the period from 1 January to 31 May 2021. The write-off will take place immediately after notification of approval of the measure by the Commission. On 24 July 2020, Germany notified its intention to grant restructuring aid to Condor in the form of a write-off of EUR 90 million from tranche B of loan 1, a write-off of EUR 20.2 million consisting of interest due on tranche B of loan 1 in the amount of EUR 18.7 million and of interest for the advantage linked to the overcompensation in the amount of EUR 1.5 million and a restructuring of the remaining EUR 400 million loans⁶. Those write-offs will also take place immediately after notification of the Commission's approval.
- (15) On the same day, Germany informed the Commission that the overall amount of the write-offs of EUR 150 million from tranche B of loan 1 will reduce the nominal amount of that tranche to EUR 123.8 million (without any interest). In Germany's view, there is therefore an overall aid element of EUR 144.1 million (EUR 1.4 million for loan 2 + EUR 18.9 million for tranche A of loan 1 + EUR 123.8 million for tranche B of loan 1). Against that background, Germany concluded that if the claw-back of any overcompensation has taken place when the write-offs are executed, the aid element of EUR 144.1 million will not exceed the ex post calculated damage of EUR 175.355 million.
- (16) Germany explained that it will ensure that when the write-offs on tranche B of loan 1 are carried out it will already have clawed back from Condor any overcompensation and received from Condor interest on the clawed-back amount. Germany considers that as a result of those steps, Condor will be in the same position as it would have been if there had never been overcompensation.
- (17) Against that background, Germany amended its notification of the Measure as examined in the Annulled decision, so as to notify in its place the KfW-loans with an amended total amount of EUR 400 million as a result of the amended amount of tranche B of loan 1. Germany submits that the Commission cannot disregard those new factual elements, including the ex post damage quantification and the planned write-offs, when assessing the aid in a new decision adopted as a result of the judgment.
- (18) By the Condor II decision adopted today, the Commission has decided not to raise objections to the write-off of EUR 60 million. In that decision, it had concluded that the aid in the form of a partial write-off from tranche B of loan 1 of EUR 60 million is compatible with the internal market as damage compensation on the basis of Article 107(2)(b) TFEU. In addition, the Commission has also adopted today the Restructuring decision, by which it has decided not to raise objections as regards a restructuring aid measure in favour of Condor. The restructuring aid is in the form of i) a partial write-off from tranche B of loan 1 of EUR 90 million, ii) a write-off of EUR 20.2 million consisting of outstanding interest due on tranche B of loan 1 in the amount of EUR 18.7 million and of interest in the amount of EUR 1.5 million to be paid by Condor for amounts used under loan

⁶ The EUR 550 million loans as explained in recital (3) minus the intended write-offs of overall EUR 150 million, i.e. EUR 60 million subject to the approval of the Commission in the Condor II decision and EUR 90 Million subject to the approval of the Commission in the Restructuring decision, both adopted today with this decision.

tranche B of loan 1 until the date of the present decision exceeding the approvable aid amount as well as iii) the restructuring of the remainder of loan 1 and of loan 2. The Commission has found that restructuring aid measure to be compatible with the internal market pursuant to Article 107(3)(c) TFEU.

- (19) As the General Court has annulled the Annulled decision, the Commission must now re-assess the remaining aid in the form of damage compensation under Article 107(2)(b) TFEU, placing itself in principle in the situation which existed on 26 April 2020. Pursuant to Article 266 TFEU, an institution whose act has been declared void is required to take the measures necessary to comply with the judgment annulling that act. It is well-established that, in order to comply with such a judgment and to implement it fully, the institution is required to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part.⁷ The procedure for replacing such a measure may be resumed at the very point at which the illegality occurred.⁸ It is also settled law that the annulment of a Union measure does not necessarily affect the preparatory acts.⁹ In the context of the State aid discipline, the Court of Justice has held if the analysis carried out by the Commission in a previous decision had been defective, thus entailing the illegality of that decision, the Commission could resume the procedure at that point by means of a fresh analysis of the examination already undertaken. Implementation of a judgment annulling a State aid decision does not therefore require the Commission to go through the whole procedure provided for in Article 108 TFEU.¹⁰
- (20) In the light of the case-law referred to in recital (19), the Commission is in principle entitled to adopt a new decision concerning aid granted to Condor under Article 107(2)(b) TFEU without taking further steps and based on the information which it had at the time of the adoption of the annulled measure, provided that such information is sufficient for its assessment. In particular, further to the annulment of the Annulled decision of 26 April 2020, the Commission may in principle again assess the Measure in the light of the situation prevailing when that decision was adopted.
- (21) Against that background, the Commission bases its reassessment of the existence of aid and its amount on the circumstances prevailing at the time of adoption of the Annulled decision on 26 April 2020. This concerns primarily the quantification of the aid element contained in tranche A of loan 1 and loan 2 as for this assessment the relevant point in time was the one of the granting of the aid.

⁷ See Joined Cases 97/86, 193/86, 99/86 and 215/86 *Asteris and others v Commission* [1988] ECR 2181, paragraph 27; Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des poudres sphériques v Council* [2000] ECR I-8147, paragraph 81; and Case T-225/04 *Italy v Commission* [2006] ECR II-56* Summ. pub., paragraph 89.

⁸ See Case 34/86 *Council v Parliament* [1986] ECR 2155, paragraph 47; Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; and Case C-458/98 P *Industrie des poudres sphériques v Council* [2000] ECR I-8147, paragraph 82.

⁹ See Case C-331/88 *Fedesa and others* [1990] ECR I-4023, paragraph 34, Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 32.

¹⁰ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 34.

- (22) The Commission considers, however, it must take into account circumstances that occurred after the adoption of the Annulled decision on 26 April 2020 and the granting of the aid on 27 April 2020 when quantifying the aid amount of tranche B of loan 1 and calculating the damage for the adoption of a new decision. This concerns the mechanism for the ex post damage quantification as laid out in the Annulled decision. The Annulled decision was based on an ex ante damage estimation, as the ongoing COVID-19 pandemic and the evolving situation prevented the Commission at that time from exactly quantifying the damage. For that reason, Germany committed to conduct an ex post damage quantification and to claw back any overcompensation including interest. Those steps that occurred after the adoption of the Annulled decision had been provided for in that decision in the form of an ex post correction mechanism that Germany committed to provide, and the Commission took that element into account in its compatibility assessment. As the effects of the annulment of the Annulled decision by the General Court were suspended by two months from the date of delivery of the judgment on 9 June 2020, the content of the Annulled decision is still valid at the moment of the adoption of the present decision.
- (23) For those reasons, the Commission considers that it must adopt a new decision taking into account Germany's commitment to conduct an ex post damage quantification and to claw-back any overcompensation including interest¹¹ within one month. The Commission will therefore base its damage quantification under the present decision on the ex post damage calculation submitted by Germany. It will further take the write-offs¹² into account, which the Commission has approved by the two no-objection decisions it adopted today¹³.
- (24) According to Germany, the ex-post assessment of the damage for the period from 17 March to 31 December 2020 led to a damage of EUR 175.355 million suffered by Condor due to the COVID-19 outbreak as a result of the imposition of travel restrictions and other containment measures¹⁴. Germany explains that the aid element calculated in the Annulled decision of EUR 267.1 million overall therefore exceeded the ex post quantified damage of EUR 175.355 million by an amount of EUR 91.745 million. In line with the claw-back mechanism provided for in the Annulled decision, Germany informed the Commission that Condor must repay the difference of EUR 91.745 million within one month after Germany establishes the ex post calculated overcompensation¹⁵, thus as of 19 July 2021. Germany noted further that Condor will have to pay also within one month after having established the ex post calculated amount of overcompensation an interest for the advantage it had from the temporary overcompensation. According to Germany the interest for that advantage amounts to EUR 1.5 million. The calculation of that interest is based on the amounts drawn from tranche B of loan 1, which is a revolving credit facility, which exceeded the aid amount of tranche B of loan 1 that is approvable under the present decision.

¹¹ See recital (44) of the Annulled decision.

¹² The write-off of EUR 60 million (notified by Germany under Article 107(2)(b) TFEU), the write-off of EUR 90 million and the write-off of the interest that Condor must pay for the overcompensation (both notified by Germany as restructuring aid).

¹³ See the Condor II decision and the Restructuring decision.

¹⁴ The methodology to calculate the damage of EUR 175.355 million of damage is presented in the present decision.

¹⁵ See recital (44) of the Annulled decision.

Germany applies an interest of [300-400]* basis points which corresponds to the difference between [600-700] basis points which is the applicable interest rate for tranche B of loan 1 under the loan agreement (see recital (94) of the Annulled decision) and 1000 bps, the credit margin established in the Reference Rate Communication¹⁶ for a loan to a company with weak collateral and in poor financial condition. Furthermore, Germany explains that Condor must pay outstanding interest on tranche B of loan 1 in an amount of EUR 18.7 million.

- (25) Germany will write off EUR 150 million from tranche B of loan 1 and it will further write off the interest that Condor has to pay for the temporary overcompensation under the claw-back mechanism provided for in recital (44) of the Annulled decision whose effects remain in place today. Germany will further write off the outstanding interest for tranche B of loan 1 payable as provided for in recital (94) of the Annulled decision. The Commission notes that, due to the partial write-offs from tranche B of loan 1 (EUR 150 million) that exceed the temporary overcompensation related to the aid enshrined in the loans approved in the Annulled decision and the write-off of the interest to be paid for the advantage derived from the temporary overcompensation (EUR 1.5 million), there is a claw-back of that temporary overcompensation including the inherent advantage. The Commission further notes that the write-off of the outstanding interest on tranche B of loan 1 in an amount of EUR 18.7 million ensures that the aid element as set out in the Annulled Decision remains respected. As a result, Condor therefore is in the same position as it would have been if the temporary overcompensation had never occurred.
- (26) The Commission will therefore assess in the present decision the remaining amended aid measure in the form of the two loans in an overall amount of EUR 400 million (hereinafter “the Measure”). As the amount of tranche B of loan 1 is amended by the write-offs approved today, the Commission will assess the aid related to that tranche based on the current circumstances.
- (27) Germany exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹⁷ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Objective of the Measure

- (28) Germany considers that the COVID-19 outbreak, i.e., the pandemic caused by infections with the new coronavirus SARS-CoV-2, and the related governmental restrictions severely affected its aviation sector. In that context, the Measure seeks to make good the damage that Condor suffered due to the COVID-19 outbreak as a result of the imposition of travel restrictions and other containment measures that Germany and other countries introduced to address the COVID-19 outbreak

¹⁶ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

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

* Confidential information

and which were in place between 17 March and 31 December 2020 (the “Overall Compensation Period”).

- (29) In particular, the Measure aims at compensating the losses suffered by Condor and directly caused by the COVID-19 outbreak as a result of the imposition of travel restrictions and other containment measures adopted by Germany, other Member States and third countries affecting routes operated or programmed by the company:
- between 17 March and 30 June 2020 (the “First Compensation Period”) due to the general travel restrictions and containment measures adopted by Germany, other Member States and third countries; and
 - between 1 July and 31 December 2020 (the “Second Compensation Period”) due to persisting or new travel restrictions affecting certain routes operated or programmed by Condor in 2020.
- (30) Germany clarified referring to its initial notification that the objective of the granted aid was to make good the damage that Condor suffered due to the COVID-19 outbreak as a result of the imposition of travel restrictions and other containment measures in place between 17 March 2020 to 31 December 2020.
- (31) Germany further informed the Commission that, although there was a link between the withdrawal of the investor PGL and the COVID-19 pandemic, it could not demonstrate that the withdrawal of PGL from the purchase agreement was directly and exclusively caused by the effect of the travel restrictions on Condor’s flights. Instead, the withdrawal also flowed from problems PGL as parent of Polish LOT itself was facing in general, due to the COVID-19 outbreak. For that reason, Germany excluded all costs and losses that could not be directly linked to the direct impact of travel restrictions on Condor’s flights from the damage quantification for the Overall Compensation Period. Those excluded actual costs and losses amounted to EUR [...] million¹⁸ for the First Compensation period.

2.2. Travel restrictions linked to the COVID-19 outbreak during the Overall Compensation Period

- (32) The COVID-19 outbreak has led to travel restrictions and containment measures introduced by Member States and third countries and the closing down of the vast majority of passenger air transport within the Union and globally in spring 2020. Although many of the travel restrictions, general confinement measures and border closures adopted by Germany, other Member States and third countries were partially lifted in the course of June 2020, the Union faced the irruption of additional waves of the pandemic in the last quarter of 2020. As a result, many travel restrictions and containment measures were reintroduced or remained in place until the end of 2020.

¹⁸ The Commission took into account in its Annulled decision an estimate of EUR 17 million for the costs of the prolonged insolvency proceedings. It was assumed that those costs would occur until 30 June 2020. In reality, the insolvency proceedings lasted until 30 November 2020 and additional costs related to it (mainly consultancy costs and costs for lawyers) occurred at the end of the proceedings. As Germany calculated the actual damage ex post, the initial estimation was no longer relevant since Germany now knows the actual costs that occurred.

2.2.1. Recommendations at Union level during the Overall Compensation Period

- (33) At Union level, on 16 March 2020, the Commission invited Member States to apply a coordinated restriction on non-essential travel from third countries to the Union for an initial period of 30 days to contain the spread of the virus.¹⁹ The Commission subsequently extended its recommendation twice until 15 June 2020.²⁰ On 11 June 2020 the Commission further recommended to prolong the travel restrictions, with a perspective for re-allowing travel for certain third countries as of 1 July 2020.²¹ The Commission recommendations were directed to the “EU+” States (30 States in total).²² Restrictions were to be lifted for countries selected together by Member States, based on a set of principles and objective criteria including the health situation, the ability to apply containment measures during travel, and reciprocity considerations, taking into account data from relevant sources such as the European Centre for Disease Prevention and Control (ECDC) and the WHO.²³
- (34) Most Member States reopened their borders with other Member States and the Schengen Associated States as of mid-June 2020,²⁴ after the recommendation of the Commission to lift the internal border controls and restrictions on free movement within the Union by 15 June 2020.²⁵
- (35) On 30 June 2020, the Council adopted a recommendation on the gradual lifting of the temporary restrictions on non-essential travel into the Union.²⁶ That recommendation urged Member States to lift travel restrictions for countries listed in the recommendation, with that list being reviewed and updated every two weeks. For countries where travel restrictions continued to apply, the Council recommended to exempt from the travel restrictions Union citizens and their family members, the long-term residents of the Union and their family members and travellers with an essential function or need as listed in the recommendation. The recommendation also indicated that a Member State should not decide to lift travel restrictions for non-listed third countries before this had been decided in a coordinated manner. That recommendation remained in place without substantial modification beyond 31 December 2020.

¹⁹ COM(2020) 115, 16 March 2020.

²⁰ COM(2020) 148, 8 April 2020; COM(2020) 222, 8 May 2020.

²¹ COM(2020) 399 final.

²² The “EU+ area” includes all Schengen Member States (as well as Bulgaria, Croatia, Cyprus and Romania), as well as the four Schengen Associated States. (Iceland, Liechtenstein, Norway, and Switzerland). The inclusion of Ireland and the UK was subject to their alignment decision.

²³ See the press release of 11 June 2020

https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1035

²⁴ This was the case on 10 June 2020 for Slovakia, Latvia and Cyprus; 12 June 2020 for Portugal; 13 June 2020 for Romania and Poland; 15 June 2020 for Austria, Belgium, Croatia, France, Germany, Greece, the Netherlands, Czechia and Sweden; on 17 June 2020 for Bulgaria; on 21 June 2020 for Spain and on 27 June 2020 for Denmark.

²⁵ Communication of 11 June 2020 from the Commission to the European Parliament, the European Council and the Council on the third assessment of the application of the temporary restriction on non-essential travel to the EU, COM/2020/399 final.

²⁶ Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, OJ L 208I, 1.7.2020, p. 1.

- (36) On 13 October 2020, the Council adopted its recommendation to coordinate measures affecting free movement within the Union²⁷. That recommendation invited Member States to provide data to the ECDC, including on newly notified cases per 100 000 population in the last 14 days, number of tests per 100 000 population carried out in the last week, percentage of positive tests, etc. The aim of that recommendation was to allow publication of a weekly map of Member States, broken down by regions, to support Member States in their decision-making on travel restrictions.

2.2.2. Restrictions applicable during the First Compensation Period

2.2.2.1. Restrictions adopted by Germany

- (37) *As regards travel from Germany to foreign countries*, the German Federal Foreign Office issued a worldwide formal travel warning on 17 March 2020 for all non-essential travel and leisure travel to all countries due to the extensive spread of the COVID-19 virus.²⁸ On 3 June 2020, the German Federal Foreign Office decided to lift formal travel warnings for Member States, Schengen-associated States and the United Kingdom as of 15 June 2020 and replaced the formal travel warnings with individual travel alerts, detailing the epidemiological situation in the country concerned²⁹. By contrast, Germany maintained in force the worldwide travel warning against travel to countries outside the EEA, Switzerland and the United Kingdom until 30 September 2020, i.e. beyond the end of the First Compensation Period.
- (38) The German authorities explain that formal travel warnings from the German Ministry of Foreign Affairs are the sharpest measure available to the German government when it seeks to limit travel, as the German authorities cannot issue an outright travel under the German constitutional order. The legal consequences of formal travel warnings are significant: if a formal travel warning is issued and a flight reservation has already been made, the right to withdraw from the reservation or to change it is free of charge. Anyone who booked holidays despite an existing formal travel warning accepts the risk of receiving no refund and it is not possible, in principle, to change the booking or cancel it free of charge. In such a case, foreign medical insurance may refuse to reimburse the cost of treatment locally. In addition, the travel cancellation insurance does not apply.
- (39) As a result, all of Condor's international destinations³⁰ outside the Union were affected by formal travel warnings throughout the First Compensation period. The formal travel warnings had been lifted for its destinations within the Union³¹ as of 15 June 2020.

²⁷ Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, OJ L 337, 14.10.2020, p. 3.

²⁸ See the press release of 17 March 2020 <https://www.auswaertiges-amt.de/de/newsroom/maas-rueckholung/2320002>

²⁹ See the press release of 3 June 2020 <https://www.bundesregierung.de/breg-de/suche/reisen-wieder-moeglich-1757372>.

³⁰ Condor's international destinations are Barbados, Canada, Cuba, Dominican Republic, Egypt, Grenada, Jamaica, Kenya, Malaysia, Maldives, Mauritius, Mexico, Montenegro, Morocco, Namibia, Puerto Rico, Seychelles, South Africa, Tanzania, Trinidad and Tobago, Turkey and USA.

³¹ Condor's EU destinations are Croatia Dubrovnik-Neretva, Croatia Primorje-Gorski Kotar, Croatia Split-Dalmatia, Croatia Zadar, Cyprus, France Guadeloupe, France Martinique, France Provence-

- (40) *As regards travel to Germany from foreign countries*, the German Federal Ministry of the Interior introduced on 17 March 2020 entry restrictions affecting all leisure and business travel originating from Condor’s destinations outside the Schengen area. Germany continuously prolonged those restrictions thereafter or reintroduced them after lifting them for a short while for a few countries. Those restrictions, introduced by the Federal Ministry of the Interior, Building and Community (BMI) based on Article 14 in conjunction with Article 6 of the Schengen Agreement, were in force throughout the First Compensation Period and prohibited foreign nationals from entering Germany without a compelling reason. The restrictions did not apply to German nationals. Nationals of other Member States, the United Kingdom, Iceland, Liechtenstein, Norway or Switzerland as well as citizens of other third countries with their residence in one of those countries could enter Germany for the purpose of transit to the respective State.³²
- (41) The entry restriction in place during the First Compensation Period affected all of Condor’s international destinations outside the Union on long-haul flights and the non-EU destinations on short and medium haul flights, namely Barbados, Canada, Cuba, Dominican Republic, Egypt, Grenada, Jamaica, Kenya, Malaysia, Maldives, Mauritius, Mexico, Montenegro, Morocco, Namibia, Puerto Rico, Seychelles, South Africa, Tanzania, Trinidad and Tobago, Turkey and the USA.
- (42) On 17 March 2020, the BMI also prohibited any non-essential travel for international aviation and maritime transport on routes from outside the Union to Germany. The BMI extended that prohibition to air travel and arriving flights from Italy, Spain, Austria, France, Luxembourg, Denmark and Switzerland within the Union on 18 March 2020. Travel by persons without any compelling reason to enter Germany (non-essential travellers) was prohibited. Those entry bans for air travel applied until 15 June 2020.³³
- (43) Germany enforced those travel restrictions through temporary checks at the internal borders with Austria, Switzerland, France, Luxembourg and Denmark (effective as of 16 March 2020). The German authorities refused entry into the territory to all travellers that did not provide an urgent reason to do so. Germany subsequently extended the internal border controls within the Schengen area to air travel on 18 March 2020.
- (44) Starting on 16 June 2020, Germany gradually lifted the border controls for travellers incoming from within the Schengen area as well as the United

Alpes-Côte d’Azur, Greece Central Macedonia, Greece East Macedonia and Thrace, Greece Epirus, Greece North Aegean, Greece Peloponnese, Greece Thessaly, Italy Catanzaro, Italy Friuli-Venezia Giulia, Italy Sardinia, Italy Sicily, Malta, Netherlands Curaçao, Spain Andalusia, Spain Balearics, Spain Canary Islands.

³² See press release of 17 March 2020:

<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/03/corona-reisebeschraenkungen.html>; see also [BMI - Migration - Travel restrictions / border control \(bund.de\)](#).

³³ See the press release of 5 May

2020:<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2020/05/border-checks-extended-15-may.html> and the press release of 13 May 2020 <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2020/05/changes-in-the-border-regime.html>.

Kingdom, Iceland, Liechtenstein Norway and Switzerland.³⁴ Travel restrictions for other foreign travellers remained applicable until the end of the First Compensation Period.³⁵

2.2.2.2. Restrictions applicable in third countries to travels to/from Germany/Europe

(45) The following travel restrictions, containment and lockdown measures were applicable in Condor's destination countries (Member States and third countries) during the First Compensation Period:

- Barbados

- Barbados prohibited all international commercial flights from 15 April 2020 to 30 June 2020³⁶.

- Croatia

- On 19 March 2020, the Croatian National Crisis Staff announced the closure of the country's borders for a valid period of 30 days. Only Croatians could cross the border, as well as citizens of the other Member States or Schengen-associated States, and their third-country family members. Persons with a right of residence in one of those States could cross the border with the aim of returning to their country of origin or residence. The entry ban for foreigners remained valid until the end of the First Compensation Period.

- Cuba

- Cuba prohibited air traffic and entry into its territory to foreigners on 24 March 2020 following the first COVID-19 cases reported on the island³⁷. It remained closed until the end of the First Compensation Period.

- Cyprus

- On 17 March 2020, Cyprus imposed entry restrictions on all non-mandatory entries from third countries into the Union and the Schengen area. Those entry restrictions were in place throughout the First Compensation Period.

- From 21 March until 8 June 2020, Cyprus did not allow commercial traffic with foreign countries including Member States.³⁸

³⁴ See the press release of 10 June 2020
<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/06/ende-binnengrenzkontrollen.html>.

³⁵ See the press release of 1 July 2020
<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/07/aufhebung-einreisebeschraenkung.html>.

³⁶ See NOTAMS A0821/20, A0827/20, A0920/20, A1000/20, A1270/20.

³⁷ <https://www.cubatransport.com/en/Blog/Post/44513/It-is-official-Cuba-regulates-entry-through-borders>

³⁸ Minister of Transport's Decree of 21 March 2020 available at <https://www.pio.gov.cy/assets/pdf/newsroom/2020/03/Διάταγμα%20ΥΠΟΥΡΓΟΥ%20ΜΕΤΑΦΟΡΩΝ%20ΕΠΙΚΟΙΝΩΝΙΩΝ%20ΚΑΙ%20ΕΡΓΩΝ.pdf> // NOTAMS A0481/20, A0482/20, A0540/20, A0541/20, A0572/20, A0573/20, A0640/20, A0641/20, A0679/20, A0678/20

- Costa Rica
- Costa Rica closed its borders on 18 March 2020³⁹, and prohibited all flights from/to its territory to the exception of humanitarian flights⁴⁰. That situation lasted until after the end of the First Compensation Period.
- Dominican Republic
- The Dominican Republic shut down its airspace from 18 March 2020 until the end of the First Compensation Period via a state of emergency ordered by the Dominican Government.
- Egypt
- Egypt closed its airspace by a Prime Ministerial decree, from 19 March to 4 June 2020 for all international commercial flights.
- France: Guadeloupe and Martinique
- The French authorities introduced on 21 March 2020 a flight ban to Guadeloupe and Martinique until 11 May 2020, allowing only special flights⁴¹.
- Greece
- As of 17 March 2020, the Greek authorities implemented a general prohibition of all non-essential travels to/from third countries except for specific and limited purposes or categories of persons⁴². Greek nationals were exempted, but only for returns to Greece.
- From 29 March 2020 to 30 June 2020 all flights to and from Germany were suspended with the exception of flights to and from Athens. Exceptions applied e.g. for medical personnel, humanitarian flights, emergencies, military and Frontex.

³⁹ Decree n°42238 of 17 March 2020.

⁴⁰ See NOTAMs A0759/20, A0700/20, A0850/20, A0771/20, A0868/20, A1007/20, A0965/20, A1064/20,, A1123/20, A1131/20, A1141/20, A1158/20, A1124/20.

⁴¹ Order of 21 March 2020 « complétant l'arrêté du 14 mars 2020 portant diverses mesures relatives à la lutte contre la propagation du virus covid-19 » prolonged by Decree n°2020-423 of 14 Avril 2020 « complétant le décret n° 2020-293 du 23 mars 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire ».

⁴² Joint Ministerial Decision Δ1α/ΓΠ.οκ.19030, “enforcement of the ban on entry into the country of third country nationals other than the countries of the European Union and the Schengen Agreement to limit the spread of COVID-19 coronavirus.” (Gazette B’ 916/17.3.2020), successively prolonged by Joint Ministerial Decisions beyond 31 October 2020. The exemptions were applicable to medical staff performing services in Greece; long-term residents of EU/Schengen and third country nationals with residence permit within EU/Schengen; diplomatic staff; personnel employed in the transport sector, including seafarers, aircraft crews, crews and technical personnel of hired aircraft firefighting equipment, as well as drivers of lorries, who pass through for the carriage of goods and the absolutely necessary auxiliary personnel for their transport; caregivers of elderly and disabled people and seasonal agricultural workers; see for example the announcement of the extension of the ban on foreigners (<https://www.jpost.com/health-science/ban-on-foreign-entry-to-israel-extended-through-aug-1-632772>).

- Grenada
- Maurice Bishop International Airport closed from 22 March 2020 until the end of the First Compensation Period. The national authorities did not permit any commercial flights until after the end of the first Compensation Period⁴³.
- Italy
- Within the Union, Italy was the first country to be hit by the COVID-19 outbreak. Italy declared a state of emergency on 31 January 2020, when it reported its first cases of COVID-19 infections. It introduced numerous travel restrictions. That situation lasted until after the end of the First Compensation Period⁴⁴.
- Jamaica
- Jamaica enforced an entry ban on travellers from Germany for the period from 10 March to 14 June 2020.
- Kenya
- The National Emergency Response Committee (NERC) adopted a directive on 22 March 2021 suspending all international flights to/from Kenya with effect on 26 March 2020⁴⁵ until the end of the First Compensation period⁴⁶. Kenya enforced an entry ban on travellers from the Union during the same period.
- Maldives
- On 17 March 2020, the Maldives Civil Aviation Authority introduced entry restrictions for passengers coming from Bavaria, North Rhine Westphalia and Baden Wuerttemberg⁴⁷. From 27 March 2020, all persons having been in Germany in the 14 days preceding their entry were prohibited from entering the Maldives. That ban applied until the end of the First Compensation Period⁴⁸.
- Malta

⁴³ See NOTAMs A1061/20, A1359/20 and A1221/20.

⁴⁴ <https://www.gazzettaufficiale.it/eli/id/2020/07/30/20G00112/sg>. See also Commission Decision of 4 September 2020 on case SA.58114 (2020/N) – Italy – COVID-19 aid to Alitalia (OJ C 41, 5.2.2021, p. 6), recitals 12-13 and 15.

⁴⁵ See Twitter Account of the Kenya Civil Aviation Authority (KCAA): https://twitter.com/CAA_Kenya/status/1242513970210185219

⁴⁶ See communication of the Kenya Civil Aviation Authority (KCAA): https://www.kcaa.or.ke/sites/default/files/docs/covid_19/Min-of-Transport-33x3-1-8-20.pdf and <https://www.kcaa.or.ke/covid-19/protocol-for-air-travel-operations>.

⁴⁷ <https://kemlu.go.id/download/L1B1Ymxpc2hpbmdJbWFnZXMvS0VCSUpBS0FOJTIwQ09ST05BL01hbGRpdmVzJTlWQXZpYXRpb24lMjBBdXRpb3JpdHkucGRm>

⁴⁸ <https://caa.gov.mv/attachments/jUqJPKxYZy7ww3lucKfVGRtWmDaTo5q6pBrH3cKm.pdf>

- Malta International Airport closed from 21 March 2020 until the end of the First Compensation Period to commercial traffic, with the exception of repatriation/humanitarian and cargo flights⁴⁹.
 - Mauritius
- On 18 March 2020, the interministerial committee took the decision to close the Mauritian borders completely. As of 19 March 2020, commercial planes could no longer land⁵⁰. Those restrictions lasted beyond the end of the First Compensation Period⁵¹.
 - Montenegro
- Montenegro prohibited all commercial air traffic and closed its borders from 17 March to 30 May 2020.
 - Morocco
- Morocco closed its airspace on 16 March 2020 and did not allow any commercial flights by foreign airlines. That situation lasted until after the end of the First Compensation Period⁵².
 - Namibia
- Namibia suspended all direct flights from Germany on 14 March 2020 with immediate effect⁵³. On 17 March 2020, Namibia imposed a general travel ban on travellers from countries affected by COVID-19, including Germany. That situation lasted until after the end of the First Compensation Period.
 - Netherlands Curaçao
- All passengers from Europe were prohibited from entering Curaçao by national decree of 17 March 2020 with retroactive effect as of 13 March 2020⁵⁴. The Hato airport (CUR) was closed for inbound passengers with exemptions for residents of Curaçao, medical personnel and cargo from all countries from 16 March 2020 until after the end of the First Compensation Period.⁵⁵

⁴⁹ Travel Ban Order, 2020; L.N. 42 of 2020, <https://legislation.mt/eli/ln/2020/42/eng> / Travel Ban (Extension to all Countries) Order, 2020; L.N. 92 of 2020, Travel Ban (Extension to all Countries) (Amendment) Order, 2020; L.N. 244 of 2020.

⁵⁰ https://www.lexpress.mu/article/372753/covid-19-trois-premiers-cas-confirmez-maurice?fbclid=IwAR3Y2Fm-xszxK9_EqWlUgAVZgnesCzB0_L8pKnZauJr210hl47dYYbfKboU.

⁵¹ <https://www.lexpress.mu/article/395007/ouverture-frontieres-premiere-phase-debute-15-juillet>.

⁵² The Moroccan authorities ordered the suspension of all air traffic to/from Morocco and the closure of airspace with NOTAM as of 14 March 2020 until 9 July 2020.

⁵³ Dr. Hage Geingob, President of the Republic of Namibia, see <http://www.namibia-botschaft.de/53-uncategorised/869-covid-19,-president-dr-hage-geingob,-statement.html>.

⁵⁴ Landsbesluit 20/308, Tijdelijk inreisverbod Europa, 17 March 2020.

⁵⁵ See directives of the civil aviation authorities Curacao 10 April 2020: CURCW/20/130-3, 24 April 2020: CURCW/20/138-4, 7 May 2020: CURCW/20/138-5, 12 June 2020: CURCW/20/138-6, 24 June 2020: CURCW/20/138-7, 29 June 2020: CURCW/20/138-8, 12 August 2020: CURCW/20/138-9, 15 October 2020: CURCW/20/138-11.

- Seychelles
- The Seychelles introduced travel restrictions effective from 18 March 2020. Any passenger who had been to a Member State in the 14 days preceding its departure was not allowed to enter the Seychelles⁵⁶. As of 23 March 2020, citizens and residents of the Seychelles could not travel abroad. In June 2020, the Seychelles government started to gradually lift restrictions, by allowing private and charter flights into the country.⁵⁷
- South Africa
- From 25 March 2020, the national authorities closed the borders to all international air traffic and that closure remained in place until after the end of the First Compensation Period⁵⁸.
- Spain
- From 21 March 2020 until the end of the First Compensation Period, the Spanish authorities imposed travel restrictions on commercial air traffic. Only Spanish citizen or residents were allowed to enter the country⁵⁹. Spain prolonged those measures by orders INT/283/2020 of 25 March 2020, INT/335/2020 of 10 April 2020, INT/368/2020 of 24 April 2020,

⁵⁶ <https://www.mfa.gov.sc/news/2013/travel-and-health-advisory-update-about-covid-19-monday-16th-march-2020>.

⁵⁷ <https://www.mfa.gov.sc/news/2100/classification-of-countries-approved-for-entry-in-seychelles/> / <https://www.mfa.gov.sc/news/2122/list-of-countries-from-which-visitors-are-permitted-to-enter-seychelles>.

⁵⁸ International Air Services Act: Regulations: COVID-19 restrictions on the movement of Air Travel - 18 March 2020
<https://www.transport.gov.za/documents/11623/138608/Air43105gen175.pdf/02fb7e2c-8bbf-4c5e-9131-4539ddca711d>
 Disaster Management Act: Measures to prevent and combat the spread of Coronavirus COVID-19 in Air Services - 26 March 2020
https://www.transport.gov.za/documents/11623/138608/Air_Services_Directives_Gazette_Covid_27_2_2020.pdf/92702c73-83c7-4bb5-9a7d-6470948e0893
 Amendment: Disaster Management Act: Directions on Air Services - 27 March 2020
https://www.transport.gov.za/documents/11623/138608/AirCargo_27_march_2020_43176gon423t.pdf/d71900e4-37c6-4dcf-a63f-5d11e436b908
 Amendment: Disaster Management Act: Measures to prevent and combat the spread of Coronavirus COVID-19 in the Public Transport services: Air services - 31 March 2020
https://www.transport.gov.za/documents/11623/138608/Air_31March2020_43189gon438.pdf/da899cef-0bc1-4d44-a5cc-f44296c2cc6e
 Amendment: Measures to address, prevent and combat the spread of COVID-19 in the Air Services - 29 May 2020
https://www.transport.gov.za/documents/11623/138608/43375_30_5_AirService_29_05_20_Transport.pdf/9a15b916-c4cd-42bd-a26f-03b029f56fce
 Amendment: Measures to address, prevent and combat the spread of COVID-19 at Air Services - 25 August 2020
https://www.transport.gov.za/documents/11623/138608/Air_Services_Directions_20Aug2020.pdf/1a798d8e-1397-42d3-9f73-9bbce19cca08
 Measures to address, prevent and combat the spread of COVID-19 in the Air Services for Alert Level 1 - 30 September 2020
https://www.transport.gov.za/documents/11623/138608/43752_01_10_Transport.pdf/631c0b86-4c35-4904-991f-1e47e29bf403

⁵⁹ Orden INT/239/2020, de 16 de marzo, por la que se restablecen los controles en las fronteras interiores terrestres con motivo de la situación de crisis sanitaria ocasionada por el COVID-19. Prolonged by

INT/396/2020 of 8 May 2020 and SND/439/2020 of 23 May 2020 until the end of the First Compensation Period.⁶⁰

- Tanzania

- The Tanzanian government announced on 11 April 2020 the suspension with immediate effect of all passenger flights to Tanzania. That ban was lifted on 18 May 2020 and international air traffic resumed on 1 June 2020⁶¹.

- Trinidad and Tobago

- Trinidad and Tobago closed its international airports and imposed an entry ban on all tourists on 17 March 2020. That situation lasted until after the end of the First Compensation Period.

- Turkey

- On 14 March 2020, Turkey introduced a travel ban and began to lift it gradually as of 14 June 2020.

- USA

- On 11 March 2020, the United States issued Presidential Proclamation No 9933,⁶² effective as of 14 March 2020 and valid beyond the end of the First Compensation Period⁶³. That Proclamation suspended as a general rule the entry into the United States for all foreigners who were physically present within the Schengen Area during a 14-day period preceding their entry or attempted entry into the United States. There was an exemption from that rule for citizens of the United States, permanent residents in the United States and some other limited groups.
- On 22 April 2020, the United States also adopted Presidential Proclamation No 10014.⁶⁴ That Proclamation suspended as a general rule visa grant to immigrants for travel into the United States, except for very specific categories of people.⁶⁵ That Proclamation applied until after the end of the First Compensation Period. It was complemented by Presidential Proclamation of 22 June 2020⁶⁶ suspending the grant of several categories of

⁶⁰ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4064 // <https://www.boe.es/eli/es/o/2020/04/10/int335> // https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4649 // https://boe.es/diario_boe/txt.php?id=BOE-A-2020-4900 // <https://www.boe.es/buscar/act.php?id=BOE-A-2020-5264>

⁶¹ https://www.ch.tzembassy.go.tz/uploads/Un-uspension_of_Air_Travel_Restrictions.pdf.

⁶² Presidential Proclamation No 9933 - Suspension of entry as immigrants and non-immigrants of certain additional persons who pose a risk of transmitting 2019 novel coronavirus.

⁶³ That Proclamation was applied at least until 31 December 2020.

⁶⁴ Presidential Proclamation No 10014 of 22 April 2020 suspending entry of immigrants who present risk to the U.S. labor market during the economic recovery following the COVID-19 Outbreak.

⁶⁵ Visa could be granted only to lawful permanent resident of the United States, medical purposes, certain investment purposes, direct relatives of citizens from the United States (spouse or child) and any alien of national interest or that would further important United States law enforcement objectives.

⁶⁶ Presidential Proclamation of 22 June 2020 suspending entry of aliens who present a risk to the U.S. labor market following the coronavirus outbreak.

non-immigrant visas (temporary work visas, intern and exchange visitors visas, temporary intracompany transferees visas) with only limited exceptions.

2.2.3. Restrictions applicable during the Second Compensation Period

2.2.3.1. Restrictions imposed by Germany

- (46) Since the lifting of the general travel warning on 15 June 2020, the Ministry of Foreign Affairs has been applying a differentiated system for all destinations with the possibility to adjust the list of applicable travel warnings at short notice according to the prevalence of the virus in the regions concerned. A formal travel warning is issued for each country that has been classified as risk area based on a joint analysis of the Federal Ministry of Health, the German Federal Foreign Office and the Federal Ministry of the Interior⁶⁷. That system applied throughout the entire Second Compensation Period.
- (47) As previously set out, the German authorities explain that formal travel warnings from the German Ministry of Foreign Affairs are the sharpest measure available to the German government when it seeks to limit travel (see recital (37) including for the consequences of such formal travel warning).
- (48) Numerous formal travel warnings for States outside the Schengen area remained in place after the general formal travel warning was lifted, as is shown in Table 1:⁶⁸

Table 1: Condor’s international destinations with travel warnings during the Second Compensation Period⁶⁹

Destination	Period
Barbados	01.07.20 - 30.09.20
Canada	01.07.20 - 31.12.20
Cuba	01.07.20 - 30.09.20
Dominican Republic	01.07.20 - 31.12.20
Egypt	01.07.20 - 31.12.20
Grenada	01.07.20 - 30.09.20
Jamaica	01.07.20 - 31.12.20
Kenya	01.07.20 - 31.12.20

⁶⁷ See, for instance, the press release of 14 July 2020 https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Transport/Archiv_Risikogebiete/Risikogebiete_14072020_en.pdf?__blob=publicationFile.

⁶⁸ See the press release of 12 June 2020 <https://www.auswaertiges-amt.de/de/ReiseUndSicherheit/covid-19-reisenwarnung-verlaengert/2351766>.

⁶⁹ The exact periods are displayed on the website of the Robert Koch Institute https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Transport/Archiv_Risikogebiete/EN-Tab.html

Malaysia	01.07.20 - 30.09.20
Maldives	01.07.20 - 31.12.20
Mauritius	01.07.20 - 30.09.20
Mexico	01.07.20 - 31.12.20
Montenegro	01.07.20 - 31.12.20
Morocco	01.07.20 - 31.12.20
Namibia	01.07.20 - 15.10.20
Puerto Rico	01.07.20 - 31.12.20
Seychelles	01.07.20 - 30.09.20
South Africa	01.07.20 - 31.12.20
Tanzania	01.07.20 - 31.12.20
Trinidad and Tobago	01.07.20 - 30.09.20
Turkey Antalya	01.07.20 - 04.08.20 09.11.20 - 31.12.20
USA	01.07.20 - 31.12.20

Source: Robert Koch Institute

- (49) Germany reintroduced numerous formal travel warnings to Condor's destinations within the Union after the worldwide formal travel warning had been lifted with effect of 15 June 2020. They are shown in Table 2:

Table 2: German travel warnings per country in the European Union between 1 July and 31 December 2020⁷⁰

Destination	Beginning	End
Croatia Dubrovnik-Neretva	09.09.20	31.12.20
Croatia Primorje-Gorski Kotar	01.11.20	31.12.20
Croatia Split-Dalmatia	20.08.20	31.12.20
Croatia Zadar	02.09.20	31.12.20

⁷⁰ Travel warnings according to the declaration of the German Foreign office following the assessment by the German government.

Cyprus	01.11.20	31.12.20
France Guadeloupe	26.08.20	31.12.20
France Martinique	17.10.20	31.12.20
France Provence-Alpes-Côte d'Azur	17.10.20	31.12.20
Greece Central Macedonia	08.11.20	31.12.20
Greece East Macedonia and Thrace	08.11.20	31.12.20
Greece Epirus	08.11.20	06.12.20
Greece North Aegean	15.11.20	31.12.20
Greece Peloponnese	13.11.20	27.11.20
Greece Thessaly	08.11.20	31.12.20
Italy Catanzaro	08.11.20	31.12.20
Italy Friuli-Venezia Giulia	08.11.20	31.12.20
Italy Sardinia	08.11.20	31.12.20
Italy Sicily	08.11.20	31.12.20
Malta	17.10.20	31.12.20
Netherlands Curaçao	07.10.20	31.12.20
Spain Andalusia	02.09.20	31.12.20
Spain Balearics	14.08.20	31.12.20
Spain Canary Islands	02.09.20	31.12.20

Source: Robert Koch Institute

- (50) The entry ban on non-essential travel introduced by the German Federal Ministry of Interior on 17 March 2020 (see recital (40)) applied in principle throughout the Second Compensation Period. Germany lifted that ban for a few third countries following the recommendations at Union level, depending on the then current epidemiological situation in the third country concerned.⁷¹ Of Condor's 22 non-EU destinations, the entry restrictions were temporarily lifted only for

⁷¹ See the press release of 1 July 2020 <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/07/aufhebung-einreisebeschraenkung.html>.

Montenegro (1 July⁷² to 16 July 2020⁷³) and Canada (1 July⁷⁴ to 27 October 2020⁷⁵).

2.2.3.2. Restrictions applicable in third countries to travels to/from Germany/Europe affecting Condor

(51) The following travel restrictions, containment and lockdown measures were applicable in Condor's destination countries (Member States and third countries) during the Second Compensation Period:

- Barbados
 - Barbados prohibited all international commercial flights between 1 and 12 July 2020⁷⁶.
- Canada
 - On 18 March 2020, the Canadian authorities issued a decree prohibiting foreign nationals from entering Canada if they arrive by means of an aircraft from a foreign country⁷⁷. That general prohibition remained in force during the Second Compensation Period⁷⁸.
- Cuba
 - The national authorities closed the airport Varadero from 1 July to 14 October 2020⁷⁹ and Havana and Holguin airports for international air traffic from 1 July to 14 November 2020.
- Costa Rica
 - The closure of border to new entries and the prohibition of commercial flights announced on 18 March 2020⁸⁰ lasted until 2 August 2020.
- France

⁷² See the press release of 1 July 2020
<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2020/07/aufhebung-einreisebeschraenkung-en.html>.

⁷³ See the press release of 16 July 2020
<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2020/07/anpassung-einreisebeschraenkungen-drittstaaten-en.html>.

⁷⁴ See the press release of 1 July 2020
<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2020/07/aufhebung-einreisebeschraenkung-en.html>.

⁷⁵ See the press release of 23 October 2020
<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/10/einreisebeschraenkungen-kanada.html>.

⁷⁶ See NOTAMs A0821/20, A0827/20, A0920/20, A1000/20, A1270/20.

⁷⁷ Order in Council n°4 of 18 March 2020 - Minimizing the Risk of Exposure to COVID-19 Coronavirus Disease in Canada Order (Prohibition of Entry into Canada).

⁷⁸ <https://www.canada.ca/en/public-health/corporate/mandate/about-agency/acts-regulations/list-actsregulations.html#emergency>.

⁷⁹ Attachment Republica de Cuba – Ministerio de Turismo. Öffnung des Reiseziels Varadero.

⁸⁰ Decree 42238 of 17 March 2020.

- The French authorities enforced a nation-wide lockdown as of 2 November 2020 until 15 December 2020, during which they required all residents on French territory to stay at home and to leave only for very specific and necessary purposes provided by law⁸¹.
 - Grenada
- Commercial flights were not permitted in the period from 1 to 31 July 2020⁸².
 - Italy
- Between 4 November and 20 December 2020, the Italian Ministry of Health adopted a series of ordinances implementing the provisions of Decree n°275 on the regional lockdown measures.⁸³ The duration of application of the regional lockdown measures in each of the regions where Condor operated is summarised in Table 3.

Table 3: Regions subject to and duration of the regional lockdown measures between 6 November and 20 December 2020

Regions concerned by the regional lockdown measures	Duration of the regional lockdown measures
Friuli	15 November – 6 December 2020
Sicily	6 November – 29 November 2020

- On 2 December 2020, Italy adopted Decree-Law n°198 providing for the enforcement of a nation-wide lockdown taking effect as of 21 December 2020 and applying until after the end of the Second Compensation Period⁸⁴. All domestic travel between Italian regions was prohibited during that period unless for essential business, necessity and/or health reasons. This also applied to international travel from each of the regions and foreign countries, including other Member States.
 - Kenya
- Some airports (NAI- Jkia, MBA- Moi Int., KSM - Kisumu Int., ELD - Eldoret Int. Airport) were closed from 1 July to 1 August 2020. An entry ban for travellers from the Union was in force for the same period⁸⁵.
 - Malaysia

⁸¹ See Decree n° 2020-1310 of 29 October 2020 « *prescrivant les mesures générales nécessaires pour faire face à l'épidémie de COVID-19 dans le cadre de l'état d'urgence sanitaire* ».

⁸² See NOTAMs A1061/20, A1359/20, A1221/20.

⁸³ See Commission decision of 26 March 2021 on State aid SA.61676 – Italy – COVID19 aid to Alitalia (OJ C 223, 11.6.2021, p. 14), recitals 15-18.

⁸⁴ Decree-Law n°182 of 2 December 2020 “*Disposizioni urgenti per fronteggiare i rischi sanitari connessi alla diffusione del virus COVID-19*”.

⁸⁵ https://www.kcaa.or.ke/sites/default/files/docs/covid_19/Min-of-Transport-33x3-1-8-20.pdf.

- With the "Recovery Movement Control Order" (RMCO)⁸⁶, Malaysia introduced a general entry ban for foreign travellers as of 8 September 2020 that was in place until after the end of the Second Compensation Period.
 - Maldives
 - From 1 to 15 July 2020, all persons were prohibited from entering the Maldives if they had been in Germany during the 14 days preceding their entry⁸⁷.
 - Mauritius
 - The closure of the borders announced on 18 March 2020⁸⁸ lasted throughout the Second Compensation Period, until 14 July 2021⁸⁹.
 - Morocco
 - Since the general closure of the Moroccan airspace since 16 March 2020, German airlines have not been allowed to land in Morocco⁹⁰.
 - Namibia
 - The suspension of all direct flights from Germany to Namibia that was announced on 14 March 2020 with immediate effect⁹¹ and the general travel ban for travelers from foreign countries, including the Schengen States announced on 17 March 2020 with effect from 18 March 2020, lasted at least until 31 August 2020.
 - Netherlands Curaçao
 - The entry ban for passengers from Europe announced on 17 March 2020 with retroactive effect from 13 March 2020⁹² lasted until the end of the Second Compensation Period.
 - Seychelles
 - The entry ban for passengers who have been to any country in Europe in the preceding 14 days enacted on 18 March 2020⁹³ was in force until 31 July 2020⁹⁴.

⁸⁶ <https://esd.imi.gov.my/portal/latest-news/announcement/entry-hold-my-permission-updates/>.

⁸⁷ <https://caa.gov.mv/attachments/jUqJPKxYZy7ww3lucKfVGRtWmDaTo5q6pBrH3cKm.pdf>.

⁸⁸ https://www.lexpress.mu/article/372753/covid-19-trois-premiers-cas-confirmes-maurice?fbclid=IwAR3Y2Fm-xszxK9_EqWlUgAVZgnesCzB0_L8pKnZauJr210h147dYYbfKboU

⁸⁹ <https://www.lexpress.mu/article/395007/ouverture-frontieres-premiere-phase-debute-15-juillet>

⁹⁰ With NOTAM of 10 July 2020, the Moroccan authorities opened the Moroccan airspace only to special flights operated by airlines registered with the Moroccan Air Traffic Control (Condor was not part of the list). That regulation was valid until 23 February 2021.

⁹¹ Dr. Hage Geingob, President of the Republic of Namibia, see <http://www.namibia-botschaft.de/53-uncategorised/869-covid-19,-president-dr-hage-geingob,-statement.html>

⁹² Landsbesluit 20/308, Tijdelijk inreisverbod Europa, 17 March 2020

⁹³ <https://www.mfa.gov.sc/news/2013/travel-and-health-advisory-update-about-covid-19-monday-16th-march-2020>

- South Africa
- From 1 July to 21 September 2020, South Africa prohibited commercial flights.
- Trinidad and Tobago
- The closure of international airports as well as an entry ban for all tourists from foreign countries was in place throughout the Second Compensation Period.
- USA
- The Presidential Proclamation No 9933⁹⁵ that was effective as of 14 March 2020 was in force throughout the Second Compensation Period. It suspended as a general rule the entry into the United States, as immigrants or non-immigrants, of all aliens who were physically present within the Schengen Area during the 14-day period preceding their entry or attempted entry into the United States. There was an exemption from that rule for citizens from the United States, permanent residents in the United States and some other limited groups.
- Presidential Proclamation No 10014⁹⁶ adopted on 22 April 2020, which suspended as a general rule visa grant to immigrants for travels into the United States, except for very specific categories of people⁹⁷ was as well in force throughout the Second Compensation Period. The same holds true for Presidential Proclamation of 22 June 2020⁹⁸, which suspended the grant of several categories of non-immigrant visas (temporary work visas, intern and exchange visitors visas, temporary intracompany transferees visas) with only limited exceptions.

2.3. Impact of the travel restrictions and containment measures

2.3.1. Impact of travel and containment restrictions on airlines

- (52) The measures implemented across Member States and third countries resulted in a heavy decline in travel with a pronounced effect on airlines.
- (53) Eurocontrol shows a significant decrease in flights between 9 March and 1 July 2020, between a minimum of 14% (on 9 March 2020) and a maximum of 93%

⁹⁴ [https://www.mfa.gov.sc/news/2083/seychelles-to-resume-passenger-flights-on-1st-august;](https://www.mfa.gov.sc/news/2083/seychelles-to-resume-passenger-flights-on-1st-august)
<https://www.mfa.gov.sc/news/2100/classification-of-countries-approved-for-entry-in-seychelles> /
<https://www.mfa.gov.sc/news/2122/list-of-countries-from-which-visitors-are-permitted-to-enter-seychelles>.

⁹⁵ Presidential Proclamation No 9933 - Suspension of entry as immigrants and non-immigrants of certain additional persons who pose a risk of transmitting 2019 novel coronavirus.

⁹⁶ Presidential Proclamation No 10014 of 22 April 2020 suspending entry of immigrants who present risk to the U.S. labor market during the economic recovery following the COVID-19 Outbreak.

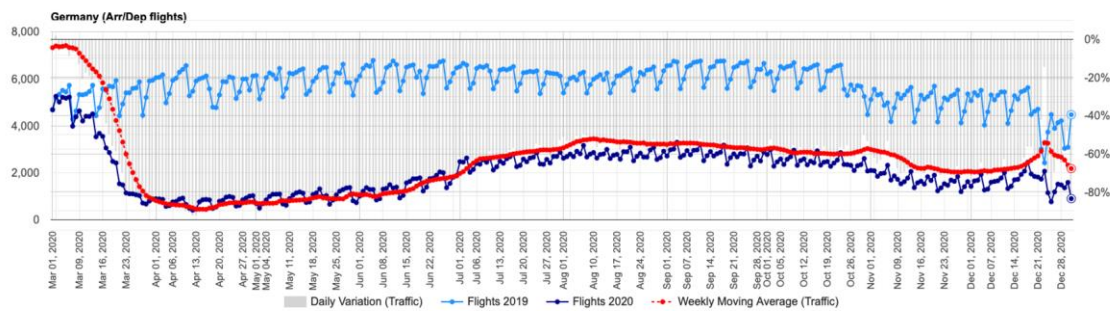
⁹⁷ Visa could be granted only to lawful permanent resident of the United States, medical purposes, certain investment purposes, direct relatives of citizens from the United States (spouse or child) and any alien of national interest or that would further important United States law enforcement objectives.

⁹⁸ Presidential Proclamation of 22 June 2020 suspending entry of aliens who present a risk to the U.S. labor market following the coronavirus outbreak

(reached on 12 April 2020) in comparison with the number of flights operated on the same dates in 2019.99

- (54) The decrease of flights to/from Germany in July to December 2020 was between -50% and -70% according to Eurocontrol, as is shown in Figure 1:

Figure 1: Number of flights operated between 1 March and 31 December 2020 (compared to 2019)



- (55) Passenger demand at German airports plummeted after the first two months of 2020 and only recovered slightly for a short period in the summer. With 63 million passengers, demand at German airports fell by 75 % compared to 2019¹⁰⁰.

Table 4: Development of passenger numbers at German airports in 2020 compared to 2019¹⁰¹

Month	Change in % vs 2019
January	- 1,9
February	- 3,6
March	- 62,9
April	- 98,6
May	- 97,9
June	- 93,6
July	- 80,1
August	- 75,6

⁹⁹ Eurocontrol - COVID19 Impact on European Air Traffic – Comprehensive Assessment. Air Traffic situation for Wednesday 1 July 2020 compared with equivalent period in 2019. Available at: eurocontrol.int/publication/eurocontrol-comprehensive-assessment-covid-19s-impact-european-air-traffic.

¹⁰⁰ <https://www.bdl.aero/wp-content/uploads/2021/01/Jahreszahlen-2020.pdf>

¹⁰¹ Arbeitsgemeinschaft der deutschen Verkehrsflughäfen (ADV) - <https://www.adv.aero/aktuelle-verkehrszahlen/>

September	- 80,7
October	- 83,2
November	- 90,3
December	- 87,9

Source: *Germany*

- (56) At global level, passenger demand in 2020 was 75.6% below 2019 levels. Capacity (measured in available seat kilometers) declined by 68.1% and load factor fell by 19.2 percentage points to 62.8%. European carriers saw a 73.7% traffic decline in 2020 compared to 2019, their capacity fell by 66.3% and their load factor decreased by 18.8 % to 66.8%. For the month of December 2020, traffic slid by 82.3% compared to December 2019, an upturn over the 87% year-to-year decline in November 2020 reflecting pre-holiday momentum that was reversed toward the end of the same month¹⁰².

2.3.2. Impact of the travel restrictions and containments measures on Condor

- (57) According to Germany, Condor's business activities were significantly affected by the spread of the COVID-19 virus and by the disruptive effects that the virus and the travel restrictions and containment measures had on the air transport sector at European and world level. As a result, there was a drastic reduction in the operating network and routes operated by the company.

2.3.2.1. First Compensation Period (17 March to 30 June 2020)

- (58) From 24 February 2020 onwards, Condor experienced a massive decline in net ticket sales, which turned negative compared with the respective figure in 2019 on 13 March 2020 and stayed negative thereafter, as shown in Table 5:

Table 5: Net ticket sales per day in February and March 2019 vs. 2020 (in thousands)

in thousands	15.2	16.2	17.2	18.2	19.2	20.2	21.2	22.2	23.2	24.2	25.2	26.2	27.2
2020	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
2019	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Var.	[20-30]%	[70-80]%	[50-60]%	[0-10]%	-[10-20]%	[10-20]%	-[0-10]%	[0-10]%	[30-40]%	-[30-40]%	-[30-40]%	-[30-40]%	-[40-50]%

in thousands	28.2	29.2	1.3	2.3	3.3	4.3	5.3	6.3	7.3	8.3	9.3	10.3	11.3
2020	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

¹⁰² <https://www.iata.org/en/pressroom/pr/2021-02-03-02/>

2019	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Var.	-[40-50]%	-[40-50]%	-[40-50]%	-[50-60]%	-[50-60]%	-[50-60]%	-[50-60]%	-[50-60]%	-[40-50]%	-[40-50]%	-[60-70]%	-[30-40]%	-[40-50]%

In thousands	12.3	13.3	14.3	15.3	16.3	17.3	18.3	19.3	20.3	21.3	22.3	23.3	24.3
2020	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
2019	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Var.	-[80-90]%	-[130-140]%	-[140-150]%	-[210-220]%	-[310-320]%	-[220-230]%	-[240-250]%	-[600-610]%	-[550-560]%	-[140-150]%	-[110-120]%	-[120-130]%	-[160-170]%

Source: *Condor*

(59) The average daily net value of sales before 24 February 2020 was EUR [...] million, which decreased to EUR [...] million (-62%) on 1 March 2020 and turned negative on 13 March 2020.

(60) The net ticket sales stayed negative until Calendar Week (“CW”) 26 (end of June 2020), and even then sales only recovered on a small basis with -83% in CWs 26 to 31 compared to the previous year (Table 6):

Table 6: Net ticket Sales per calendar week (in thousands)

CW	7	8	9	10	11	12	13	14	15	16	17
2020	[...]	[...]	[...]	[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]
2019	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Var	-[0-10]%	-[30-40]%	-[50-60]%	-[90-100]%	-[330-340]%	-[130-140]%	-[110-120]%	-[110-120]%	-[140-150]%	-[170-180]%	-[220-230]%

CW	18	19	20	21	22	23	24	25	26	27	28
2020	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	[...]	[...]	[...]
2019	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Var	-[190-200]%	-[180-190]%	-[170-180]%	-[340-350]%	-[150-160]%	-[150-160]%	-[110-120]%	-[110-120]%	-[90-100]%	-[70-80]%	-[80-90]%

CW	29	30	31	32	33	34	35	36	37	38	39
2020	[...]	[...]	[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	[...]	-[...]
2019	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Var	-[70-80]%	-[90-80]%	-[80-90]%	-[100-110]%	-[130-140]%	-[120-130]%	-[120-130]%	-[140-150]%	-[120-130]%	-[60-70]%	-[140-150]%

Source: *Condor*

- (61) Table 7 shows the significant reduction of Condor's flight operations from March 2020 onward. Compared to January 2020, Condor's flight operations registered a decrease of 79% in terms of block hours operated (hours during which aircraft are flying). Condor also registered a decrease of 78% in its departures, of 95% in seat offering and of 91% in routes operated.

Table 7: Evolution of Condor's flight operations between January-June 2020

2020 Condor	Jan	Feb	Mar	Apr	May	Jun
Block Hours (000)	[10-20]	[10-20]	[10-20]	[0-10]	[0-10]	[0-10]
Departures (000)	2,1	2,1	2,0	0,5	0,6	0,2
Seats (000)	[470-480]	[450-460]	[360-370]	[20-30]	[20-30]	[20-30]
Flying Fleet	[40-50]	[40-50]	[40-50]	[20-30]	[20-30]	[20-30]
Avg. Daily Util. (BH/Flying Fleet)	[10-20]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Number of routes	88	91	98	8	16	20

Source: *Condor*

- (62) Condor severely reduced its flight operations compared to 2019, as can be seen in Table 7. Overall, the capacity of Condor declined between 38% in March 2020 (predominantly in the second half of the month) and 98% in May and June 2020. Condor parked up to 62% of its planes in June 2020, while using its flying fleet at a level of 11% of average daily block hours compared to June 2019.

Table 8: Evolution of Condor's flight operations between January-June 2019 and January-June 2020

Difference % 2020 vs. 2019	Jan	Feb	Mar	Apr	May	Jun
Block Hours	-8%	-3%	-23%	-82%	-84%	-96%
Departures / Legs	-10%	-3%	-23%	-85%	-88%	-96%
Capacity / Seats	-9%	-4%	-38%	-96%	-98%	-98%
Flying Fleet	-4%	-2%	0%	-48%	-44%	-62%
Avg. Daily Util. (BH/Flying Fleet)	-4%	-1%	-23%	-65%	-72%	-89%
Routes	-22%	-23%	-22%	-96%	-92%	-90%

Source: *Condor*

- (63) Based on the traffic figures provided by Germany for the period from March to June 2020, Condor also recorded a steep decline in passenger traffic as compared to the same period in 2019. Table 8 shows that significant traffic reduction by

comparing the Available Seat Kilometre (ASK)¹⁰³, Revenue Passenger Kilometre (RPK)¹⁰⁴ and Seat Load Factor (SLF)¹⁰⁵ figures of Condor for the period between 1 March and 30 June 2020 with those for the same period in 2019.

- (64) The offer of Condor (ASK) declined by 35% in March 2020 compared to 2019, and by up to 98% compared to the previous year in May and June 2020. Similarly, its RPK drastically decreased by 43% in March 2020 and by up to 99% in June 2020 compared to the 2019 figures as a consequence of the revenues and flown kilometers declining during the lockdown. Condor also registered very low SLF figures compared to its normal levels, as shown by Table 9:

Table 9: Condor's ASK, RPK and SLF figures for March-June 2019 and March-June 2020

March	2020	2019	Delta
ASK (billion)	[...]	[...]	-35%
RPK (billion)	[...]	[...]	-43%
SLF (%)	[...]	[...]	-11%
April	2020	2019	Delta
ASK (billion)	[...]	[...]	-95%
RPK (billion)	[...]	[...]	-97%
SLF (%)	[...]	[...]	-29P.%
May	2020	2019	Delta
ASK (billion)	[...]	[...]	-98%
RPK (billion)	[...]	[...]	-98%
SLF (%)	[...]	[...]	-25P.%
June	2020	2019	Delta
ASK (billion)	[...]	[...]	-98%
RPK (billion)	[...]	[...]	-99%

¹⁰³ Available seat kilometre (ASK) is a measure of an airplane's carrying capacity available to generate revenues. It refers to how many seat kilometres are actually available for purchase on an airline. Seat kilometres are calculated by multiplying the number of kilometres that a given airplane will be flying on a route by the number of seats available on that airplane. ASK can be used to assess how efficient an airline is at generating revenues from the availability of seats to customers. Thus the airline operates at below capacity if all the seats on the plane are not sold.

¹⁰⁴ The revenue passenger kilometre (RPK) shows the number of kilometre travelled by paying passengers. It is calculated by multiplying the number of paying passengers by the distance travelled. For example, an airplane with 100 passengers that flies 250 kilometres has generated 25,000 RPK.

¹⁰⁵ The seat load factor (SLF) is an airline industry metric that measures how much of an airline's passenger carrying capacity is used. It is a percentage indicating how effective the airline is at selling seats and earning revenues.

SLF (%)	[...]	[...]	-39P.%
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Source: *Condor*

- (65) Germany considered that Condor’s business figures of 2019 could have been influenced by the business Condor had with its parent company, the Thomas Cook Group (“TCG”) at that time. Accordingly, it also demonstrated the impact of the COVID-19 related travel restrictions on Condor’s business by comparing its actual figures with the pre-COVID-19 business forecasts drawn up after the operational and financial unbundling of Condor from TCG. Based on that comparison, Condor’s flight operations starkly contrast with those forecasted for 2020 on the basis of the pre-COVID-19 forecast as of mid-March 2020.
- (66) In March 2020, the total number of passengers transported by Condor already decreased by almost 50% compared to both the same period in 2019 (see Table 10) and the COVID-19 forecast (see Table 11).

Table 10: Impact of the COVID-19 outbreak on Condor’s flight activities in March 2020 in comparison to March 2019

	Booked passengers 2019 ('000)	Booked passengers 2020	Delta	Load factor 2019 (%)	Load factor 2020	Delta	Ticket revenues 2019 (mln EUR)	Ticket revenues 2020 (mln EUR)	Delta
1-7 March	[...]	[...]	-11%	[...]	[...]	-3%	[...]	[...]	-15%
8-15 March	[...]	[...]	-18%	[...]	[...]	-11%	[...]	[...]	-18%
16-22 March	[...]	[...]	-57%	[...]	[...]	-39%	[...]	[...]	-17%
23-31 March	[...]	[...]	-97%	[...]	[...]	-65%	[...]	[...]	-40%

Source: *Condor*

Table 11: Impact of the COVID-19 outbreak on Condor’s flight activities in March 2020 in comparison to the pre-COVID-19 forecast for March 2020

March	Booked passengers pre-COVID-19 forecast ('000)	Booked passengers 2020	Delta	Load factor pre-COVID-19 forecast (%)	Load factor 2020	Delta	Ticket revenues pre-COVID 19 forecast (mln EUR)	Ticket revenues 2020	Delta
1-7	[...]	[...]	0%	[...]	[...]	-1%	[...]	[...]	4%

8-15	[...]	[...]	-8%	[...]	[...]	-8%	[...]	[...]	-5%
16-22	[...]	[...]	-51%	[...]	[...]	-37%	[...]	[...]	-6%
23-31 March	[...]	[...]	- 97%	[...]	[...]	-62%	[...]	[...]	-27%

Source: *Condor*

- (67) Against that background and taking into account that the majority of the restrictions that had an impact on Condor's flights started on 17 March 2020, Germany considers that the First Compensation Period starts on 17 March 2020 and ends on 30 June 2020.
- (68) As explained by Germany, all of Condor's international destinations¹⁰⁶ were affected by travel restrictions throughout the First Compensation Period. Only some travel restrictions were lifted for its destinations within the Union¹⁰⁷ as of 15 June 2020.
- (69) According to Germany, despite the limited easing of the travel restrictions on routes within the Union as of 15 June 2020, Condor's activities were still extremely low at that time compared to both the previous year and the pre-COVID-19 forecast.
- (70) As shown in Table 12, Condor's overall passenger volume between 15 and 30 June 2020 was still only at 1% of the passenger volume in the same period in 2019.

Table 12: Condor's flight operations for the period 15 to 30 June 2020 compared to 15 to 30 June 2019

¹⁰⁶ They are Barbados, Canada, Cuba, Dominican Republic, Egypt, Grenada, Jamaica, Kenya, Malaysia, Maldives, Mauritius, Mexico, Montenegro, Morocco, Namibia, Puerto Rico, Seychelles, South Africa, Tanzania, Trinidad and Tobago, Turkey and USA.

¹⁰⁷ They are Croatia Dubrovnik-Neretva, Croatia Primorje-Gorski Kotar, Croatia Split-Dalmatia, Croatia Zadar, Cyprus, France Guadeloupe, France Martinique, France Provence-Alpes-Côte d'Azur, Greece Central Macedonia, Greece East Macedonia and Thrace, Greece Epirus, Greece North Aegean, Greece Peloponnese, Greece Thessaly, Italy Catanzaro, Italy Friuli-Venezia Giulia, Italy Sardinia, Italy Sicily, Malta, Netherlands Curaçao, Spain Andalusia, Spain Balearics, Spain Canary Islands.

	International/ intercontinental		EU		Total variation (2020 vs 2019)
	2020	delta (2019)	2020	delta (2019)	
Number of flights	[...]	-100%	[...]	-97%	-98%
Booked passengers	[...]	-100%	[...]	-98%	-99%

Source: *Condor*

- (71) Table 13 gives an overview of Condor's flight operations during the period from 15 to 30 June 2020 compared to the flight operations forecasted pre-COVID-19 for the same period. That comparison also shows that Condor's overall passenger volume between 15 and 30 June 2020 was still only at 1% of the passenger volume forecasted in the pre-COVID-19 forecast for the reference period.

Table 13: Condor's flight operations for the period 15 to 30 June 2020 compared to the pre-COVID-19 forecast for the same period

	International/ intercontinental		EU		Total variation (2020 vs pre-COVID-19 forecast)
	2020	delta (pre- COVID- 19- forecast)	2020	delta (pre- COVID- 19- forecast)	
Number of flights	[...]	-100%	[...]	-97%	-98%
Booked passengers	[...]	-100%	[...]	-98%	-99%

Source: *Condor*

- (72) Tables 14 and 15 show that the revenues from ticket sales in the period from 15 to 30 June 2020 compared to the same period in 2019 and compared to the pre-COVID-19 forecast were still 99% lower and thus as much affected as in the previous weeks.

Table 14: Condor's ticket revenues in the period from 15 to 30 June 2020 compared to the same period in 2019

	2019	2020	Delta (2020 vs 2019)
Ticket revenues (in EUR million)	[...]	[...]	-99%

Source: *Condor*

Table 15: Condor's ticket revenues in the period from 15 to 30 June 2020 compared to the same period of the pre-COVID 19 forecast

	Pre-Covid 19 Forecast	2020	Delta (2020 vs 2019)
Ticket revenues (in EUR million)	[...]	[...]	-99%

Source: Condor

- (73) Between 15 and 30 June 2020, 62% of all scheduled routes of Condor were still affected by travel restrictions. Those routes were the following:

Restrictions			
DUS-ACE	FRA-HRG	FRA-YVR	LEJ-RMF
DUS-AGA	FRA-IBZ	FRA-YXY	LEJ-TFS
DUS-AYT	FRA-KLX	FRA-YYC	MUC-ACE
DUS-CFU	FRA-LAS	FRA-YYZ	MUC-AGA
DUS-CHQ	FRA-LPA	FRA-ZNZ	MUC-AYT
DUS-FNC	FRA-MBA	HAJ-ACE	MUC-CFU
DUS-FUE	FRA-MBJ	HAJ-AYT	MUC-CHQ
DUS-HER	FRA-MLA	HAJ-FUE	MUC-CUN
DUS-HRG	FRA-MRU	HAJ-HER	MUC-FUE
DUS-KLX	FRA-MSP	HAJ-HRG	MUC-HER
DUS-LPA	FRA-MSY	HAJ-LPA	MUC-HRG
DUS-PFO	FRA-PDX	HAJ-PMI	MUC-IBZ
DUS-PMI	FRA-PFO	HAJ-SPC	MUC-JSI
DUS-SPC	FRA-PHX	HAJ-SUF	MUC-JTR
DUS-SUF	FRA-PIT	HAJ-TFS	MUC-KLX
DUS-TFS	FRA-PMI	HAM-ACE	MUC-LPA
DUS-XRY	FRA-PUJ	HAM-AYT	MUC-PFO
FRA-ACE	FRA-SDQ	HAM-FUE	MUC-PMI
FRA-AGA	FRA-SEA	HAM-HER	MUC-PUJ
FRA-ANC	FRA-SEZ	HAM-HRG	MUC-SEA
FRA-AYT	FRA-SJO	HAM-LPA	MUC-SPC
FRA-BGI	FRA-SJU	HAM-PMI	MUC-SUF
FRA-BWI	FRA-SPC	HAM-TFS	MUC-TFS
FRA-CFU	FRA-SUF	HAM-XRY	MUC-XRY
FRA-CHQ	FRA-TAB	LEJ-ACE	MUC-YHZ
FRA-CUN	FRA-TFS	LEJ-AYT	STR-ACE
FRA-FAI	FRA-TIV	LEJ-FUE	STR-CFU
FRA-FNC	FRA-VRA	LEJ-HER	STR-FUE
FRA-FUE	FRA-WDH	LEJ-HRG	STR-HER
FRA-HAV	FRA-XRY	LEJ-LPA	STR-HRG
FRA-HER	FRA-YEG	LEJ-PFO	STR-LPA
FRA-HOG	FRA-YHZ	LEJ-PMI	STR-PMI
			STR-TFS

Source: Condor

- (74) 84% of Condor's revenues in 2019 and 86% of Condor's revenues as forecasted in the pre-COVID-19 forecast for the same period derived from those routes that

were still affected by travel restrictions between 15 and 30 June 2020, as shown by Tables 16 and 17:

Table 16: Ticket revenues registered on Condor's routes (still affected by travel restrictions in 2020) between 15 and 30 June 2019

2019	Restricted Routes (as per 15-30 June 2020)	Total	%
Ticket revenues (EUR mln)	[...]	[...]	84%

Source: Condor

Table 17: Ticket revenues forecasted on Condor's routes (still affected by travel restrictions) between 15 and 30 June 2020

Pre-Covid FC	Restricted Routes (as per 15-30 June 2020)	Total	%
Ticket revenues (EUR mln)	[...]	[...]	86%

Source: Condor

- (75) Tables 18 and 19 show changes in passenger volume, average passenger volume per day as well as ticket sales between the periods from 15 to 30 June 2020 and July 2020 compared to the figures of 2019 and of the pre-COVID-19 forecast for the same period. On the basis of those figures, only sales and traffic for flights within the Union started to gain momentum in July 2020 compared to the second half of June 2020.

Table 18: Condor's flight operations for the periods from 15 to 30 June 2020 and July 2020 compared to 2019 (change between 2020 and 2019 in %)

	Booked passengers	Average daily volume of booked passengers	Ticket revenues
EU			
15 – 30 June	-98%	-98%	-97%
1 – 15 July	-75%	-75%	-70%
International/Intercontinental			
15 – 30 June	-100%	-100%	-100%
1 – 15 July	-100%	-100%	-100%

Source: Condor

Table 19: Condor's flight operations for the periods from 15 to 30 June 2020 and in July 2020 compared to pre-COVID-19 forecast for the same periods (change in %)

	Booked passengers	Average daily volume of booked passengers	Ticket revenues
EU			
15 – 30 June	-98%	-98%	-97%
1 – 15 July	-75%	-75%	-74%
International/Intercontinental			
15 – 30 June	-100%	-100%	-100%
1 – 15 July	-100%	-100%	-100%

Source: *Condor*

2.3.2.2. Second Compensation Period (1 July to 31 December 2020)

- (76) According to Germany, the restrictions in place during the Second Compensation Period in Germany and in foreign countries listed in section 2.2.3 continued to hugely affect Condor's operations on certain routes. Those countries continued to apply limitations on entry into their territory in relation to foreign citizens and/or to non-essential travel. As a result, Condor incurred significant losses on specific routes to/from certain countries at least until 31 December 2020.
- (77) Capacity between July and October 2020 continued to be well below the levels of previous years, especially from September onwards, with reductions of between 68% and 81% in those months. Due to travel restrictions, Condor had to reduce the number of routes by between 48% and 63% compared to 2019.
- (78) Based on the traffic figures provided by Germany for the period from 1 July to 31 October 2021, Condor continued to record steep declines in passenger traffic as compared to the same period in 2019. Table 20 shows that significant traffic reduction by comparing the ASK, RPK and SLF figures of Condor between 1 July and 31 October 2020 with those for the same period in 2019.

Table 20: Evolution of Condor's flight operations between July-October 2019 and July-October 2020

Difference % 2020 vs. 2019	Jul	Aug	Sep	Oct
Block Hours	-76%	-74%	-83%	-85%
Departures / Legs	-68%	-65%	-77%	-81%
Capacity / Seats	-70%	-68%	-80%	-83%
Flying Fleet	-33%	-38%	-35%	-31%
Avg. Daily Util. (BH/Flying Fleet)	-64%	-58%	-74%	-78%
Routes	-50%	-48%	-55%	-63%

Source: *Condor*

- (79) The offer of Condor (ASK) had recovered to some extent, to 21% for July 2020 and 23% for August 2020 compared to the same months in 2019, but Condor had to reduce its offer to 10% by October 2020 compared to October 2019.
- (80) Even with the heavily reduced offer, the SLF figures remained very low during the Second Compensation Period compared to 2019, as shown by Table 21.

Table 21: Condor's ASK, RPK and SLF, figures for July-October 2019 and July-October 2020

July	2020	2019	Delta
ASK (billions)	[...]	[...]	-[70-80]%
RPK (billions)	[...]	[...]	-[80-90]%
SLF (%)	[...]	[...]	-[20-30]P.%
August	2020	2019	Delta
ASK (billions)	[...]	[...]	-[70-80]%
RPK (billions)	[...]	[...]	-[80-90]%
SLF (%)	[...]	[...]	-[20-30]0P.%
September	2020	2019	Delta
ASK (billions)	[...]	[...]	-[80-90]%
RPK (billions)	[...]	[...]	-[80-90]%
SLF (%)	[...]	[...]	-[10-20]P.%
October	2020	2019	Delta
ASK (billions)	[...]	[...]	-[90-100]%

RPK (billions)	[...]	[...]	-[80-90]%
SLF (%)	[...]	[...]	-[10-20]P.%

Source: *Condor*

- (81) Due to the new travel restrictions and containment measures imposed by the authorities in Germany and other countries, Condor grounded [50-60]% of its fleet in November 2020 and [40-50]% in December 2020.
- (82) Overall capacity of Condor declined by 93% across both November and December 2020, recording only 12-15% of the departures made in November and December 2019, as shown by Table 22.

Table 22: Evolution of Condor's flight operations between November-December 2019 and November-December 2020

Difference % 2020 vs. 2019	Nov	Dec
Departures / Legs	-88%	-85%
Block Hours	-90%	-86%
Capacity / Seats	-93%	-93%
Flying Fleet	-57%	-49%
Avg. Daily Util. (BH/Flying Fleet)	-77%	-72%
Routes	-78%	-77%

Source: *Condor*

- (83) Based on the traffic figures provided by Germany for the period from 1 November to 31 December 2020, Condor recorded another steep decline in passenger traffic as compared to the same period in 2019. Table 23 shows that significant traffic reduction by comparing the ASK, RPK and SLF figures of Condor from 1 November to 31 December 2020, with those for the same period in 2019.

Table 23: Condor's ASK, RPK and SLF, figures for November and December 2020 compared to the same period in 2019

November	2020	2019	Delta
ASK (billions)	[...]	[...]	-92%
RPK (billions)	[...]	[...]	-96%
SLF (%)	[...]	[...]	-25%
December	20,2	2019	Delta
ASK (billions)	[...]	[...]	-83%
RPK (billions)	[...]	[...]	-95%
SLF (%)	[...]	[...]	-28%

Source: *Condor*

- (84) Table 24 shows the losses of booked passengers and ticket revenues on some of Condor's routes during the Second Compensation Period by comparing the actual figures with the 2019 figures for the same period and with the figures of the pre-COVID-19 forecast. Germany provided a complete overview of all routes affected by travel restrictions and containment measures in the Second Compensation Period.

Table 24: Condor's loss of booked passengers and ticket revenues during the Second Compensation period compared to the 2019 figures and the pre-COVID 19 forecast for the same period

1. July - 31. December	Booked Passengers 2019	Booked Passengers pre-COVID FC	Booked Passengers 2020	Delta 2019	Delta pre-COVID 19 FC
Arrecife	[...]	[...]	[...]	-89%	-89%
Heraklion	[...]	[...]	[...]	-28%	-29%
Hurghada	[...]	[...]	[...]	-100%	-100%
Palma de Mallorca	[...]	[...]	[...]	-85%	-84%
Las Vegas	[...]	[...]	[...]	-100%	-100%
Punta Cana	[...]	[...]	[...]	-97%	-98%

1. July - 31. December	Ticket revenues 2019	Ticket revenues pre-COVID FC	Ticket revenues 2020	Delta 2019	Delta pre-COVID FC
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Arrecife	[...]	[...]	[...]	-89%	-88%
Heraklion	[...]	[...]	[...]	-33%	-30%
Hurghada	[...]	[...]	[...]	-100%	-100%
Palma de Mallorca	[...]	[...]	[...]	-85%	-88%
Las Vegas	[...]	[...]	[...]	-100%	-100%
Punta Cana	[...]	[...]	[...]	-95%	-97%

Source: *Condor*

2.4. National legal basis

- (85) The national legal basis for granting the State-guaranteed loans is Article 3(1)(5) of the ‘Gesetz über die Feststellung des Bundeshaushalts für das Haushaltsjahr 2020’¹⁰⁸ and § 2(4) of the ‘Gesetz über die Kreditanstalt für Wiederaufbau’¹⁰⁹.

2.5. Form and budget of the Measure

2.5.1. Form and budget of the initially notified Measure

- (86) The aid has been provided in the form of two State-guaranteed loans provided by KfW with subsidized interest rates.
- (87) The German State provided a 100% guarantee on the loans. The decision to grant the loan was taken by KfW, which in such a transaction is the German Government’s vehicle for granting the loans. The guarantee was issued by the German Federal Government. The loans and the guarantees are inseparable, i.e. one would not exist without the other.
- (88) According to the credit agreements that Germany submitted to the Commission, Germany granted the loans on the following terms on 27 April 2020:
- The amount for loan 1 was EUR 529.8 million, composed of:
 - Tranche A amounting to EUR 256 million;
 - Tranche B amounting to EUR 273.8 million.
 - The amount for loan 2¹¹⁰ was EUR 20.2 million.
- (89) The annual interest payable on the loans is calculated based on the following elements: (i) EURIBOR (3-months-EURIBOR for Tranche A and loan 2 and 1-month-EURIBOR for Tranche B), (ii) [600-700] bps per year and (iii) KfW’s refinancing costs.
- (90) In order to secure loan 1, Condor ordered [...]. Condor secured loan 2 by a [...].
- (91) The tranches are currently end-due as follows:

¹⁰⁸ Law of 21 December 2019 (BGBl. I, p. 2890).

¹⁰⁹ Law of the KfW of 05/11/1948 (WiGBl., p. 123) as amended by the new notice of 23/6/1969 (BGBl. I p. 573), last amended by the Tenth Jurisdictional Adjustment Regulation of 31/08/2015 (BGBl. I, p. 1474).

¹¹⁰ Also called ‘Tranche C’.

- Tranche A must be fully reimbursed by 30 June 2026. The loan must be repaid in quarterly instalments of EUR [...] million starting on 30 June 2021 and a one-off payment of all outstanding amounts on 30 June 2026.
 - Tranche B is due to expire on 31 December 2031. Payments made under tranche B are to be repaid at the end of each interest period, plus any interest accrued up to that date but not yet paid. From 30 June 2026, the total loan amount for tranche B will be automatically reduced by EUR [...] million at the end of each subsequent calendar quarter.
 - The repayment of loan 2 is due on 31 December 2031.
- (92) Condor is required to use [...]. In addition, Condor is required to [...]. When the Annulled decision was adopted, as a result of the ongoing insolvency proceedings, [...].
- (93) Germany assumed at the time of the adoption of the Annulled decision that it was likely that the expected proceeds from the business continuity of Condor or a sales process would suffice to fully repay tranches A and B and loan 2, taking into account the planning uncertainty due to the COVID-19 outbreak.
- (94) In case of a sale of Condor by way of a share deal, disposal of collaterals or sale of Condor's shares, the loan agreements provide for a hierarchy of repayments of the various tranches as follows: loan 2 to be repaid first, followed by the repayment of tranche A and at last tranche B. In addition:
- In case of other sales of assets of Condor, tranche A must also be reduced before tranche B;
 - In case of proceeds from other collaterals, tranche A would take precedence over tranche B, i.e. the proceeds shall to be transferred first to tranche A and then to tranche B.
- (95) At the time when the Annulled decision was adopted, the German authorities presented three estimates for the aid element:
- Estimate 1 assumed that the loan would be repaid in total as scheduled. The aid element was established by taking the difference between the spread of [600-700] bps and a "market rate plus base rate" of 1000 bps plus a base rate of -0.31%. Undiscounted that total sum corresponded to a gross grant equivalent ("GGE") of EUR [...] million, while discounted the total corresponded to EUR 113 million.
 - Estimates 2 and 3 were based on a software tool that, according to the German authorities, estimated the GGE for guarantees. For estimate 2, the German authorities submitted that a guarantee fee of [6-7]% was assumed with a coverage of [...]%. For estimate 3, a guarantee fee of [...]% was assumed. Estimate 2 found no aid element, while in Estimate 3 the GGE was EUR [...] million.

2.5.2 *Form and budget of the amended Measure*

- (96) By the Condor II decision adopted today, the Commission has decided not to raise objections to the write-off of EUR 60 million. In that decision, it has concluded that the aid in the form of a partial write-off from tranche B of loan 1 of EUR 60 million is compatible with the internal market as damage compensation on the basis of Article 107(2)(b) TFEU. In addition, the Commission has also adopted today the Restructuring decision, by which it has decided not to raise objections as regards restructuring aid measures in favour of Condor. The restructuring aid is in the form of i) a partial write-off from tranche B of loan 1 of EUR 90 million, ii) a write-off of EUR 20.2 million of outstanding interest due on tranche B of loan 1 in an amount of EUR 18.7 million and of interest for the advantage from the overcompensation in an amount of EUR 1.5 million as well as iii) the restructuring of the remainder of loan 1 and of loan 2. The Commission has found that restructuring aid measure to be compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (97) The write-offs from tranche B of loan 1 executed immediately after the notifications of their approval by the Commission as compatible aid will reduce tranche B of loan 1 to EUR 123.8 million. Germany amended its notification for the aid examined in this decision accordingly.
- (98) Germany considers that the write-offs amend the aid in the form of tranche B of loan 1, so that it has to be perceived as a new aid measure, whose aid element needs to be established by reference to the date of the envisaged amendment, i.e. the day of the write-offs. Germany notes that according to the Annulled decision the aid amount equals the nominal amount minus expected interest to be paid until June 2022 and it also considers that the probability of repayment and the collaterals have not increased for that tranche since the adoption of the Annulled decision. In light of those elements, Germany considers that the aid element of the remaining tranche of EUR 123.8 million equals the nominal amount.

2.6. **Administration of the Measure**

- (99) The two loans with subsidised interest rates were provided by KfW while the German State provided a 100% guarantee on the loans on 27 April 2020.

2.7. **Beneficiary**

- (100) The beneficiary of the measure is Condor.
- (101) Condor is a German charter airline, registered in Kelsterbach with the Headquarter in Neu-Isenburg (Hessen). It provides air transport services to individual clients and tour operators from its hubs in Germany, with a focus on the leisure travel market, to 126 destinations all over the world. In 2019, its turnover was EUR 1.7 billion, with a balance sheet total of EUR 7.2 billion. Condor has at present 4 022 employees¹¹¹.

¹¹¹ KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/ BGH, 16 June 2021, p. 5.

- (102) SG Luftfahrt GmbH (SGL) is the sole shareholder of Condor. SGL is a holding company without operational activities. It holds Condor’s shares in trust since Condor exited insolvency proceedings in December 2020, for the sole purpose to sell it to an investor with own economic interest. Condor is therefore not part of the Noerr Group (via Team Treuhand GmbH and/or Noerr & Stiefenhofer), as SGL acts as the sole shareholder established for restructuring purposes only. Figure 2 shows the current structure of the Condor group.

Figure 2: The structure of the Condor group

[...]

Source: KPMG, Condor Flugdienst GmbH, German Restructuring Concept according to IDW S6/ BGH, 16 June 2021, p. 22

As a charter airline, Condor provides services to tour operators and travel agencies. Condor also sells flight seats directly to end customers, for example via the internet. Condor serves short-medium and long-haul routes and also flies to airports that are not served by scheduled airlines¹¹².

2.8. Eligible losses and modalities for compensation

- (103) The German authorities have provided two compensation methodologies based on the evolution of the travel restrictions and containment measures implemented by Germany and foreign countries in 2020.
- (104) The compensation for the First Compensation Period (17 March to 30 June 2020) encompasses the net losses suffered by Condor due to the general containment measures/travel restrictions imposed at domestic, European and international levels, by comparison with the business results forecasted in the pre-COVID-19 business forecast based on EBT.
- (105) The compensation methodology for the Second Compensation Period (1 July to 31 December 2020) aims at targeting the damage suffered on certain routes (the “Eligible Routes”) operated or programmed by Condor directly due to specific travel restrictions and containment measures implemented by certain foreign countries and by Germany. According to Germany, that shift in the compensation methodology is justified by the different context of that Second Compensation Period. In that period, Condor was not prevented from operating air services to the same extent: restrictions were entirely lifted for travels to/from some foreign countries but temporarily or permanently remained in place to/from other countries. Thus, that methodology seeks to capture better the direct impact of the travel restrictions while at the same time excluding the impact of other indirect factors resulting from the COVID-19 outbreak and causing damage to Condor. Such indirect factors include the fall of demand due to uncertainty or the effects of the economic crisis following the COVID-19 outbreak and the normalisation of teleworking policies for business class travellers.

¹¹² Scheduled airlines consist of legacy carriers (or full service network carrier), such as Lufthansa, and low cost carriers, such as Ryanair.

2.8.1. Common principles of the dual compensation methodology

(106) According to Germany, the eligible losses correspond for both periods to the damage directly suffered by Condor due to the restrictions and containment measures. The compensation methodology takes account only those flights that were operated or programmed by Condor on routes affected by the following restrictions and containment measures (the ‘Eligible Restrictions’) that either applied in the destination or in the departure country as they are outlined under section 2.2:

- closure of airports;
- formal travel warnings;
- travel bans, including a prohibition of non-essential flights;
- entry restrictions.

(107) Germany defines the damage as the net losses due to the COVID-19 outbreak as a consequence of the Eligible Restrictions taken by governments in reaction to the pandemic. The net losses registered are quantified as the difference between the revenues and costs (including avoided costs) incurred between the Overall Compensation Period and those predicted in Condor’s pre-COVID-19 forecast for the same period that can be attributed to the COVID-19 outbreak and the Eligible Restrictions taken by governments. Condor established that business forecast in February 2020 before the outbreak of the COVID-19 pandemic in Germany. On the basis of the business plan¹¹³ drawn up by Condor for the period 2020 to the end of September 2022, the following revenues and profits were forecasted before the outbreak of the COVID-19 pandemic in Germany for the business year 2020, as shown in Table 25:

Table 25: Condor’s pre-COVID-19 business forecast 2020 and 2021

	Business year 2020 in EUR million
Total revenues	[...] ¹¹⁴
Total expenses	([...])
Result of operating activities (EBIT)	[...]
Financial result	([...])
Result of ordinary business activities (EBT)	[...]

¹¹³ See “Unternehmensplanung” (business plan) of February 2020, to the “Plan gemäß § 217 ff. InsO in dem Eigenverwaltungsverfahren über das Vermögen der Condor Flugdienst Gesellschaft mit beschränkter Haftung, Amtsgericht Frankfurt am Main, Insolvenzgericht, 810 IN 1209/19 C, Insolvenzplan” (insolvency plan) of 11 February 2020.

¹¹⁴ Including estimated EUR [...] million “Erträge aus Erlassen“ (insolvency effects at the end of Condor’s insolvency proceedings); for the damage calculation, this non-operational revenue has been excluded from the pre-COVID forecast.

Taxes	(...)
Annual net profit/loss	[...]

Source: Condor

- (108) For the damage calculation, Germany used those pre-COVID 19 forecasted business figures instead of Condor’s actual business figures for 2019. Germany took that approach to ensure that the damage quantification excluded losses deriving from Condor’s lost business with TCG. In 2019, Condor still had revenues from business relations with its parent company. According to Germany, the use of the pre-COVID-19 business forecast is the most conservative approach.
- (109) Condor set up the business plan and the included forecast for 2021 in January 2020 and PwC reviewed them in February 2020, i.e. pre-COVID 19. They have been checked in detail and their validity had been confirmed by the Insolvency Court¹¹⁵ and PwC.
- (110) The damage calculation takes into account the following elements:
- loss of revenue: a review of the impact of the travel restrictions and containment measures taken by governments as a consequence of the COVID-19 outbreak on total revenue, including (i) fare revenues from tickets (tickets which could not be sold), and (ii) additional / accessory revenues (seat reservation, upgrades);
 - avoided costs: a review of Condor’s cost base and the impact (both positive and negative) of the containment measures taken by governments as a consequence of the COVID-19 outbreak on variable costs, including deviation in (i) all variable costs (in particular fuel costs, fees and charges, maintenance costs, IATA¹¹⁶ commissions and catering costs), (ii) fixed costs that are not directly related to the operation of a flight, but that were nevertheless adjusted at corporate level due to the containment measures taken by governments as a consequence of the COVID-19 outbreak (in particular lower personnel costs and marketing costs). Cost items do not include any refund (effectively paid or to be paid).
- (111) The different items (flight revenues, other revenues, variable costs and fixed costs) have been allocated to the individual flights based on ASK. Personnel costs were attributed to fixed costs and allocated to the flights based on ASK as they were determined in the pre-COVID 19 forecast. Aircraft maintenance costs have been treated as variable costs as under the German local GAAP (“*Handelsgesetzbuch*”) they are a direct expense in the profit and loss statement.

¹¹⁵ At the time of adoption of the Annulled decision, Condor was in insolvency following the bankruptcy of its parent company TCG. The Insolvency Court is responsible for carrying out the insolvency proceedings. In the present case the insolvency proceedings took place in self-administration (debtor in possession), where the debtor (i.e. its management) remains in charge and the Insolvency Court appoints a custodian (*Sachwalter*) to supervise the debtor. The right to manage and dispose of the debtor’s assets remains with the debtor. Self-administration is regularly used for larger companies suitable for restructuring. In such cases, an insolvency plan is used to implement restructuring measures.

¹¹⁶ International Air Transport Association.

2.8.2. Eligible losses for the First Compensation Period

(112) The net losses due to the eligible restrictive measures (actual damage) are calculated as the loss of revenues minus avoided costs during the First Compensation Period by comparing the results of Condor during that period with the results that it would have expected to achieve without the COVID-19 restrictions. The proxy for the First Compensation Period of those foregone profits is the difference between the EBT results of Condor in the First Compensation Period and its expected EBT results based on the pre-COVID-19 business forecast for the same period in 2020 (see Tables 26 and 27).

Table 26: Financial results of Condor in the First Compensation Period compared to pre-COVID-19 forecast (EBT based)

	2020 pre COVID-FC				2020 Actuals*			
	Mar	Apr	May	Jun	Mar	Apr	May	Jun
Revenue	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Other operating income	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total earnings	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cost of materials and services	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]
Staff cost	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]
Depreciation, amortisation and impairment	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]
Other operating expenses	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]
Total operating expenses	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]
Result from operating activities	-[...]	-[...]	-[...]	[...]	-[...]	-[...]	-[...]	-[...]
Financial result	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]	-[...]
EBT	-[...]	-[...]	-[...]	[...]	-[...]	-[...]	-[...]	-[...]
EBITDA	-[...]	-[...]	-[...]	[...]	-[...]	-[...]	-[...]	-[...]

*adjusted as described in notification document

Source: Condor

Table 27: Condor's EBT from March to June 2020 vs. pre-COVID-19 forecast (EUR million)

	March	April	May	June	March-June
EBT pre-COVID-19 forecast	-[...]	-[...]	-[...]	[...]	-50,6
EBT 2020	-[...]	-[...]	-[...]	-[...]	-123,2
Net losses	-10,1	-9,8	-12,8	-40,0	-72,6

Source: Condor

(113) Tables 28 and 29 show that establishing the actual net losses by comparing Condor's results over the First Compensation Period with its actual figures 2019 would have led to much higher net losses in comparison to using the pre-COVID-

19 business forecast for the same period. Thus using the pre-COVID 19 forecast is according to Germany the most conservative approach.

Table 28: Financial results of Condor in the First Compensation Period compared to 2019 (EBT based)

	2019 Actuals*					2020 Actuals*			
	Mar	Apr	May	Jun		Mar	Apr	May	Jun
Revenue	[...]	[...]	[...]	[...]		[...]	[...]	[...]	[...]
Other operating income	[...]	[...]	[...]	[...]		[...]	[...]	[...]	[...]
Total earnings	[...]	[...]	[...]	[...]		[...]	[...]	[...]	[...]
Cost of materials and services	-[...]	-[...]	-[...]	-[...]		-[...]	-[...]	-[...]	-[...]
Staff cost	-[...]	-[...]	-[...]	-[...]		-[...]	-[...]	-[...]	-[...]
Depreciation, amortisation and impairment	-[...]	-[...]	-[...]	-[...]		-[...]	-[...]	-[...]	-[...]
Other operating expenses	-[...]	-[...]	-[...]	-[...]		-[...]	-[...]	-[...]	-[...]
Total operating expenses	-[...]	-[...]	-[...]	-[...]		-[...]	-[...]	-[...]	-[...]
Result from operating activities	-[...]	-[...]	-[...]	[...]		-[...]	-[...]	-[...]	-[...]
Financial result	-[...]	-[...]	[...]	[...]		-[...]	-[...]	-[...]	-[...]
EBT	-[...]	-[...]	-[...]	[...]		-[...]	-[...]	-[...]	-[...]
EBITDA	-[...]	-[...]	-[...]	[...]		-[...]	-[...]	-[...]	-[...]
*adjusted as described in notification document									

Source: Condor

Table 29: Condor's EBT from March to June 2020 vs. 2019 (EUR million)

	March	April	May	June	March-June
EBT 2019	-[...]	-[...]	-[...]	[...]	-6,6
EBT 2020	-[...]	-[...]	-[...]	-[...]	-123,2
Net losses	-24,0	-25,1	-14,0	-53,6	-116,6

Source: Condor

- (114) Germany then further adjusted the calculation of the damage to take into account that the First Compensation starts from 17 March (and not 1 March) to 30 June 2020. For the allocation of damage occurred in March 2020, it proposed a methodology to distribute the losses between the two halves of March 2020 on the basis of the delta of daily passengers transported by Condor in 2020 compared to the pre-COVID-19 business forecast for the same period. The methodology used to calculate the share of damage that can be allocated to the period 17 March to 31 March 2020 is the following:

$$\text{Damage for 17 to 31 March 2020} = (\text{Passengers 17-31 March 2020 (forecast)} - \text{Passengers 17-31 March 2020}) / (\text{Passengers March (forecast)} - \text{Passengers March 2020 actuals})$$

Table 30: Allocation of losses for March 2020

	March 2020 (pre-COVID-19)	March 2020	Delta	Share of damage (%)

	forecast)			
Passengers booked (total)	[...]	[...]	-41%	100%
Passengers booked (1-16 March)	[...]	[...]	-6%	7%
Passengers booked (17-31 March)	[...]	[...]	-80%	93%

Source: Condor

- (115) Germany attributed 93% of the EBT losses registered for the month of March 2020 (delta pre-COVID-19 forecast versus actual figures) to the second half of the month starting 17 March 2020. Taking into account that specific allocation methodology for the month of March 2020, Germany calculated the definitive quantification of the damage during the First Compensation Period as follows:

Table 31: Condor’s adjusted EBT delta from 17 March to 30 June 2020 vs. pre-COVID-19 business forecast (EUR million)

	16-31 March	April	May	June	March-June
Net losses	9.4	9.8	12.8	40.0	71.9

Source: Condor

- (116) As a result, Condor’s net losses directly caused by the COVID-19 pandemic is according to Germany EUR 71.9 million for the period from 17 March to 30 June 2020.

2.8.3. Eligible losses for the Second Compensation Period

- (117) During the Second Compensation Period, the Eligible Restrictions affected specific routes whereas they did not affect others. In order to identify the damage directly caused by the COVID-19 outbreak through those travel restrictions and containment measures, Germany submitted a detailed flight-by-flight and route-by-route assessment using a methodology that aims at ensuring that only the losses incurred by Condor as a direct consequence of the enforcement of the COVID-19 Eligible Restrictions would be compensated by the Measure.
- (118) To establish the direct link between the COVID-19 travel restrictions and Condor’s losses, Germany identified the volume of passengers impeded from being able to travel by the enforcement of the COVID-19 travel restrictions listed in section 2.2.3. The absence of those passengers constitute the losses incurred by Condor as a direct consequence of the enforcement of the Eligible Restrictions and not due to other indirect factors.
- (119) In addition, the methodology aims at reconstructing the counterfactual number of passengers, revenues and costs (and ultimately the profits/losses) that Condor would have registered on its flights during the Second Compensation Period operated on the ‘Eligible Routes’, had those travel restrictions linked to the

COVID-19 outbreak not occurred. Thus, the net losses eligible for compensation under the Measure are the difference between, on the one hand, the profits/losses stemming from *the volume of passengers that Condor would have expected to transport* during the Second Compensation Period (the counterfactual scenario based on the pre-COVID 19 forecasted volume of passengers, revenues and costs for the Second Compensation Period) on the Eligible Routes had the Eligible Restrictions linked to the COVID-19 outbreak not occurred, and on the other hand, the profits/losses stemming from the *actual volume of passengers that Condor has transported* during the Second Compensation Period on the Eligible Routes.

(120) The compensation methodology is further detailed in the following sub-sections.

2.8.2.1 Counterfactual scenario in the absence of the COVID-19 Eligible Restrictions

- (121) To establish the volume of passengers directly impeded from traveling by the enforcement of the then Eligible Restrictions, Germany sought to (i) identify a bundle of routes operated by Condor free of any Eligible Restrictions and (ii) compare the traffic registered on those routes during the Second Compensation Period with the traffic forecasted on those same routes for the same period on the basis of the pre-COVID-19 forecast. That exercise aimed at identifying as precisely as possible the volume of passengers that travelled in the absence of the Eligible Restrictions by contrast with the passengers who would not have travelled in any event regardless of the existence of those restrictions. The former group establishes the losses incurred by Condor eligible for compensation under the Measure, while for the latter group the losses incurred by Condor are not eligible for compensation under the Measure.
- (122) During both the First Compensation Period and the period from 1 November to 31 December 2020, Condor's routes were so heavily affected by travel restrictions that Germany could not identify a sufficiently representative bundle free of any Eligible Restrictions for the entire Second Compensation Period (for the applicable restrictions and their impact on Condor's routes, see section 2.2.2 and 2.2.3).
- (123) In addition, Condor did not operate any domestic traffic in Germany during the Second Compensation Period that could have been used as a benchmark (given that this category of routes is in principle free of any COVID-19 related travel restrictions)¹¹⁷.
- (124) Germany therefore looked at specific months within the Second Compensation Period, and identified a sufficiently representative volume of flights (8 650 flights) operated by Condor on a bundle of routes (the 'Benchmark') where none of the Eligible Restrictions applied between 1 July and 31 October 2020¹¹⁸. It then

¹¹⁷ See for example Commission decision of 29 December 2020 on State aid SA.58114 – Italy – COVID-19: aid to Alitalia (OJ C 134, 16.4.2021, p. 2) recital 81, and Commission decision of 12 March 2021 on State aid SA.60113 – Finland – COVID-19: hybrid loan to Finnair (OJ, C 240, 18.6.2021, p.14), recital 108.

¹¹⁸ Germany indicated that limiting the counterfactual period to 1 September to 31 October 2020 (a period that would have been from a seasonal aspect more comparable to the Compensation Period) would have the effect that the Benchmark would have increased the number of passengers travelling on

compared the traffic registered therein by Condor during that period with the traffic forecasted on those same routes for the same period on the basis of the pre-COVID-19 business forecast. That exercise made it possible to identify the approximate volume of passengers that travelled in the absence of the Eligible Restrictions.

(125) More precisely, the Benchmark takes into account all outbound flights unaffected by the Eligible Restrictions in the period from 1 July to 20 October 2020 and all inbound flights unaffected by the Eligible Restrictions in the period from 20 July to 31 October 2020. Germany made the following three observations on the justification for the adjustment of the Benchmark:

- Germany explained that the period for inbound flights taken into account started only as of 20 July 2020 as the return flights from leisure travel destinations were still empty due to a lack of returning travellers. Travellers only started going abroad after the lifting of travel restrictions throughout the second half of June 2020, and did not return immediately. Thus inbound flights during the period from 1 to 19 July 2020 were not sufficiently representative of the willingness of passengers to travel in the absence of the Eligible Restrictions, since those inbound flights were still affected by the persisting effects of those restrictions lifted in the second half of June 2020. As such, they could not be appropriately included in the Benchmark, which aim is on the contrary to observe the behaviour of passengers on destinations not affected by the Eligible Restrictions. This is also reflected in the figures of Condor registered on inbound flights from 1 to 19 July 2019 at a route-by-route level that heavily deviated from the ones registered at the end of July 2020;
- By the same token, the outbound flights operated as of 21 October 2020 were not taken into account given that leisure travellers increasingly accommodated their booking behaviour as of that date to the new travel restrictions and containment measures imposed by States to counter the emergence of a new wave of COVID-19 infections. Thus, Germany found also the period as of 21 October 2020 for outbound flights to be unrepresentative. This is also reflected in the figures of Condor registered at a route-by-route level between 21 and 31 October 2021 that heavily deviated from the ones registered immediately before that period.

(126) The number of passengers observed on 8 650 flights operated by Condor on routes not affected by at least one of the Eligible Restrictions between 1 July and 31 October 2020 was 55% lower than envisaged in the pre-COVID-19 business forecast for the same period, meaning that 45% of the forecasted passengers did travel in the absence of those restrictions. That comparison provides a relevant benchmark to identify the volume of passengers that travelled in the absence of Eligible Restrictions, and to exclude those that would have not travelled in any event for other reasons not linked to the Eligible Restrictions. In other words, the Benchmark considers that in the absence of the Eligible Restrictions during the Second Compensation Period, only 45% of the 2019 passengers of Condor would

routes without travel restrictions to 46%. Therefore, the counterfactual period used in the present decision constituted a more conservative approach, as it leads to a lower benchmark.

have travelled with the company during that period in the absence of any Eligible Restrictions..

- (127) Germany applied that lowered level of in demand to Eligible Routes operated or programmed by Condor during the Second Compensation Period, by considering that, as the Benchmark, 45% of the passengers forecasted by Condor on each Eligible Route would have flown with Condor during the Second Compensation Period in the absence of Eligible Restrictions on those same routes.
- (128) The loss of revenues due to the difference between the passengers actually transported by Condor during the Second Compensation Period on each of the eligible routes operated or programmed by Condor, and the 45% of passengers that Condor would have approximately transported on those same routes during the Second Compensation Period absent any Eligible Restrictions, constitutes the eligible damage that can be compensated by the Measure.

2.8.2.2 Adjustments of revenues, costs and profits according to the counterfactual scenarios and the period of enforcement of the travel restrictions

- (129) The loss of passengers attributable to the Eligible Restrictions for a number of eligible routes implied a significant reduction of revenues as well as savings of variable costs and, to a lower extent, of fixed costs. Germany used data on revenues, variable costs and fixed costs for 2020 and 2021¹¹⁹ to estimate the lost revenues and avoided costs stemming from the loss of passengers directly attributable to the Eligible Restrictions.
- (130) Fixed costs do not tend to vary significantly with ordinary fluctuations of passengers observed in the normal course of business. However, they can show some variation when the change in the number of passengers is significant. At the same time, it cannot be assumed that fixed costs decreased proportionally to the number of passengers, as if they were fully variable. The lower than proportional variation of fixed costs with the number of passengers reflects the economies of scale of the economic activity. The level of fixed costs that Condor would have borne in the counterfactual scenario had the Eligible Restrictions not occurred, has been estimated using a linear approximation¹²⁰, based on the forecasted and actual fixed costs and passenger volumes.

2.8.2.3 Quantification of the damage suffered during the Second Compensation Period by Condor

- (131) The application of the route-by-route analysis entailed the identification of the number of passengers, revenues, costs and profits for all Eligible Routes as shown in Table 32.

¹¹⁹ Precisely, the data for the period July 2020 to December 2020.

¹²⁰ The forecasted and actual fixed costs and number of passengers at company level provide a reference of the fixed costs of Condor that correspond to two very different levels of passengers. Those two pairs of data show that fixed costs can be adjusted downwards when the level of passengers is reduced very significantly, but only to a limited extent. The linear approximation consists in using the limited reduction of fixed costs observed between forecasted and actual data, applying it proportionally to the lower reduction with the application of the Benchmark of bookings that it is assumed would have occurred absent the eligible containment measures.

Table 32: Figures for all eligible routes, July-December 2020

	Number of passengers booked	Revenues (EUR '000s)	Variable costs (EUR '000s)	Fixed costs (EUR '000s)	EBT (EUR '000s)
Pre-COVID-19 forecast	[...]	[...]	[...]	[...]	[...]
Adjusted based on benchmark	[...]	[...]	[...]	[...]	-[...]
Actual 2020	[...]	[...]	[...]	[...]	-[...]
Damage					103.414

- (132) Based on that route-by-route analysis, Germany submits that EUR 103.414 million can be considered to constitute the damage suffered by Condor that is directly linked to the COVID-19 outbreak and the Eligible Restrictions in force during the Second Compensation Period on the routes operated by Condor.

2.9. Cumulation

- (133) The German authorities confirm that the aid cannot be cumulated with other aid (also *de minimis*) covering the same eligible costs.

3. ASSESSMENT

3.2. Existence of State aid

- (134) Prior to examining if the notified Measure involves State aid pursuant to Article 107(1) TFEU, the Commission notes that Germany does not dispute the State aid character of the Measure.
- (135) The qualification of a measure as aid within the meaning of that provision therefore requires that the following cumulative conditions be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on an undertaking; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (136) The question whether the Measure contains State aid has to be assessed in the light of the circumstances prior to the moment when the Measure was granted, i.e. in the light of the circumstances that prevailed before 26 April 2020, the date of the adoption of the Annulled decision.

3.2.1. Imputability to the State

- (137) The decision to grant the notified Measure was taken by the German Federal Government. The loans were extended via the public development bank KfW. As set out in recital (87), the loans and the respective guarantees are inseparable because of their specific nature. The German Government imposed the granting of the loan on KfW, which is merely the vehicle of the Government for

channelling the loan. KfW will not earn any interest nor bear any risk. The interest payments are passed through to the Government and the Government extends a guarantee to KfW for the repayment of the loan.

- (138) The Measure is financed through State resources, since it is financed from the general budget of the State.
- (139) The Commission therefore concludes that the Measure is imputable to the State and implies the use of State resources within the meaning of Article 107(1) TFEU.

3.2.2. *Economic advantage*

- (140) The notified Measure provides an economic advantage to Condor. It allows Condor to finance its liquidity gaps for the continuation of its operations during the COVID-pandemic by giving it access to finance that Condor, given its specific situation and the given circumstances, would not have been able to obtain on the market. According to Germany, Condor could not raise the required funds on comparable conditions on the market. Furthermore, the Measure confers an advantage on Condor in the form of State-guaranteed subsidised loans by relieving it of costs that it would have to bear under normal market conditions since, without the intervention by the State, it would obtain loans only at higher costs, if at all.
- (141) Without the State guarantees, KfW would bear the risk of issuing the loans to Condor. Bearing the risk but not the rewards of the loans, KfW would not have granted the loans without the State guarantee. Before issuing a guarantee, any financial institution would have made a risk assessment with regard to the potential default of the underlying loan. Due to the pressing liquidity needs at that time, there was no time for the preparation of a proper risk assessment. Hence, a financial institution would not have issued such a guarantee.
- (142) The German authorities do not claim that this is the behaviour of a private market lender and guarantor. They explicitly state in their notification that the objective of the Measure is to make good the damage that Condor suffered due to the imposition of travel restrictions and containment measures linked to the COVID-19 outbreak. This is clearly a policy objective and not a purpose a private market lender and guarantor would consider.
- (143) Given all the above, the Commission concludes that the notified Measure confers an economic advantage to Condor within the meaning of Article 107(1) TFEU.

3.2.3. *Selectivity*

- (144) The notified Measure was issued solely to the benefit of Condor. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective.¹²¹ This is so regardless of whether there are operators on the relevant markets that are in a comparable situation. In any event, the loans are not part of a

¹²¹ Judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, EU:C:2015:362, paragraph 60.

broader measure of general economic policy to provide support to undertakings, which are in a comparable legal and factual situation in light of the objective of the measure, active in the aviation sector or other economic sectors. Instead, they are extended only to Condor.

- (145) The State guarantees were issued to KfW to relieve the development bank from the risk of a potential default of the loans. Germany provided the guarantees for the respective loans solely to secure the loans to Condor. Therefore, the Commission concludes that the Measure is selective within the meaning of Article 107(1) TFEU.

3.2.4. Distortion of competition and impact on trade

- (146) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid¹²². It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition¹²³. In that regard, the fact that an economic sector has been liberalised at Union level is an element which may serve to determine that the aid has a real or potential effect on competition and on trade between Member States¹²⁴. The aviation sector is open to competition in the Union and therefore sensitive to any measure in favour of one or more Member States. Condor as the beneficiary of the aid measures is active on the air transport market where intra-Union trade takes place.
- (147) The notified Measure is therefore liable to distort or threaten to distort competition and to affect trade between Member States.

3.2.5. Conclusion on the existence of aid

- (148) In light of the above, the Commission concludes that the notified Measure in favour of Condor involves State aid under Article 107(1) TFEU and will therefore assess its compatibility with the internal market.

3.3. Compatibility of the Measure

- (149) Since the Measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether it is compatible with the internal market.
- (150) Pursuant to Article 107(2)(b) TFEU the Commission shall declare compatible with the internal market “aid to make good the damage caused by natural disasters or exceptional occurrences”.

3.3.1. Applicability of Article 107(2)(b) TFEU

- (151) Article 107(2)(b) TFEU covers aid which is, in law, compatible with the internal market, provided that it satisfies certain objective criteria. Since this is an exception to the general principle stated in Article 107(1) TFEU that State aid is

¹²² See, in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; Case C-372/97 Italy v Commission [2004] ECR I-3679, paragraph 44.

¹²³ Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

¹²⁴ See Case C-409/00 Spain v Commission [2003] ECR I-1487, paragraph 75.

incompatible with the internal market, Article 107(2)(b) TFEU must be interpreted narrowly. Therefore, only damage caused by natural disasters or exceptional occurrences may be compensated for under that provision. There must be a direct link between the damage suffered by an undertaking and the exceptional occurrence, and the compensation must not exceed the amount of damage.

(152) Where those criteria are satisfied, the Commission is bound to declare such aid compatible with the internal market, and it has no discretion in that regard. Therefore, all undertakings including undertakings in difficulty pursuant to section 2.2 of the Rescue and Restructuring Guidelines¹²⁵ that have received rescue aid under those guidelines¹²⁶, may be granted aid on the basis of Article 107(2)(b) TFEU¹²⁷.

(153) Article 107(2)(b) TFEU is therefore applicable in the present case.

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

(154) 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 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-law¹²⁸ has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.

(155) 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.¹²⁹ In that regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee;¹³⁰ (ii)

¹²⁵ Communication from the Commission, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01), OJ C 249, 31.7.2014, p. 1.

¹²⁶ Such as Condor (see in particular Commission decision of 14.10.2019 C(2019)7429 final in case SA.55394 (2019/N) – Germany – Rescue aid to Condor, OJ C 294, 4.9.2020, p. 3, recitals 75-77).

¹²⁷ See Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 2020/C 91 I/01, OJ C 91I, 20.3.2020, p. 1, para. 15.

¹²⁸ 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.

¹²⁹ Exceptional occurrences which 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).

¹³⁰ Commission decision of 1 August 2008 in 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.

significant scale/economic impact¹³¹ and (iii) extraordinary, i.e. differ sharply from the conditions under which the market normally operates.¹³²

3.3.3. *COVID-19 outbreak as an exceptional occurrence*

- (156) 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 has 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.
- (157) The WHO warned about the very high risk that COVID-19 would spread and have a global impact. The subsequent spread of COVID-19 ultimately resulted in far-reaching disruption of various economic sectors. That disruption was 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.
- (158) On 11 March 2020, the WHO characterised the COVID-19 disease as a pandemic. The public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 virus determined the exceptionality of the circumstances. The rapidity of the spread caused enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption.¹³³ The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stemmed from that acknowledgement.
- (159) Since March 2020, Member States adopted various measures that aimed to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, closure of non-essential shops, obligation for companies to

¹³¹ 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 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France, OJ C 127, 29.05.2003, p. 32), or the number of dead or injured people (Commission decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, paragraph 35, OJ C 120, 25.04.2012, p. 1; Commission decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, paragraph 19, OJ C 170, 16.07.2002, p. 16), the immense ecological and economic damage (Commission decision of 11 April 2012 in case SA.33487, paragraph 36, OJ C 120, 15.04.2012, p. 1), the amount of material damage, despite the local character of the industrial accident (Commission decision of 2 May 2002 in case N 241/2002, paragraph 19, OJ C 170, 16.07.2002, p. 16).

¹³² In its decision of 19 May 2004 in case C-59/2001 (OJ L 62, 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.

¹³³ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

organise working from home for every position where this is possible and various social distancing measures.

- (160) In view of the above, the COVID-19 outbreak qualifies as an exceptional occurrence, as it was not foreseeable and is clearly distinguishable from ordinary events, by its character and its effects on the affected undertakings and the economy in general, and therefore falls outside the normal functioning of the market.
- (161) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.¹³⁴

3.3.4. *Causal link between the damage to be compensated by the Measure and the COVID-19 outbreak*

- (162) The Commission has examined the Measure pursuant to Article 107(2)(b) TFEU, which requires a direct link between the damage and the exceptional occurrence for which the State aid measure provides compensation. That assessment has led to the following observations.
- (163) As described in detail in section 2.2, the COVID-19 outbreak has resulted in travel restrictions all over the world and the closing down of the vast majority of passenger air transport. Those containment measures were intended to avoid the spread of the virus, but they negatively affected the aviation sector.
- (164) The Measure aims at compensating losses suffered by Condor on its routes that were affected by governmental travel restrictions that were implemented by Germany, other Member States and third countries, during the Overall Compensation Period.
- (165) Germany and/or other foreign countries imposed restrictions on travelling to and from other countries as outlined under sections 2.2.2 and 2.2.3. The Commission has verified the existence of those restrictions and their duration and it finds that the element advanced by Germany are indeed accurate.
- (166) To demonstrate the direct link between the damages and the exceptional occurrence, the German authorities have put forward data and detailed explanations regarding the Overall Compensation Period running from 17 March to 31 December 2020. The Commission notes that Germany rightly assessed two sub-periods. Germany thereby distinguished, on one hand, losses suffered by Condor due to the enforcement of travel restrictions and general containment measures applied at domestic, regional and international level that affected its entire network (First Compensation Period) and, on the other hand, losses

¹³⁴ See Commission Decision of 12 March 2020 in State aid case SA.56685 (2020/N) – Denmark – Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.04.2020, and Commission Decision of 31 March 2020 in State aid case SA.56765 (2020/N) – France – 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, OJ C 294, 04.09.2020.

suffered by Condor on certain routes due to the enforcement of specific containment measures affecting those routes (Second Compensation Period)¹³⁵.

- (167) The Commission will therefore assess if there a direct link between the damage suffered by Condor on the Eligible Routes and the COVID-19 outbreak due to the Eligible Restrictions adopted by Germany and foreign countries in each of the two sub-periods.

3.3.4.1. First Compensation Period (17 March to 30 June 2020)

- (168) The Commission observes that under the First Compensation Period travel restrictions, lockdown and containment measures were widely in force (see section 2.2.2) in Germany, within the Union and in third countries. They translated into an extensive grounding of Condor's fleet and a loss of large passenger and revenue volumes.
- (169) Data set out in recitals (58) to (75) confirm the impact of the worldwide formal travel warning and the other travel restrictions and containment measures on Condor's operations. Tables 5 and 6 show that the net ticket sales of Condor decreased in the first half of March 2020. They also show a clear fall in the second half of that month following the closure of the borders on 16 March 2020 and the introduction of further travel restrictions in Germany, such as the worldwide formal travel warning and the entry restrictions as of 17 March 2020, and in other countries. As shown in Table 11, the total number of passengers expected by Condor fell in the second half of March 2020 by -51% (week 16-22 March 2020) and -97% (week 23-31 March 2020) compared with the figures of the pre-COVID 19 forecast.
- (170) In addition, as shown in Tables 7 to 10, several of Condor's performance indicators (such as SLF, ASK and RPK) were substantially affected in March, April, May and June 2020 compared with the same months in 2019.
- (171) Against that background, the Commission finds that Germany has convincingly demonstrated that there is a direct link between the damage suffered by Condor and the COVID-19 outbreak due to the travel restrictions adopted by Germany and foreign countries as of 17 March 2020 until 14 June 2020.
- (172) The Commission notes that on 15 June 2020 Germany lifted the general formal travel warning for other Member States and Schengen-associated States, and replaced it with individual travel alerts, detailing the epidemiological situation in the country concerned. By contrast, Germany maintained the worldwide formal travel warning against travel to countries outside the EEA, Switzerland and the United Kingdom until after the end of the First Compensation Period. At the same time, there were entry restrictions, border controls and further restrictions enforced by other foreign countries that affected Condor's international destinations in force until after the end of the First Compensation period. This means that all of Condor's destinations on long-haul and the non-EU destinations on short and medium haul remained affected, namely Barbados, Canada, Cuba,

¹³⁵ See judgment of the General Court of 25 June 2008, *Olympiaki Aeroporia Ypiresies v Commission*, T-268/06, EU:T:2008:222, paragraph 49.

Dominican Republic, Egypt, Grenada, Jamaica, Kenya, Malaysia, Maldives, Mauritius, Mexico, Montenegro, Morocco, Namibia, Puerto Rico, Seychelles, South Africa, Tanzania, Trinidad and Tobago, Turkey and the USA.

- (173) The data provided for June 2020 show that Condor continued to be strongly affected by the existing restrictions in place in Germany, in other Member States and third States even though some of them were lifted as of 15 June 2020. In the period from 15 to 30 June 2020, travel restrictions still affected 62% of all of Condor's scheduled routes. In addition, those affected routes represented [85-90]% of Condor's forecasted revenues in the pre-COVID-19 forecast for the period from 15 to 30 June 2020 (see Tables 16 and 17), while only [15-20]% of booked passengers (i.e. only [10-15]% of the total forecasted ticket revenues) were expected to travel on those routes not affected by travel restrictions after 15 June 2020.
- (174) As shown in Tables 12 and 13, Condor's overall passenger volume between 15 and 30 June 2020 was still only at 1% both of the passenger volume in the 2019 reference period and of the pre-COVID 19 forecast figures for the same period. As shown in Tables 14 and 15, the revenues from ticket sales in the period from 15 to 30 June 2020 compared to the same period in 2019 and compared to the pre-COVID-19 forecast were still 99% lower and thus affected as much as in the previous weeks.
- (175) This shows that the travel restrictions kept in place throughout June 2020 in Germany and elsewhere still paralysed almost all of Condor's activities.
- (176) Tables 18 and 19 show changes in passenger volume, average passenger volume per day as well as ticket sales for the periods from 15 to 30 June 2020 and in July 2020 compared to the figures of 2019 and of the pre-COVID-19 forecast for the same period. Those figures show that sales and traffic for intra-Union-flights did begin to gain momentum in July 2020. The Commission concludes that as of 1 July 2020 Condor entered into a phase of increased momentum, first mainly for intra-Union-flights and later for international flights as well. In those circumstances, the Commission considers that it was prudent and conservative of the German authorities to fix the end of the First Compensation Period at 30 June 2020 and to use a route-by-route analysis as of 1 July 2020 to assess the damage directly attributable to the travel restrictions adopted by Germany in regard to foreign countries and *vice versa*.

3.3.4.2. Second Compensation Period (1 July to 31 December 2020)

- (177) The Measure aims at compensating losses suffered by Condor on specific routes between 1 July and 31 December 2020 where specific governmental restrictions (the Eligible Restrictions listed in recital (106)) implemented by Germany, other Member States or third countries listed in section 2.2.3 still existed on certain routes operated by Condor.
- (178) Such restrictions took the form of full entry bans and/or a prohibition of non-essential travel on one or both sides of a route operated by Condor. Germany adopted a general prohibition of non-essential travel to/from the third countries listed in section 2.2.3 for a certain period, while many of the third countries and Member States to which Condor operated routes also had a full prohibition of

non-essential travel to foreign nationals with exceptions that only concerned specific categories of persons determined by law, or persons that had to obtain prior approval by the public authorities to enter into the country based on a case-by-case assessment.

- (179) In some instances, the travel restrictions were unilaterally imposed either by Germany for travel to/from a foreign country or by a foreign country for travel to/from Germany. The Commission notes that those unilateral travel restrictions were so extensive that they legally excluded a majority of an airline's customers (including business travellers). The Commission also regards a prohibition of non-essential travel as directly affecting the customer-base of an airline, as the travellers in question are not allowed to travel to a given country (e.g. leisure) and Condor's main business is leisure travel. In addition, the Commission notes that Germany updated its travel restrictions on a regular basis in light of the infection rates in a given foreign country. Under those circumstances, the German travel restrictions were implemented on the basis of an unpredictable event that made it difficult for travellers to plan ahead any non-essential travel.
- (180) The data provided by Germany show in addition that the governmental restrictions severely affected Condor. Condor's offer and performance figures over the Second Compensation Period displayed in Tables 20 to 23 show the depressed level of demand, which is further demonstrated by the drastic reduction of booked passengers registered on a sample of destinations normally operated by Condor during the Second Compensation Period (see Table 24). There was therefore a significant decrease in passengers transported and flights operated, not to mention in certain cases the total disappearance of any air commercial services on certain routes and/or between Germany and foreign countries (see section 2.3.2)

3.3.4.3. Conclusion on the direct link between the damage and the exceptional event

- (181) The Commission observes that the Eligible Restrictions existing on Eligible Routes formally prevented Condor from transporting many of the passengers that would otherwise have used its services, namely those in the categories that did not meet the conditions to benefit from the exemption to the prohibition on foreign travel (especially leisure travel). This is in particular the case for the vast majority of the passengers during the First Compensation Period characterised by the existence of full lockdowns enforced around the world including in Germany. This is also the case for the estimated 45% of travellers that Condor would have expected to transport on Eligible Routes during the Second Compensation Period in the absence of travel restrictions on those routes.
- (182) The data provided by Germany show in addition that the governmental restrictions severely affected Condor, with a significant decrease in passengers transported (see sections 2.3.2). In that context, the Commission takes the view that the Eligible Restrictions implemented by Germany and foreign countries had the effect of significantly hindering the provision of air services on the Eligible Routes operated or programmed by Condor during the Overall Compensation Period, thus directly affecting Condor.
- (183) In light of those circumstances, the Commission concludes that the notified Measure aims at covering the net losses of Condor caused as a direct effect of the

COVID-19 outbreak and the general containment, lockdown, travel and border restrictions in place during that period on Condor's routes. Hence, there exists a direct causal link between the damage suffered by Condor during Overall Compensation Period and the exceptional occurrence, i.e. the COVID-19 outbreak.

3.3.5. *Proportionality of the Measure*

- (184) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage directly caused by the exceptional occurrence. Aid must not result in over-compensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (185) To 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 actually and directly affected the operations of Condor and what actual impact it has had on the costs and revenues of the company.

3.3.5.1. Amount of the damage directly linked to the COVID-19 outbreak

3.3.5.1.1. *First Compensation Period*

- (186) The damage to be compensated under the First Compensation Period corresponds to the net loss, defined as loss of revenues minus avoided costs directly linked to the travel restrictions and containment measures listed in sections 2.2.1 and 2.2.2.
- (187) The loss of revenues is the difference between the revenues that Condor would have expected during the First Compensation Period, had the containment measures linked to the COVID-19 outbreak not occurred, and the revenues that Condor has actually generated during the First Compensation Period. To approximate counterfactual revenues, the Commission uses forecasted revenues for the same period of the pre-COVID-19 forecast.
- (188) Avoided costs correspond to costs that Condor would have had during the First Compensation Period if its activity had not been affected by the containment measures linked to the COVID-19 outbreak, and that Condor did not have to bear as a result of the cancelled operations (fuel, airport taxes, etc.). The avoided costs are quantified by comparing the costs forecasted by Condor for the same period in its pre-COVID-19 forecast with the costs borne by the company during the First Compensation Period.
- (189) The German authorities submitted an evaluation of the damage on the basis of a monthly comparison of the actual EBT for the First Compensation Period and the monthly EBT forecasted for the same period in the pre-COVID-19 EBT-forecast.
- (190) Germany has submitted the actual net losses registered by Condor in the months of April, May and June 2020 on the basis of the monthly EBT delta, which reflects the operating revenue and expenses of the company and makes it possible to capture the effective operating losses of the company. For the calculation of the net losses in March 2020 (i.e., from 17 to 31 March), Germany has estimated the corresponding proportion of revenues, variable costs and fixed costs based on the

delta of daily passengers estimated for Condor in the pre-COVID-19 forecast. The Commission notes that, in the absence of actual daily EBT data for March, the allocation of net losses by using that methodology is a robust and accurate approximation for the actual distribution of daily losses. Those daily losses were indeed much more concentrated in the second half of March 2020, following the closure of the German borders on 17 March 2020 and the adoption of a world wide formal travel warning and the subsequent half of Condor's activities.

- (191) The Commission notes further that using the pre-COVID 19 forecast instead of Condor's actual figures for the same period 2019 is the more conservative approach. It ensures that the figures are not polluted by losses that Condor had because of the bankruptcy of TCG and it leads to lower damage amounts as can be seen from the data provided by Condor for both comparisons as demonstrated in section 2.8.2.
- (192) Based on the above, the Commission considers that the damage evaluation correctly established the total net losses of Condor in the First Compensation Period at EUR 71.94 million (see section 2.8.2).

3.3.5.1.2. *Second Compensation Period*

- (193) The damage to be compensated under the Second Compensation Period corresponds to the net loss registered by each flight on the Eligible Routes directly linked to the Eligible Restrictions in place in Germany and foreign countries as indicated in section 2.2.3.
- (194) The loss of revenues is the difference between the revenues that Condor would have expected during the Second Compensation Period on each flight operated on the Eligible Routes, had the Eligible Restrictions linked to the COVID-19 outbreak not occurred, and the revenues that Condor has actually generated during the Second Compensation Period on those same routes. To approximate counterfactual revenues, the Commission uses forecasted revenues for the same period of the pre-COVID-19 forecast.
- (195) Avoided costs correspond to costs that Condor would have had during the Second Compensation Period borne on each flight operated on the Eligible Routes if its activity had not been affected by the Eligible Restrictions linked to the COVID-19 outbreak, and that Condor did not have to bear as a result of the cancelled operations (fuel, airport taxes, etc.). The avoided costs are quantified by comparing the costs forecasted by Condor for the same period in its pre-COVID-19 forecast with the costs borne by the company during the Second Compensation Period.
- (196) *Firstly*, the Commission considers it correct that under the Second Compensation Period a route-by-route analysis has to be undertaken since only specific routes (and sometimes only for a specific period) were affected by the relevant containment measures. The Commission considers that the route-by-route quantitative analysis (on the basis of daily flights operated or programmed by Condor) submitted by Germany appropriately identifies the damage attributable to the travel restrictions and containment measures on a route-by-route basis.
- (197) *Secondly*, the Commission observes that the Measure does not aim at compensating the full losses incurred by Condor during the Second Compensation

Period due to the decline in passengers compared with the pre-COVID-19 forecast, but only those that can be directly attributed to the Eligible Restrictions in place in Germany and foreign countries as indicated in section 2.3.3. For that purpose, by comparing the traffic registered by Condor in the Second Compensation Period on routes that were not affected by any Eligible Restrictions with the traffic actually registered by Condor during the Second Compensation Period on Eligible Routes, the Commission notes that it is possible to distinguish the loss of passengers *directly* due to the Eligible Restrictions from the reduction of passengers that would have been lost in any event regardless of the containment measures.

- (198) The empirical methodology followed by Germany appropriately identifies what would have been the level of passengers absent the containment measures (i.e. the Benchmark – see recitals (124) to (128)). The use of the Benchmark thus strips out from the profitability delta of a route those passengers who would not use aviation services during the Second Compensation Period for reasons other than the Eligible Restrictions. It thereby determines in a robust manner the damage arising on the routes subject to travel restrictions or containment measures as a direct consequence of such measures (see in particular section 2.8.3). It does so by relying on the comparison between the traffic registered by Condor on the routes not affected by any Eligible Restriction in the period July to October 2020¹³⁶ pre-COVID 19 forecasted by Condor and the actual traffic of Condor observed on the Eligible Routes in the same period.
- (199) The bundle of routes operated by Condor free of Eligible Restriction, and retained by Germany in the Benchmark, is sufficiently representative to estimate the number of passengers that Condor could have expected to transport in the absence of Eligible Restrictions on its routes during the Second Compensation Period. Indeed, the Commission observes that the Benchmark analyses the volume of passengers transported by Condor between 1 July and 31 October 2020 on 8 650 flights on routes not affected by any travel restriction eligible for compensation (i.e. not affected by restriction on non-essential travel, travel restriction at destination, airport closure or formal travel warning).
- (200) As to the suitability of that period, the Commission notes that Germany used the period in which most travel restrictions and containment measures that had a direct impact on Condor's routes were lifted. In addition, the justifications provided by Germany concerning the adjustment of the Benchmark for inbound flights and outbound flights (see recital (125)) are solidly backed up by data reviewed by the Commission. They can be as such accepted in order to appropriately reflect a benchmark that is the least biased possible to establish the approximate behaviour of passengers directly sensitive to the existence of COVID-19 Eligible Restrictions. Furthermore, the option to limit the benchmark period to that of 1 September to 31 October 2020 (a period that would have been from a seasonal point of view been more comparable to the Compensation Period) would mean that in the Benchmark the number of passengers travelling on routes without travel restrictions would have slightly increased from 45% to 46%. As a result, the period 1 July – 31 October 2020 used in the Benchmark involves a

¹³⁶ Precisely, all outbound flights that have not been affected by travel restrictions in the period 1 July to 20 October 2020 and all inbound flights that have not been affected by travel restrictions in the period 20 July to 31 October 2020 have been taken into account.

more conservative approach. Therefore, the Commission considers that the Benchmark used by Germany was conservative for quantifying the damage without being unrepresentative due to seasonal reasons.

- (201) As for the adjustment of costs, the distinct approach to revenues and variable costs, on the one hand, and fixed costs, on the other hand, appropriately takes into account the impact of large variations of output and the economies of scale that characterise the cost structure of an airline. Fixed costs can show some variation when confronted with large variations of output, as the one affecting Condor, although any such variation is likely to be less than proportional. The linear adjustment of fixed costs submitted by Germany, as well as the allocation of fixed costs based on the forecasted flight-by-flight and route-by-route data for the period from 1 July to 31 December 2020, provides a reliable estimate of the avoided fixed costs at the level of the routes.
- (202) In light of those elements, the Commission considers that the methodology submitted by Germany allows a precise quantitative identification of the damage attributable to the COVID-19 outbreak due to the relevant containment measures. The Commission therefore considers that the route-by-route analysis submitted by Germany provides a reliable and conservative method to calculate as precisely as possible the damage suffered by Condor directly due to the Eligible Restrictions.
- (203) The Commission scrutinised the application of that methodology to the Eligible Routes operated or programmed by Condor for which the Commission concludes that there was a direct link between the damage suffered by Condor because of the COVID-outbreak due to the Eligible Restrictions in force on those routes. The relevant aggregate figures resulting from the application of that methodology are displayed in Table 32 of the present decision, leading to an overall damage of EUR 103.414 million for the Second Compensation Period that is eligible for compensation.

3.3.5.1.3. Conclusion

- (204) Based on this, the overall damage suffered by Condor in the Overall Compensation Period that can be directly linked to the Eligible Restrictions amounts to EUR 175.355 million.
- (205) In addition, the German authorities have confirmed that the aid cannot be cumulated with other aid (also *de minimis*) covering the same eligible costs (see recital (133)) and has not been cumulated with such other aid.

3.3.5.2. Initial Amount of the Aid

- (206) The Annulled decision approved an aid amount of EUR 267.1 million. The Commission assessed and quantified the aid element in the Annulled decision as follows¹³⁷.

¹³⁷ That assessment and quantification are in principle still valid for the adoption of a new decision after the annulment of the Annulled decision by the General Court as the aid element has to be quantified at the moment when the aid is granted/the moment preceding the adoption of a decision taking into account only those elements that were known to the Commission at that point in time.

- (207) As regards the amount of the aid, the German authorities presented three estimates for the aid element in the two loans. Estimate 1 assumes that the loans will be repaid in total as scheduled. The aid element is established based on the difference between the spread of [600-700] bps and a “market rate plus base rate” respectively of 1000 bps and of -0.31%. The 1000 bps are based on the Reference Rate Communication. They correspond to the loan margin for firms in the bad rating category and low collateralisation¹³⁸. Undiscounted, that total sum corresponded to a gross grant equivalent (“GGE”) of EUR [...] million, while discounted the total corresponded to EUR [...] million.
- (208) The Commission noted in its Annulled decision that the loan contract did not provide for an interest rate of [600-700] bps, but rather [600-700] bps plus EURIBOR plus an adjustment for KfW’s refinancing rate. However, since the 3-months EURIBOR was set at -0.161% at the time of the adoption of the Annulled decision and the KfW adjustment for its refinancing rate was very small, the estimated aid amount was only marginally affected. The adjustment for KfW’s refinancing rate was very small given KfW’s excellent credit rating. In addition, Estimate 1 was based on the assumption that the full amount of all tranches would be drawn immediately and repaid following the repayment schedule. That assumption overestimated the aid element since the German authorities argued that Condor was expected and (only allowed) to draw on tranche B as liquidity needs arrive over time. Since the impact was very small, the German estimate on the aid element was not materially affected.
- (209) Estimates 2 and 3 were based on a software tool to estimate GGE for guarantees. In Estimate 2, no aid element was found, while in Estimate 3, the GGE was EUR 142 million. Since the Commission did not have sufficient information about the underlying parameters, it could not reconcile or comment on those figures.
- (210) The Commission agreed with the methodology used for Estimate 1 if one applied the corrections to the EURIBOR, the KfW refinancing rate and the drawn amounts. However, it further noted that Estimate 1 relied mainly on the assumption that 1000 bps was the correct market spread and that those loans would be repaid as scheduled.
- (211) However, the Commission considered that the repayment of the loans would be risky since it heavily depended on the timing of the expected sale, the achieved sales price and the earned cash flows (used for down payments) until then. The Commission therefore determined the GGE if the sale were to take place, as announced and envisaged, in mid-2022. It split the assessment by tranches since tranche A of loan 1, tranche B of loan 1 and loan 2 have different seniorities in case of prepayment because of sale or liquidation of the company. In particular, the Commission noted that if sold, loan 2 would be first repaid, thereafter tranche

¹³⁸ That means, the yearly interest rate advantage because of the measure equals $9.69\% - [6-7]\% = [2.5-7.5]\%$. For example, for the first 12 months for which there is an outstanding amount of EUR 550 million, the aid element for that period equals $550 \text{ million} * [2.5-7.5]\% = [13-18] \text{ million}$. For each period, the outstanding loan amount is reduced according to the repayment schedule, see Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008. p. 6).

A and then tranche B. The collateral for A and B would be first used for A and then for B.

- (212) The Commission found that by [...] tranche A was planned to have EUR 193.5 million outstanding, while loan 2 would amount to EUR 20.2 million. A similar sales price obtained at that stage as achieved in the beginning of 2020 (EUR [...] million) would be enough to repay tranche A and loan 2 and even exhibit [...] of EUR [...] million. While it was uncertain which price would be achieved for Condor in 2022 and so whether a buffer of EUR [...] million was sufficient, the Commission took note of two elements indicating that such a price was realistic. First, the price of EUR [...] million was achieved in an open tender procedure within a short time frame of six months and, second, for a company already in insolvency proceedings. For the new sales process, the time frame would be longer and Condor would have left insolvency proceeding. Since the repayment likelihood for these two tranches could be considered sufficiently high, the Commission used the interest rate differential to quantify the aid element. The Commission applied 1000 bps, the credit margin established in the Reference Rate Communication for a loan to a company with weak collateral and in poor financial condition. On the basis of that methodology, the Commission found the outstanding balance until June 2022 for tranche A and loan 2, aid of EUR 18.9 million (A) and EUR 1.4 million (loan 2), undiscounted.
- (213) For tranche B the proceeds from the sale were unlikely to be sufficient to repay the outstanding amount which meant that it would have to be repaid by cash flows achievable in the future. In turn, that element lowered the achievable equity sales price since there would be lower cash flows to equity holders. Thus, the Commission considered for tranche B of loan 1 an aid element of the full notional amount of EUR 273.8 million, which was a conservative finding. However, since the German authorities charged interest of [6-7]% plus EURIBOR and KfW adjustment, the Commission subtracted the envisaged interest payments from the notional amount since a grant would be interest-free. For that calculation, it used the expected balance and, for simplicity, a rate of [6-7]% to be paid.¹³⁹ The interest until June 2022 amounted to EUR 27 million, undiscounted.
- (214) Summing up all aid elements, + EUR 18.9 million (A), + EUR 1.4 million (loan 2), + EUR 273.8 million – EUR 27 million (B), the Commission arrived at an estimated total aid of EUR 267.1 million for the State guarantee and the corresponding loans.¹⁴⁰
- (215) However, the Commission notes that Germany notified an amendment of the Measure on 23 July 2020, which is described in the next section.

¹³⁹ The conclusion of that calculation does not change for reasonable ranges of KfW's refinancing costs and EURIBOR rates.

¹⁴⁰ The Commission also determined the aid when discounting when assuming a discount rate of 10% (spread) - 0.31% (base rate) = 9.69%. The corresponding value is EUR 268.4 million.

3.3.5.3. Amount of the aid of the Measure as newly notified by Germany

- (216) The Commission notes that Germany has notified two write-offs from tranche B of loan 1 for an overall amount of EUR 150 million. The write-offs will take place as soon as the Commission notifies its decisions not to raise objections to those measures. By the Condor II decision adopted today, the Commission has decided not to raise objections to the write-off of EUR 60 million from tranche B of loan 1. By the Restructuring decision also adopted today, the Commission has decided to raise no objections to *inter alia* aid in the form of the write-off of EUR 90 million from tranche B of loan 1. Thus, the write-offs will take place in the following hours.
- (217) In addition, Germany has informed the Commission that it will write-off the interest Condor has to pay in the amount of EUR 20.2 million. That latter write-off has two components. It concerns first the outstanding interest based on the initial loan agreement for tranche B of loan 1 in an amount of EUR 18.7 million. Second, the write-off concerns also the additional interest in an amount of EUR 1.5 million payable to eliminate the advantage Condor received due to the temporary access to funds it obtained from the loans provided in the wake of the Annulled decision in excess of the ex-post quantified damage. Condor accessed these funds progressively, reaching in July 2021 the amount of EUR 91.745 million in excess of the approvable aid amount based on the ex post quantified damage. The Commission notes that the interest to eliminate the advantage from overcompensation was quantified by applying in addition to the [600-700] basis points due based on the loan agreement another [300-400] basis points on the amounts drawn exceeding the approvable aid amount so that in total a yearly interest rate of 1000 basis points is due, for the duration over which the excess amounts were drawn. In that respect, the Commission notes that in line with the Reference Rate Communication 1000 basis points is the interest normally applied for a loan to a company with weak collateral and in poor financial condition. The amount of interest applied paid by Condor ensures reimbursement of the additional advantage Condor had. The Commission notes that the partial write-offs from tranche B of loan 1 amounting to EUR 150 million exceed the repayable excess funds of EUR 91.745 million temporarily accessed by Condor. The Commission further notes the write-off approved under the Restructuring decision of the interest of EUR 1.5 million to be paid for the advantage derived from that temporary access to excess funds.

Hence, a claw-back of any advantage enjoyed by Condor in relation to that temporary access to excess funds has taken place. The Commission further notes that the write-off of the outstanding interest on tranche B of loan 1 in an amount of EUR 18.7 million ensures that the aid element as set out in the Annulled Decision remains respected. As a result, after the write-off, Condor is in the same situation as it would have been if it has never enjoyed temporary access to funds in excess of the ex-post quantified damage.

- (218) Against that background, the Commission takes note of the intended amendment of the Measure and bases its compatibility assessment on the notified Measure only, which takes account of those modifications.

- (219) As tranche A of loan 1 and loan 2 are not amended by the write-offs, the aid amount as calculated at the moment of the Annulled decision stays the same. As a result, the Commission calculates the aid amount for tranche A of loan 1 at EUR 18.9 million and for loan 2 at EUR 1.4 million as outlined in section 3.3.5.2.
- (220) The Commission considers that given the difficulties related to COVID-19 experienced by Condor, the probability of repayment and the value of the collaterals have not increased for that tranche since the adoption of the Annulled decision. Accordingly, the Commission considers, as it also has been explained by Germany, that the aid amount for the amended tranche B of loan 1 is its nominal amount, namely EUR 123.8 million.
- (221) The total aid amount of the Measure therefore equals EUR 144.1 million.
- (222) When comparing both elements, the aid calculated in an amount of EUR 144.1 million and the damage of EUR 175.355 million, the Commission notes that the aid element of the Measure is less than the damage suffered by Condor for which there is a direct causal link to the COVID-19 outbreak.
- (223) The Commission therefore concludes that the notified Measure provides for compensation that does not exceed what is necessary to make good the damage.
- (224) In view of the above, the Commission concludes that the Measure is proportionate.

3.3.6. Conclusion on the compatibility of the aid

- (225) In the light of the findings above, the Commission concludes that the notified Measure in the form of loans for an amount of EUR 400 million (of which EUR 144.1 million constitute State aid), as amended by Germany, meets the conditions of compatibility with the internal market set out in Article 107(2)(b) TFEU. The Commission therefore considers that the aid provided to Condor is compatible with the internal market.

4. CONCLUSION

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

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

