



EUROPEAN COMMISSION

Brussels 17.6.2022
C(2022) 4273 final

PUBLIC VERSION

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**Subject: State Aid SA.103028 (2022/N) – Croatia
COVID-19: Support to undertakings active in the civil aviation sector for recapitalisation measures under Temporary Framework 3.11**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, Croatia (“Croatia” or the “State”) notified by electronic notification of 17 May 2022 an aid scheme for recapitalisation measures (“Support to undertakings active in the civil aviation sector for recapitalisation measures under Temporary Framework 3.11” or the “scheme”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).¹

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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- (2) Croatia exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE SCHEME

- (3) Croatia considers that the COVID-19 pandemic has affected the real economy. The scheme forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the pandemic, to ensure that the disruptions caused by the pandemic do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the pandemic.
- (4) According to the Croatian authorities, the purpose of the scheme is to support the solvency of viable companies active in the civil aviation sector that are experiencing temporary difficulties due to the impact of the COVID-19 pandemic.
- (5) As in the majority of Member States, the COVID-19 outbreak started to affect overall economic activity in Croatia already in March 2020. More specifically, its GDP contracted by 8.1% in 2020 compared to 2019.
- (6) In order to counter the financial difficulties that undertakings were facing due to the COVID-19 outbreak as of March and April of 2020, the Croatian Government and the Croatian National Bank adopted several packages of wage and liquidity support measures aimed at supporting the national economy, in order to mitigate the decrease in employment and ensure sufficient liquidity on the market. Those wage and liquidity support measures have yielded positive results, preserving the number of jobs in the sectors and businesses affected by the COVID-19 pandemic and providing necessary liquidity, especially to small and medium-sized enterprises. However, some economic sectors, such as tourism, the travel industry and, in particular, the transport sector are likely to experience a longer-lasting disruption than others. Since the Croatian economy depends heavily on those services, the uncertainties regarding the pace of recovery of that sector have a serious impact on the overall economic situation in Croatia and are expected to continue to do so in the future.
- (7) According to Croatia, a well-developed civil aviation sector is essential for the economic and social development and promotion of inter-regional exchange and cross-border cooperation. Croatia explains that the civil aviation sector serves as instrument for regional and overall national development, and facilitates the flow of goods, as well as the access of people to employment, health, education, and cooperation with neighbours. Hence, in the current situation, the Croatian Government considers that it is vital to use all available tools to ensure the proper functioning of the civil aviation sector in order to mitigate the financial difficulties that its operators have been and are currently facing due to the COVID-19 pandemic.

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

- (8) Croatia considers it necessary to support in particular undertakings active in the civil aviation sector, which have been affected severely by the COVID-19 pandemic. The Croatian authorities provided data that shows that air traffic only resumed very slowly following summer 2020. In 2021, air traffic in Croatia was far from reaching pre-COVID-19 level of 2019 (see Table 1).

Table 1: Development of passenger numbers at Croatian Airports in 2020 and 2021 compared to 2019

Airport	Passengers per year			2020./2019	2021./2019
	2019	2020	2021		
Franjo Tuđman Airport (Zagreb)	3,435,531	924,823	1,404,478	26.92%	40.88%
Split Airport	3,301,930	674,366	1,577,584	20.42%	47.78%
Dubrovnik Airport	2,896,227	330,147	927,934	11.40%	32.04%
Zadar Airport	801,347	120,747	220,853	15.07%	27.56%
Pula Airport	771,210	81,918	265,480	10.62%	34.42%
Rijeka Airport	200,821	27,680	56,320	13.78%	28.04%
Osijek Airport	46,361	6,625	11,390	14.29%	24.57%
Brač Airport	25,339	4,250	8,052	16.77%	31.78%
Mali Lošinj Airport	6,495	3,214	5,835	49.48%	89.84%
TOTAL	11,485,261	2,173,770	4,477,926	18.93%	38.99%

- (9) Croatia explains that there is still significant insecurity among civil aviation service providers and customers alike. Ever since the outbreak of the COVID-19 pandemic, service providers have tried to adapt to the unstable circumstances and business outlook caused first by travel bans and other health-related measures, then by a perceived lack of coordination and synchronisation of measures and, most recently, by capacity restrictions due to staff shortages.
- (10) Croatia indicates that although current passenger numbers are improving, they are not sufficient to alleviate all financial difficulties encountered during the COVID-19 pandemic. In the meantime, operating costs, especially energy costs, and financial obligations towards banks or leasing companies, are significantly higher than under normal circumstances, which jeopardises the sustainability or even survival of the undertakings active in the civil aviation sector and, therefore, the continuity of service.
- (11) Croatia expects that the support measures under the scheme will have a positive impact on other sectors of the Croatian economy and society as a whole by ensuring continuity of service and mobility of Croatian citizens and tourists both domestically and internationally.
- (12) Croatia confirms that the aid under the scheme is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

- (13) Croatia considers the scheme to be compatible with the internal market on the basis of Article 107(3)(b) TFEU, in the light of the Temporary Framework and in particular its section 3.11.

2.1. The nature and form of aid

- (14) The measures granted under the scheme take the form of recapitalisation instruments through the issuance of common shares.

2.2. Legal basis

- (15) The legal basis for the scheme is the Law on State Aid (Official Gazette, issue no. 47/14 and 69/17) in connection with the implementing provision, the Government Decision on the adoption of the State aid Scheme to support the maritime sector, transport sector, transport infrastructure operators and related sectors impacted by the COVID-19 outbreak of 3 July 2020 and subsequent amendments. A new amendment, which includes the legal basis of the notified scheme, will enter into force only after the adoption of the present decision. The Croatian authorities provided a draft of that amendment.

2.3. Administration of the scheme

- (16) The Croatian Ministry of the Sea, Transport and Infrastructure is responsible for administering the scheme.

2.4. Budget and duration of the scheme

- (17) The estimated budget of the scheme is HRK 646 million³, financed by the general State budget.
- (18) Aid may be granted under the scheme as from the notification of the Commission's decision approving the scheme until no later than 30 June 2022.

2.5. Beneficiaries

- (19) The beneficiaries of the scheme are large enterprises⁴ active in the civil aviation sector affected by the COVID-19 pandemic. The beneficiaries include undertakings registered in Croatia to perform activities in the following sectors according to NACE :

51.10 Passenger air transport;
51.21 Freight air transport;
52.2 Support activities for transport.

- (20) Aid beneficiaries may, inter alia, include airlines, airports, air navigation service providers and maintenance service providers.

³ Approximately EUR 85.78 million, see exchange rate on 9 June 2022 available at: https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en

⁴ See Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

- (21) Aid may not be granted under the scheme to any undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁵ on 31 December 2019.
- (22) The scheme targets undertakings that were viable prior to the COVID-19 pandemic and have demonstrated the long-term sustainability of their business model. In the absence of State intervention, those undertakings would cease their activities or would not be in a position to finance themselves on the market to cover their liquidity needs nor to strengthen their own funds, due to their high indebtedness or the deterioration of their solvency.

2.6. Sectoral and regional scope of the scheme

- (23) The final beneficiaries of the scheme are large enterprises active in the civil aviation sector and which are established in the NUTS-2 regions of City of Zagreb and Northern Croatia. Financial institutions are excluded as eligible final beneficiaries.

2.7. Basic elements of the scheme

2.7.1. Types of instruments

- (24) The scheme will consist of recapitalisation measures and will take the form of capital injections, which will be carried out through the issuance of new common shares to be held by the State.

2.7.2. Eligibility criteria for the beneficiaries and support award decisions

- (25) The Croatian authorities confirm that beneficiaries must be at risk of going out of business or face serious difficulties to maintain their operations. Under the scheme, eligible beneficiaries must have seen a significant decrease in turnover in the relevant period, in particular they must have generated at least 20% less turnover in 2020 than in 2019. In addition, beneficiaries will have to demonstrate that their debt-to-equity ratio has deteriorated at the moment of application for aid, in comparison with 31 December 2019.
- (26) As the scheme applies to the civil aviation sector, beneficiaries must also prove that they have suffered a decrease in business volume, e.g., in volume of transport of passengers, freight, and bookings in 2020 and 2021 compared to 2019 and/or cancelled or postponed for at least one year business activities that they had previously envisaged according to their business plans for 2020 and 2021.
- (27) Undertakings that decided to pay dividends both in 2020 and 2021 will not be eligible to apply for State aid under the scheme.
- (28) Regarding a common interest to intervene, Croatia confirms that the scheme is geared towards the civil aviation sector, which has been severely affected by the COVID-19 pandemic and will take long to recover. In that respect and in order to ensure free movement of people and goods and to generate socio-economic

⁵ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

benefits stemming from the connectivity of Croatia, the scheme is of paramount importance. Croatia explains that without the envisaged scheme the civil aviation industry in Croatia would collapse, followed by bankruptcies of businesses of systemic relevance and interruption of civil aviation services.

- (29) As regards the beneficiaries' inability to find alternative financing, Croatia explains that the aid currently available through the existing State aid measures available in Croatia does not cover all liquidity needs required by the civil aviation sector.
- (30) Beneficiaries will be required to prove their inability to secure financing on the markets at affordable terms.
- (31) Croatia confirms that it will grant COVID-19 recapitalisation measures under the scheme approved by the Commission only upon a written request for such aid.
- (32) The estimated budget of the scheme is approximately EUR 85.78 million. Accordingly, as confirmed by Croatia, no individual aid above EUR 250 million will be granted and no separate notification of individual aid under the scheme will be required.

2.7.3. *Amount of aid*

- (33) Croatia emphasises that the scheme is geared towards ensuring immediate liquidity needs of undertakings active in the civil aviation sector. It contains safeguards against overcompensation taking into account other available public financing sources. Each request for aid under the scheme will be analysed and approved by the Croatian Ministry of the Sea, Transport and Infrastructure on the basis of objective and pre-defined criteria, such as:
 - the fact that beneficiaries were not undertakings in difficulty on 31 December 2019 (recital (21));
 - the type of undertakings eligible to receive aid under the scheme (recital (23));
 - the beneficiaries' risk of going out of business or face serious difficulties to maintain their operations (recital (25)(25));
 - the fact that beneficiaries suffered a decrease in business volume and/or cancelled or postponed for at least one year business activities that they had previously envisaged according to their business plans for 2020 and 2022 (recital (26)).
 - the fact that beneficiaries did not pay any dividends in 2020 and 2021 (recital (27));
 - the importance of the beneficiaries for businesses of systemic relevance and the continuation of civil aviation services in Croatia (recital (28)(28));
 - the forecasted debt to equity ratio after the recapitalisation (recital(34));
- (34) In order to ensure that the amount of the recapitalisation does not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak, a comparison of the forecasted debt to equity ratio with the historic debt to equity ratio of the respective beneficiary prior to the COVID-19

outbreak shall be performed. The cut-off date for the forecasts is 31 December 2022 and the historic basis for the comparison is the debt to equity ratio on 31 December 2019. The Croatian Ministry of the Sea, Transport and Infrastructure will ensure that the forecasted debt to equity ratio on 31 December 2022 after the recapitalisation will not exceed the historic debt to equity ratio on 31 December 2019.

- (35) In order to ensure that the amount of the recapitalisation is limited to the minimum needed to ensure the viability of the respective beneficiaries, the aid will not go beyond re-establishing the creditworthiness of the respective beneficiaries. The decisive indicator to establish that creditworthiness is the net debt to EBITDA ratio; Croatia confirms that aid will not result in a beneficiary having a ratio of net debt to EBITDA at 31 December 2022 below 3.0 to 3.5. In case of negative EBITDA, Croatia will not use the net debt to EBITDA ratio but will use an equity to total asset ratio as indicator for establishing the creditworthiness. In the case of negative EBITDA, an equity to total asset ratio of at least 15% in the undertaking's balance sheet can be considered as benchmark for assuming creditworthiness on the financial markets, meaning that the scheme would recapitalise undertakings with an equity to total asset ratio of 15% and lower.
- (36) In assessing the proportionality of the aid, Croatia will take into account State aid received or planned in the context of the COVID-19 pandemic.

2.7.4. Remuneration

- (37) As regards computing the entry prices of the capital injections, Croatia confirms that the individual share price will not exceed the average share price of the respective beneficiary over the 15 calendar days preceding the request for the capital injection. If the beneficiary is not a publicly listed company or if the beneficiary is a publicly listed company but the traded volume is extremely low and thus not meaningful, an estimate of its market value will be established by an independent expert or by other proportionate means.
- (38) Four years after the COVID-19 recapitalisation measure (or five years if the beneficiary is not a publicly listed company), if the State has not sold at least 40% of its equity participation resulting from the COVID-19 recapitalisation measure, a step-up mechanism will be activated, which will result in a 10% increase in the State's shareholding to incentivise the beneficiary to buy back the capital injected into it by the State. Six years after the COVID-19 recapitalisation measure (or seven years if the beneficiary is not a publicly listed company), if the State has not sold in full its equity participation resulting from the State's COVID-19 equity injection, a step-up mechanism will again be activated resulting in an additional 10% increase in the State's shareholding.
- (39) Croatia will ensure that the aid beneficiaries will have, at any time, the possibility to buy back the equity stake that the State has acquired. To ensure that the State receives appropriate remuneration for the investment, the buy-back price should be the higher amount of (i) the nominal investment by the State increased by an annual interest as presented in the table listed in point 66 of the Temporary Framework plus an additional remuneration 200 basis points per year until year 8, or (ii) the market price at the moment of the buy-back.

- (40) Croatia envisages that, as an alternative, it would carry out open and non-discriminatory consultations of potential purchasers or a sale on the stock exchange in order to sell its equity stake at market prices to purchasers other than the beneficiary. Croatia confirms that if it sells its equity stake at a price below the minimum price referred to in recital (39), the governance rules laid down in recital (43) will continue to apply at least until four years after the COVID-19 recapitalisation measure was granted.
- (41) If the State is the only existing shareholder, the redemption of the COVID-19 recapitalisation measure may take the following form, notwithstanding recital (40). Provided two years have passed since the granting of COVID-19 recapitalisation measure:
- a. the sales process referred to in recital (40) is not required, and
 - b. the open and non-discriminatory consultation referred to in recital (40) may be replaced by a valuation of the beneficiary performed by an entity independent from that beneficiary and from the State. If that independent valuation establishes a positive market value, the State is deemed to have exited from the COVID-19 recapitalisation measure, even if the beneficiary remains State-owned. However, if the positive market value is less than the minimum price laid down in recital (39), the governance rules laid down in recital (43) will continue to apply until four years after the grant of the COVID-19 recapitalisation measure. The Commission may on its own initiative request the submission of that independent valuation and may evaluate it to ensure that it complies with the standard set to ensure transactions that are in line with market conduct.
- (42) If the State is one of several existing shareholders, the redemption of the COVID-19 recapitalisation measure may take the following form, alternatively to recital (40). Provided two years have passed since the granting of the COVID-19 recapitalisation measure:
- a. For the part of the COVID-19 equity that the State would need to retain in order to restore its shareholding to that before the COVID-19 recapitalisation measure, the possibility described in recital (41) is applicable. If the State sells a significant fraction of the shares of the beneficiary undertaking to private investors via a competitive process as referred to in recital (40), that process can be considered as an independent valuation for the purposes of recital (41).
 - b. For the rest of the COVID-19 equity, recital (40) applies. This includes in particular the need to conduct a competitive process.

When the redemption of the COVID-19 recapitalisation measure concerns only a fraction of the COVID-19 equity, letters (a) and (b) above apply to that fraction of the COVID-19 equity.

2.7.5. Governance and prevention of undue distortions of competition

- (43) Under the scheme, beneficiaries will have to comply with the following conditions:

- (a) In order to prevent undue distortions of competition, beneficiaries must not engage in aggressive commercial expansion financed by State aid or beneficiaries taking excessive risks;
 - (b) Beneficiaries of the measures under the scheme will not advertise them for commercial purposes;
 - (c) As long as at least 75% of the COVID-19 recapitalisation measures have not been redeemed, beneficiaries are prohibited from acquiring a more than 10% stake in competitors or other operators in the same line of business, including upstream and downstream operations;
 - (d) In exceptional circumstances, and without prejudice to merger control, such beneficiaries are allowed to acquire a more than 10% stake in operators upstream or downstream in their area of operation, only if the acquisition is necessary to maintain the beneficiary's viability. The Commission may authorise such acquisition if it is necessary to maintain the beneficiary's viability. Such acquisition may not be implemented before the Commission has approved it;
 - (e) State aid under the notified scheme will not be used to cross-subsidise economic activities of integrated undertakings that were in economic difficulties already on 31 December 2019. Under the scheme, beneficiaries that are integrated undertakings will have to put in place a clear account separation to ensure that the recapitalisation measure does not benefit those activities;
 - (f) As long as the COVID-19 recapitalisation measures have not been fully redeemed, beneficiaries cannot make dividend payments, nor non-mandatory coupon payments, nor buy back shares, other than in relation to the State;
 - (g) As long as at least 75% of the COVID-19 recapitalisation measures has not been redeemed, the remuneration of each member of the beneficiaries' management will not go beyond the fixed part of his/her remuneration on 31 December 2019. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the fixed remuneration of the members of the management with the same level of responsibility on 31 December 2019. Under no circumstances will bonuses, other variable or comparable remuneration elements be paid.
- (44) Croatia confirms in line with point 78bis of the Temporary Framework that, in cases where the State is an existing shareholder, i.e. before the COVID-19 recapitalisation measure, and
- (a) Croatia injects new equity under the same conditions as private investors and pro rata to its existing shareholding (or below); and
 - (b) the private participation is significant (in principle at least 30% of the new equity injected), and
 - (c) Croatia's new equity injection constitutes State aid because of its particular circumstances, for instance because of another measure benefitting the undertaking,

specific conditions as regards the State's exit are not applicable and the following will apply:

i. point 61 of the Temporary Framework regarding the step up mechanism (see recital (38)) does not apply to such COVID-19 recapitalisation measure;

ii. in derogation from points 74, 75 and 78 of the Temporary Framework, the acquisition ban and the cap on the remuneration of the management (see recital (43)) are limited to three years;

iii. in derogation from point 77 of the Temporary Framework (dividend ban, see recital (43)), the dividend ban is lifted for the holders of the new shares. For existing shares, the dividend ban is lifted, provided the holders of those existing shares are altogether diluted to below 10% in the undertaking. If holders of existing shares are not altogether diluted to a share in the undertaking below 10%, the dividend ban applies to existing shareholders for three years;

iv. the requirements in section 3.11.7 of the Temporary Framework do not apply except for the reporting obligations under its point 83, which will apply for three years; and

v. all the other conditions laid down in section 3.11 of the Temporary Framework apply *mutatis mutandis*.

(45) In line with point 78ter of the Temporary Framework, in case where the State injects equity into an undertaking in which it is not an existing shareholder (i.e. before the COVID-19 recapitalisation measure), and

(a) it injects new equity under the same conditions as private investors, and

(b) the private participation is significant (in principle at least 30% of the new equity injected), and

(c) where the State's recapitalisation measure constitutes State aid because of its particular circumstances, for instance because of another measure benefiting the undertaking,

the Croatian authorities commit to ensure that:

i. with respect to the dividend ban (see recital (43)), in derogation from point 77 of the Temporary Framework, the dividend ban is lifted for all holders of new shares. For existing shares, the dividend ban is lifted, provided the holders of such existing shares are altogether diluted to a share in the undertaking below 10%; and

ii. all the other conditions laid down in section 3.11 of the Temporary Framework apply *mutatis mutandis*.

2.7.6. Exit of the State and reporting obligations

2.7.6.1. Exit strategy

- (46) The Croatian authorities confirm that beneficiaries that have received support under the scheme of more than 25% of equity at the moment of intervention must demonstrate a credible exit strategy for the participation of the State, unless the State's intervention is reduced below the level of 25% of equity within 12 months from the date of the granting of the aid. The Croatian authorities confirm that this comprises:
- (a) a plan of the respective beneficiaries on the continuation of their activity and the use of the funds invested by the State, including a payment schedule of the remuneration and of the redemption of the State investment (together the "repayment schedule"); and
 - (b) the measures that the beneficiary and the State will take to abide by the repayment schedule.
- (47) The Croatian authorities confirm that the exit strategy presented by the respective beneficiaries within 12 months after aid is granted, in compliance with the conditions pointed out in points 79 and 81 of the Temporary Framework, must be endorsed by the State.

2.7.6.2. Reporting obligations

- (48) The Croatian authorities confirm the obligation for the beneficiaries to report to the State on the progress in the implementation of the repayment schedule and the compliance with the conditions concerning the governance and prevention of undue distortions of competition recital (43)) within 12 months of the schedule's presentation, and thereafter periodically every 12 months.
- (49) The Croatian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework, including the obligation to publish relevant information on each individual aid above EUR 100,000 granted under the scheme on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting⁶.
- (50) In accordance with the scheme, the granting authority will keep detailed records regarding the granting of aid for ten years upon granting of the aid and commit to provide them to the Commission upon request.
- (51) Croatia commits to submit annual reports on the scheme to the Commission.

2.7.6.3. Publication obligation for large enterprises

- (52) The Croatian authorities confirm that as long as the measures under the scheme have not been fully redeemed, beneficiaries must, within 12 months from the date

⁶ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, this will include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

2.7.6.4. Reporting obligation for the State

- (53) The Croatian authorities commit to report to the Commission annually on the implementation of the repayment schedule and compliance with the conditions in section 3.11.6 of the Temporary Framework.

2.7.6.5. Restructuring plan

- (54) Croatia confirms that if six years after the COVID-19 recapitalisation (or seven years in case of companies not publicly listed) the State's intervention has not been reduced below 15% of beneficiary's equity a restructuring plan in accordance with the Rescue and Restructuring Guidelines⁷ will be notified to the Commission for approval. For that case, Croatia commits that the actions envisaged by the restructuring plan will ensure the beneficiary's viability in accordance with the Rescue and Restructuring Guidelines and with a view of:
- EU objectives and national obligations linked to the green and digital transformation; and
 - The exit of the State without adversely affecting trade to an extent contrary to the common interest.

2.8. Cumulation

- (55) The Croatian authorities confirm that aid granted under the scheme may be cumulated with aid under *de minimis Regulations*⁸ or the General Block Exemption Regulation⁹ provided the provisions and cumulation rules of those Regulations are respected.
- (56) The Croatian authorities confirm that aid under the scheme may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (57) The Croatian authorities confirm that aid granted under the scheme may be cumulated with aid granted under other measures approved by the Commission

⁷ Communication from the Commission, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

⁸ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

⁹ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

3. ASSESSMENT

3.1. Lawfulness of the scheme

- (58) By notifying the scheme before putting it into effect, the Croatian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (59) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (60) The scheme is imputable to the State since it is based on Law on State Aid (Official Gazette, issue no. 47/14 and 69/17) in connection with the implementing provision (recital (15)) and the Croatian Ministry of the Sea, Transport and Infrastructure is responsible for administering it (recital (16)). It is financed through State resources, since it is financed by the general State budget.
- (61) The scheme confers an advantage on its beneficiaries in the form of equity instruments through issuing new common shares. Therefore, it confers an advantage on those beneficiaries, which they would not have had under normal market conditions.
- (62) The advantage granted by the scheme is selective, since it is awarded only to certain undertakings, i.e., certain large enterprises active in the civil aviation sector.
- (63) The scheme is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in the civil aviation sector, in which intra-Union trade exists.
- (64) In view of the above, the Commission concludes that the scheme constitutes aid within the meaning of Article 107(1) TFEU. The Croatian authorities do not contest that conclusion.

3.3. Compatibility

- (65) Since the scheme involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether it is compatible with the internal market.
- (66) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.

- (67) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (68) The scheme aims at facilitating the access of eligible undertakings to external finance at a time when the normal functioning of markets is severely disturbed by the COVID-19 pandemic and that pandemic is affecting the wider economy and leading to severe disturbances of the real economy of Member States, including that of Croatia.
- (69) The scheme is one of a series of measures conceived at national level by the Croatian authorities to remedy a serious disturbance in their economy. The scheme is of a scale that can be reasonably anticipated to produce positive effects for the Croatian civil aviation sector. Furthermore, the scheme has been designed to meet the requirements of a specific category of aid (“Recapitalisation measures for non-financial undertakings”) described in section 3.11 of the Temporary Framework.
- (70) Section 3.11 of the Temporary Framework deals with recapitalisation measures. It sets out the criteria under which Member States may provide public support in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 pandemic, aiming to ensure that the disruption of the economy does not result in the unnecessary exit from the market of undertakings that were viable before that pandemic.
- (71) Therefore, in the following sections, the Commission will assess the compatibility of the scheme under section 3.11 of the Temporary Framework.

3.3.1. Applicability

- (72) Aid under the scheme is to be granted at the latest by 30 June 2022 (recital (18)). Therefore, the scheme complies with point 48 of the Temporary Framework.
- (73) The aid takes the form of a recapitalisation and will take the form of a capital increase, which will be carried out through the issuance of ordinary shares to be held by the State (recital (24)).

3.3.2. Eligibility of beneficiaries and entry conditions

- (74) Aid under the scheme is only provided to undertakings that would otherwise go out of business or would face serious difficulties to maintain their operations and showing deterioration of, in particular, the beneficiary's debt to equity ratio (recital (25)). Therefore, the scheme complies with point 49(a) of the Temporary Framework.
- (75) The scheme will only apply where it is in the common interest to intervene, as investments are only provided to companies whose failure would likely involve social hardship or market failure due to significant loss of employment, the risk of

disruption to important transport services (recital (28)). Therefore, the scheme complies with point 49(b) of the Temporary Framework.

- (76) Croatia will provide public support through the scheme to companies which have exhausted the possibilities of finding financing on the markets (recital (30)) and the aid measures existing in Croatia to help cover their liquidity needs are insufficient to ensure the survival of such enterprises (recital (29)). Therefore, the scheme complies with point 49(c) of the Temporary Framework.
- (77) Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the scheme (recital (21)). Therefore, the scheme complies with point 49(d) of the Temporary Framework.
- (78) Financing will be granted only on the basis of the written request by the beneficiary and as a result of a positive assessment carried out by the Croatian Ministry of the Sea, Transport and Infrastructure confirming that the eligibility conditions contained in recitals (25)-(31) are met. Therefore, the scheme complies with point 50 of the Temporary Framework. The financing will be granted through equity instruments (recital (24)), which is in line with point 52 of the Temporary Framework.
- (79) There will be no individual aid granted under the scheme above the threshold of EUR 250 million contained in point 51 of the Temporary Framework (recital (32)). Therefore, no separate notification of individual aid will be required under point 51 of the Temporary Framework.

3.3.3. Amount of the recapitalisation

- (80) Croatia committed that the aid will not lead to a lower debt to equity ratio of the beneficiary undertaking on 31 December 2022 than the debt to equity ratio of that undertaking on 31 December 2019 (see recital (34)). The financing under the scheme will therefore not go beyond restoring the capital structure of the beneficiaries to that predating the COVID-19 pandemic.
- (81) Moreover, the aid will not result in the beneficiaries having a ratio of net debt to EBITDA at 31 December 2022 below 3.0 to 3.5. If the projected EBITDA is negative, the criterion relating to net debt to EBITDA will be replaced by an equity to total asset ratio as indicator for establishing the creditworthiness. In cases of negative EBITDA, the recapitalisation granted to undertakings with an equity to total asset ratio of 15% and lower (see recital (34)). Therefore, the amount of each individual COVID-19 recapitalisation granted under the scheme will not exceed the minimum needed to ensure the viability of the beneficiaries.
- (82) In assessing the proportionality of the aid, State aid received or planned in the context of the COVID-19 pandemic will be taken into account (see recital (36)). Therefore, the scheme complies with point 54 of the Temporary Framework.

3.3.4. Remuneration and exit of the State

- (83) The scheme falls under the scope of the recapitalisation measures referred to in point 52a of the Temporary Framework.

- (a) A capital injection by Croatia in the form of shares will be conducted at a price that does not exceed the average share price of the beneficiary over the 15 days preceding the request for the capital injection or an estimation of its market value by an independent expert or by other proportionate means if the beneficiary is not publicly listed (see recital (37)). Therefore, the scheme complies with point 60 of the Temporary Framework.
- (b) Point 61 of the Temporary Framework requires that a step-up mechanism, which may be implemented through additional shares or other forms, increases the remuneration of the State by a minimum of 10%. The scheme includes a remuneration equivalent to an additional 10% shareholding after 4 and 6 years (5 and 7 years respectively if the beneficiary is not a publicly listed company), which will take the form of additional shares, if, at those dates, 40% and 100% of the equity participation subscribed by the Croatian State respectively, have not been redeemed by the relevant undertaking or sold by the Croatian State (recital (38)). Therefore, the Commission considers that the remuneration of the shareholding held by the Croatia complies with point 61 of the Temporary Framework.
- (c) The capital injection can be bought back by the beneficiary at any time. The buy-back price will be the higher amount of (i) the nominal investment by the State increased by an annual interest as presented in the table listed in point 66 of the Temporary Framework plus an additional remuneration 200 basis points per year until year 8, or (ii) the market price at the moment of the buy-back (recital (39)). Such buy-back will ensure that the State receives appropriate remuneration in line with point 63 of the Temporary Framework.
- (d) Furthermore, as an alternative, Croatia may sell at any time its equity stake at market prices to purchasers other than the beneficiary, following an open and non-discriminatory consultation (recital (40)) or a sale on the stock exchange. Therefore, the scheme complies with point 64 of the Temporary Framework.
- (e) The scheme provides for alternative mechanisms to redeem the COVID-19 recapitalisation in situations where the State is the only existing shareholder (recital (41)) or the State is one of several existing shareholders (recital (42)). The sales process by the State applicable under the scheme in those situations complies with points 64bis or 64ter of the Temporary Framework, depending on whether the State is the only existing shareholder or one of the several existing shareholders.

3.3.5. *Governance and prevention of undue distortions of competition*

- (84) As listed in recital (43), aid beneficiaries will have to comply with a series of governance measures as listed in the Temporary Framework, in order to prevent undue distortions of competition:
- (85) Beneficiaries are not allowed to take excessive risks and to engage in aggressive commercial expansion financed by State aid. Therefore, the scheme complies with point 71 of the Temporary Framework.

- (86) Beneficiaries are not allowed to advertise the investment by the State for commercial purposes. Therefore, the scheme complies with point 73 of the Temporary Framework.
- (87) Until at least 75% of the aid under the scheme has not been redeemed, beneficiaries will not acquire a stake of more than 10% in competitors or other operators in the same line of business, including upstream and downstream operations. In exceptional circumstances, and without prejudice to merger control, beneficiaries may acquire a more than 10% stake in operators upstream or downstream in their area of operation or even competitors, only if the acquisition is necessary to maintain their viability and upon Commission's prior approval. Therefore, the scheme complies with points 74 and 75 of the Temporary Framework.
- (88) Beneficiaries are prohibited from using the funds received via the scheme to cross-subsidise other economic activities of integrated undertakings that were already in economic difficulties on 31 December 2019 and will introduce clear account separation to ensure no cross-subsidisation. Therefore, the scheme complies with point 76 of the Temporary Framework.
- (89) As long as a recapitalisation measure under the scheme has not been fully repaid, beneficiaries cannot make dividend payments, or non-mandatory coupon payments, or buy back shares, other than in relation to the State. Therefore, the scheme complies with point 77 of the Temporary Framework.
- (90) As long as at least 75% of the COVID-19 recapitalisation measure under the scheme has not been redeemed, the remuneration of each member of the beneficiaries' management must not go beyond the fixed part of their remuneration on 31 December 2019. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the fixed remuneration of the members of the management with the same level of responsibility on 31 December 2019. In addition, Croatia commits that under no circumstances will bonuses or other variable or comparable remuneration elements be paid. Therefore, the scheme complies with point 78 of the Temporary Framework.
- (91) In cases where the State is an existing shareholder, i.e. before the COVID-19 recapitalisation measure, and
- (a) Croatia injects new equity under the same conditions as private investors and pro rata to its existing shareholding (or below); and
 - (b) the private participation is significant (in principle at least 30% of the new equity injected), and
 - (c) Croatia's new equity injection constitutes State aid because of its particular circumstances, for instance because of another measure benefitting the undertaking,

specific conditions as regards the State's exit are not applicable and the following rules apply (recital(44)):

- i. point 61 of the Temporary Framework regarding the step up mechanism (see recital (38)) does not apply to such COVID-19 recapitalisation measures;
- ii. in derogation from points 74, 75 and 78 of the Temporary Framework, the acquisition ban and the cap on the remuneration of the management (see recital (43)) are limited to three years;
- iii. in derogation from point 77 of the Temporary Framework (dividend ban, see recital (43)), the dividend ban is lifted for the holders of the new shares. For existing shares, the dividend ban is lifted, provided the holders of those existing shares are altogether diluted to below 10% in the undertaking. If holders of existing shares are not altogether diluted to a share in the undertaking below 10%, the dividend ban applies to existing shareholders for three years;
- iv. the requirements in section 3.11.7 of the Temporary Framework do not apply except for the reporting obligations under its point 83, which shall apply for three years; and
- v. all the other conditions laid down in section 3.11 of the Temporary Framework apply *mutatis mutandis*.

Therefore, the scheme complies with point 78bis of the Temporary Framework.

- (92) In case where Croatia injects equity into an undertaking in which it is not an existing shareholder (i.e. before the COVID-19 recapitalisation measure), and
- (a) it injects new equity under the same conditions as private investors, and
 - (b) the private participation is significant (in principle at least 30% of the new equity injected), and
 - (c) where the Croatia's recapitalisation measure constitutes State aid because of its particular circumstances, for instance because of another measure benefiting the undertaking,

specific conditions as regards the State's exit are not applicable and the following shall apply (see recital (45)):

- i. with respect to the dividend ban (see recital (43)), in derogation from point 77 of the Temporary Framework, the dividend ban is lifted for all holders of new shares. For existing shares, the dividend ban is lifted, provided the holders of such existing shares are altogether diluted to a share in the undertaking below 10%; and
- ii. all the other conditions laid down in section 3.11 of the Temporary Framework apply *mutatis mutandis*.

The scheme is therefore line with point 78ter of the Temporary Framework.

3.3.6. Exit strategy of the State from the participation resulting from the recapitalisation and reporting obligations

- (93) The Croatian authorities undertake to ensure that the beneficiaries that have obtained a COVID-19 recapitalisation equivalent to more than 25% of the equity held at the time of the intervention, provide proof of the existence of a credible exit strategy with regard to the Croatian State's participation, unless the latter's intervention is reduced to less than 25% of the capital during the 12 months following the date on which the aid was granted (recital (46)).
- (94) The exit strategy has to specify: (i) the plan of the beneficiary on the continuation of its activity and the use of the funds invested by the State, in particular the repayment schedule; and (ii) the measures that the beneficiaries and the State will take to abide by the repayment schedule (recital (46)). The Croatian authorities undertake that the exit strategy as presented by the beneficiaries within 12 months after aid is granted must be endorsed by the Croatian Ministry of the Sea, Transport and Infrastructure (recital (47)). Therefore, the scheme complies with points 79 to 81 of the Temporary Framework.
- (95) Beneficiaries of the scheme will have to report to the Croatian authorities on the progress in the implementation of the repayment schedule as well as compliance with the obligations described in recital (48) within 12 months of the submission of the repayment schedule, and thereafter periodically every 12 months. Therefore, the scheme complies with point 82 of the Temporary Framework.
- (96) As long as the aid under the scheme has not been fully redeemed, beneficiaries will, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, such publications will include information on how their use of the aid received supports their activities in line with Union objectives and national obligations linked to the green and digital transformation, including the Union objective of climate neutrality by 2050 (recital (52)). Therefore, the scheme complies with point 83 of the Temporary Framework.
- (97) Croatia will report annually to the Commission on the implementation of the repayment schedules and compliance with the obligations described in recitals (84) to (91). Therefore, the scheme complies with point 84 of the Temporary Framework.
- (98) The Croatian authorities confirm that, if after six years from the application of the scheme (or seven years in case of companies not publicly listed), the State's shareholding is not reduced below 15% of the respective beneficiaries' equity, the State will have to submit a restructuring plan to the Commission for approval, in accordance with the Rescue and Restructuring Guidelines (recital (54)). The restructuring plan shall take into account Union objectives and national obligations related to the green and digital transformation, and the exit of the State should not affect the internal market in such a way that the scheme would be contrary to the common interest. Therefore, the scheme complies with point 85 of the Temporary Framework.

3.3.7. *Monitoring, cumulation, and relocation*

- (99) The Croatian authorities confirm that the aid under the scheme is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (12)).
- (100) The Croatian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (49)). The Croatian authorities further confirm that aid under the scheme may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (55) to (57)).
- (101) The Commission therefore considers that the scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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

Your request should be sent electronically to the following address:

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State Aid Greffe
B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

