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Subject: State Aid SA.59029 (2020/NN) – Italy – COVID-19 compensation scheme for airlines with an Italian operating license

Excellency,

1. PROCEDURE

- (1) By electronic notification of 15 October 2020, the Italian authorities notified to the European Commission ('Commission') their intention to introduce a scheme in favour of airlines with an Italian operating license, in order to compensate the damage they suffered due to the COVID-19 pandemic ('measure' or 'scheme'), in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU'). Following contacts between the Italian authorities and the Commission ⁽¹⁾, the notification was completed on 27 November 2020 and later amended by the Italian authorities on 9 December 2020.
- (2) The Italian authorities exceptionally agreed to waive their rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ⁽²⁾, and to have the decision adopted and notified in English.

⁽¹⁾ The Commission sent requests for information on 19 and 22 October 2020. The Italian authorities replied on 23 November 2020. On 4 and 17 December 2020, the Commission sent further requests for information, to which the Italian authorities replied on 7 and 21 December 2020, respectively.

⁽²⁾ Regulation of the Council No 1 of 15 April 1958 determining the languages to be used by the European Economic Community, OJ 17/1958, 6.10.1958, p. 385.

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- (3) By decision of 22 December 2020 (the ‘2020 Decision’), the Commission did not raise objections to the measure, finding it compatible with the internal market pursuant to Article 107(2)(b) TFEU ⁽³⁾.
- (4) By its judgement of 24 May 2023 (the ‘judgment’), the General Court annulled the 2020 Decision ⁽⁴⁾. The General Court found, first, that, the Commission had not disclosed in a clear and unequivocal manner the reasoning which had led it to conclude that one of the conditions to be eligible for aid under the measure ⁽⁵⁾ was both indissolubly linked to the measure itself and not inherent in the objective of that measure ⁽⁶⁾.
- (5) The General Court found, second, that the 2020 Decision was also vitiated by a failure to state reasons in so far the Commission had not substantiated its view that the only relevant provision, other than Articles 107 and 108 TFEU, in light of which it had to examine that eligibility condition under Union law was Article 8 of the Rome I Regulation ⁽⁷⁾, to the exclusion of ‘other provisions of Union law’ ⁽⁸⁾.
- (6) Following the annulment of the 2020 Decision by the General Court, the Commission has re-examined the measure.
- (7) The Commission notes that an appeal against the judgement is pending before the Court of Justice ⁽⁹⁾. In principle, appeals do not have suspensory effects. If that appeal were to be found admissible and well-founded, the Court of Justice will set aside the judgment of the General Court. If, in that case, the lawfulness of the 2020 Decision is eventually upheld by the Union Courts, the present decision will become without object.

2. DESCRIPTION OF THE MEASURE

2.1. Objective and scope of the measure

- (8) The Italian authorities submitted that the measure aims at making good the damage suffered by certain airlines due to the containment measures imposed by the authorities of Italy and other countries to limit the spread of the COVID-19

⁽³⁾ See Commission Decision of 22 December 2020 in case SA.59029 (2020/N) – Italy – COVID-19 Compensation scheme for airlines with an Italian operating license, OJ C 77, 5.3.2021, p. 6.

⁽⁴⁾ See judgment of the General Court of 24 May 2023, *Ryanair v Commission*, T-268/21, EU:T:2023:279.

⁽⁵⁾ In order to be eligible for damage compensation under the measure, airlines had to apply to their employees that had their ‘home base’ in Italy, as well as to employees of third parties involved in the airline’s activities, a remuneration not lower than the minimum established by the national collective agreement for the aviation sector (see recital (27) of the 2020 Decision).

⁽⁶⁾ See judgment of the General Court of 24 May 2023, *Ryanair v Commission*, T-268/21, EU:T:2023:279, paragraph 24.

⁽⁷⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

⁽⁸⁾ See judgment of the General Court of 24 May 2023, *Ryanair v Commission*, T-268/21, EU:T:2023:279, paragraph 33.

⁽⁹⁾ The appeal was registered under Case C-490/23 P, *Neos v Ryanair and Commission*.

pandemic ('containment measures'), which included limitations on travels ('travel restrictions') to/from Italy, and which have severely affected the aviation sector.

2.1.1. The containment measures related to the COVID-19 pandemic

- (9) The COVID-19 pandemic resulted in strict travel restrictions imposed by Member States and third countries, leading to a sharp decrease in both domestic and international passenger flights.
- (10) Within the Union, Italy was the first country to be hit by the COVID-19 pandemic. After reporting its first cases of COVID-19 infections, on 31 January 2020, the Italian government declared a state of emergency for six months, i.e., until 31 July 2020 ⁽¹⁰⁾. On 29 July 2020, the state of emergency was prolonged until 15 October 2020 ⁽¹¹⁾.
- (11) In the course of February 2020, the Italian authorities adopted several containment measures, including travel restrictions, to limit the spread of the COVID-19 pandemic. On 7 February 2020, flights from China, Taiwan, Hong Kong and Macao were banned. On 21 February 2020, the Italian Ministry of Health imposed quarantine to all persons in the Italian territory who had travelled in areas with confirmed COVID-19 cases ⁽¹²⁾.
- (12) As of 25 February 2020, due to the rapid spread of the COVID-19 outbreak in Northern Italy, all gatherings, fairs, sport events and competitions were cancelled ⁽¹³⁾. On the same date, schools and universities throughout the country were only allowed to provide distance learning courses ⁽¹⁴⁾.
- (13) On 1 March 2020, the Italian government locked down several cities in Northern Italy and considerably restricted economic, transport, religious, cultural, teaching and sport activities in several regions of Northern Italy, while imposing sanitary measures throughout the country ⁽¹⁵⁾. On 4 March 2020, the Italian authorities extended the containment measures imposed in the northern regions to the entire national territory ⁽¹⁶⁾.
- (14) Between late February and 9 March 2020, several Member States, as well as third countries, imposed travel restrictions on travel to, from or through Italy. Those

⁽¹⁰⁾ See Deliberation of the Council of the Ministers of 31 January 2020.

⁽¹¹⁾ See Decree-Law 83 of 30 July 2020.

⁽¹²⁾ See Order of the Minister of Health of 21 February 2020.

⁽¹³⁾ See Joint Order of the Minister of Health and the President of the Lombardy Region of 23 February 2020; Joint Order of the Minister of Health and the President of the Veneto Region of 23 February 2020; Joint Order of the Minister of Health and the President of the Emilia-Romagna Region of 23 February 2020; Joint Order of the Minister of Health and the President of the Friuli-Venezia Giulia Region of 23 February 2020; Joint Order of the Minister of Health and the President of the Piedmont Region of 23 February 2020; Joint Order of the Minister of Health and the President of the Liguria Region of 23 February 2020.

⁽¹⁴⁾ See Decree of the President of the Council of Ministers of 25 February 2020.

⁽¹⁵⁾ See Decree of the President of the Council of Ministers of 1 March 2020.

⁽¹⁶⁾ See Decree of the President of the Council of Ministers of 4 March 2020.

travel restrictions included entry bans or mandatory quarantine. The Italian authorities provided a list of such travel restrictions, as detailed in Table 1.

Table 1- Non-exhaustive list of travel restrictions to and/or from Italy imposed between late February and 9 March 2020

| Country | Type of travel restriction | Date of entry into force | Date of removal |
|--------------------|--|---------------------------------|----------------------------|
| Austria | Health checks at the borders with Italy; suspension of flights to/from Bologna and Milan | 6 March 2020 | 15 June 2020 |
| Canada/USA | Travel warning to avoid all non-essential travel to Italy | 28 February 2020 | Ongoing as of 15 June 2020 |
| China and Taiwan | Suspension of flights between Italy and China/Taiwan | 30 January 2020 | 8 June 2020 |
| Denmark | Travel warning to avoid all non-essential travel to Northern Italy | 6 March 2020 | 15 June 2020 |
| Dominican Republic | Health checks for travellers coming from Italy and suspension of flights to/from Milan | 28 February 2020 | 1 July 2020 |
| India | Travel warning to avoid all non-essential travel to Italy | 26 February 2020 | 8 August 2020 |
| Ireland | Travel warning to avoid all non-essential travel to Northern Italy | 24 February 2020 | 15 June 2020 |
| Israel | Quarantine for Israeli travellers coming from Italy | 26 February 2020 | 11 October 2020 |
| | Entry ban of foreign travellers coming from Italy | 5 March 2020 | |
| Kuwait | Suspension of flights to Italy | 24 February 2020 | Ongoing as of 15 June 2020 |
| Lebanon/Jordan | Entry bans on foreigners coming from Italy | 28 February 2020 | 31 July 2020 |
| Madagascar | Travel warning asking travellers coming from Italy to postpone or cancel their journey | 27 February 2020 | Ongoing as of 15 June 2020 |
| Maldives | Entry ban on travellers coming from Italy and on cruises' arrivals | 7 March 2020 | 15 July 2020 |

| | | | |
|-----------------|---|--------------|-----------------|
| The Netherlands | Travel warning to avoid all non-essential travel to Northern Italy | 6 March 2020 | 15 June 2020 |
| Oman | Suspension of flights connections between Milan, Rome, Verona and Salalah | 1 March 2020 | 1 December 2020 |
| Romania | Travel warnings to avoid all non-essential travel to Italy | 2 March 2020 | 15 June 2020 |

- (15) On 8 March 2020, in response to the COVID-19 pandemic, the Italian authorities imposed lockdown measures in Northern Italy, which included travel restrictions within the country and for destinations abroad ⁽¹⁷⁾. Those lockdown measures were extended to the entirety of the national territory on 10 March 2020 ⁽¹⁸⁾, and remained in force until 2 June 2020 included (the ‘Italian lockdown’) (see recital (19)).
- (16) By their Joint Decree of 12 March 2020 ⁽¹⁹⁾, the Italian Minister of Infrastructure and Transport and the Italian Minister of Health ordered the closure of the majority of airports in Italy except for 17 commercial airports (out of the existing 39), exclusively allowing the departure and landing of government and emergency flights. Those travel restrictions remained in force until 2 June 2020 (see recital (18)).
- (17) To contain the spread of the COVID-19 pandemic, on 16 March 2020, the Commission invited Member States to apply coordinated travel restrictions on non-essential travel from third countries to the Union for an initial period of 30 days ⁽²⁰⁾, subsequently extending it twice until 15 June 2020 ⁽²¹⁾. The envisaged travel restrictions applied to all Schengen Member States, as well as Bulgaria, Croatia, Cyprus, and Romania, and the four Schengen Associated States (Iceland, Liechtenstein, Norway, and Switzerland) – 30 countries in total.
- (18) On 2 June 2020, the Italian authorities partially lifted travel restrictions on air transport services, allowing such services to be commercially performed in 23

⁽¹⁷⁾ See Decree of the President of the Council of Ministers of 8 March 2020.

⁽¹⁸⁾ See Decree of the President of the Council of Ministers of 9 March 2020. The decree entered into force the following day, 10 March 2020.

⁽¹⁹⁾ See Joint Decree of the Minister of Infrastructure and Transport and the Minister of Health 112 of 12 March 2020.

⁽²⁰⁾ See Communication from the Commission to the European Parliament, the European Council and the Council ‘COVID-19: Temporary Restriction on Non-Essential Travel to the EU’, COM(2020) 115 final, 16.3.2020.

⁽²¹⁾ See Communication from the Commission to the European Parliament, the European Council and the Council on the assessment of the application of the temporary restriction on non-essential travel to the EU, COM(2020) 148 final, 8.4.2020; and Communication from the Commission to the European Parliament, the European Council and the Council on the second assessment of the application of the temporary restriction on non-essential travel to the EU, COM(2020) 222 final, 8.5.2020.

Italian airports. The rest of the airports remained closed until further notice ⁽²²⁾. On 14 June 2020, the Italian authorities expanded the list of open airports to 24 ⁽²³⁾.

- (19) On 3 June 2020 ⁽²⁴⁾, the Italian authorities lifted the Italian lockdown (see recital (15)), as well as the travel ban to/from other Member States and the four Schengen Associated States. Travel restrictions remained applicable to most third countries until 30 June 2020 ⁽²⁵⁾.
- (20) Around mid-June 2020, following the recommendation of the Commission to lift internal borders controls and restrictions on free movement within the Union by 15 June 2020 ⁽²⁶⁾, most Member States reopened their borders with other Member States and the Schengen Associated States ⁽²⁷⁾. At that time, some Member States (e.g., Denmark and Portugal) still kept their borders closed or only accepted citizens from a very limited list of countries. Other Member States, like Cyprus and Malta, kept their borders closed to travellers coming from Italy.

2.1.2. Impact of the containment measures on the Italian aviation sector

- (21) The containment measures taken by the Italian and other countries' authorities negatively affected the Italian aviation sector and seriously impaired airlines' operations in Italy.
- (22) According to the Italian Civil Aviation Authority ('ENAC'), the monthly number of flights registered in Italy remained stable in January and February 2020, compared to the same months in 2019, before dropping by 65.9 % in March, 95.2 % in April, 97 % in May and 88.5 % in June 2020 ⁽²⁸⁾. Similarly, the monthly number of passengers transported in Italy dropped by 84.9 % in March, 99.3 % in April, 98.8 % in May, and 94.2 % in June 2020, compared to the same months in 2019 ⁽²⁹⁾.
- (23) The Italian authorities explained that the beneficiaries of the measure (see recitals (28) and (29)), which all hold an air operating license issued by ENAC (see recital (28)) and, therefore, have their principal place of business in Italy ⁽³⁰⁾, were

⁽²²⁾ See Joint Decree of the Minister of Infrastructure and Transports and of the Minister of Health 227 of 2 June 2020.

⁽²³⁾ See Joint Decree of the Ministry of Infrastructure and Transports and Ministry of Health 245 of 14 June 2020.

⁽²⁴⁾ See Decree-Law 33 of 16 May 2020.

⁽²⁵⁾ See Decree of the President of the Council of Ministers of 11 June 2020.

⁽²⁶⁾ See Communication 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, 11.6.2020.

⁽²⁷⁾ Slovakia did so on 10 June 2020; Romania and Poland on 13 June 2020; Austria, Belgium, Croatia, Czechia, Finland, France, Germany, Greece, the Netherlands and Sweden on 15 June 2020; Bulgaria on 17 June 2020; Spain on 21 June 2020.

⁽²⁸⁾ See ENAC's traffic data for the first semester of 2020, available at https://www.enac.gov.it/sites/default/files/allegati/2020-Nov/Dati_traffico_2020_I_semestre_201119.pdf.

⁽²⁹⁾ Ibidem.

⁽³⁰⁾ Pursuant to Article 4 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3, it is for the Member State where an air carrier has its principal place of business to grant

particularly affected by the travel restrictions imposed by the authorities of Italy and other countries on travels to/from Italy. According to the Italian authorities, those airlines operated almost the entirety of their traffic in Italy, to Italy and/or from Italy, and were thus highly sensitive to the travel restrictions adopted by that Member State, and by other countries' governments on travels to/from Italy⁽³¹⁾.

- (24) The Italian authorities also explained that the beneficiaries of the measure (see recitals (28) and (29)) were affected by the negative consequences of the COVID-19 pandemic even before the start of the Italian lockdown (see recital (15)), due to the containment measures enforced at a local level in Northern Italy (see recitals (12) and (13)) as well as the travel restrictions imposed on residents in Italy and on flights to/from Italy at Union and international level (see recital (14)). For instance, the passenger traffic of Neos S.p.A. ('Neos') fell by more than 50 % in the period 1–9 March 2020, while Blue Panorama S.p.A. ('Blue Panorama') had to cancel all its flights operated to/from Italy between 1 and 9 March 2020⁽³²⁾. The Italian authorities explained that those sharp decreases in demand resulted from the travel restrictions adopted by countries where the beneficiaries of the scheme were flying to/from, and/or from the containment measures put in place in Northern Italy, where the beneficiaries were operating air services⁽³³⁾. Due to the containment measures, including travel restrictions, imposed both at domestic and international level, the Italian authorities explained that the beneficiaries of the measure reported a significant decrease in passenger traffic, in the number of routes operated, and in revenue, already as of 1 March 2020.

2.2. Legal basis

- (25) The legal basis of the measure consists of the following acts:
- a. Article 198 of Decree-Law 34 of 19 May 2020, converted into law, with amendments, by Law 77 of 17 July 2020.
 - b. A joint ministerial decree issued, pursuant to Article 198 of Decree-Law 34 of 19 May 2020, by the Italian Minister of Infrastructure and Transport, the Italian Minister of Economic Development and the Italian Minister of Economy and Finance, that will lay down the detailed arrangements for the administration of the measure ('decree'). The Italian authorities submitted a draft of that decree.

the operating licence to that air carrier, provided that the conditions listed in Article 4 of that regulation are fulfilled.

⁽³¹⁾ According to figures from OAG (a global travel data provider) provided by Italy, in 2019, the beneficiaries of the measure (see recitals (28) and (29)) operated the majority of their flights from/to/within Italy (more specifically, this amounted to 92.1 % for Air Dolomiti S.p.A., 99 % for Blue Panorama Airlines S.p.A., and 96.7 % for Neos S.p.A.). For airlines with air operating licences issued by other Member States' authorities, on the other hand, data shows that flights from/to/within Italy constituted a much smaller proportion of their overall activities (e.g., 29.2 % for Ryanair, 20.9 % for easyJet, 19.5 % for Vueling Airlines, 14.8 % for Wizz Air, and 6.9 % for Lufthansa).

⁽³²⁾ In the same period of 2019, Blue Panorama operated 48 flights to/from Italy.

⁽³³⁾ Neos, for example, has its hub in Malpensa Airport (Milan), in the area that was most affected by the COVID-19 pandemic in late February 2020.

2.3. Form and budget of the measure

- (26) The measure takes the form of direct grants paid with resources coming from a compensation fund of EUR 130 million financed by Italy's general budget.

2.4. Administration of the measure

- (27) The authority responsible for the administration of the measure is the Italian Ministry of Infrastructure and Transport.

2.5. Beneficiaries

- (28) Beneficiaries of the measure are all air carriers that fulfil the following requirements.
- a. The air carrier is not a beneficiary of the fund established by Article 79(2) of Decree-Law 18 of 17 March 2020, which established a compensation scheme for the damage caused by the COVID-19 pandemic to air carriers with an air operating licence issued by ENAC, and which, on 17 March 2020, were entrusted with public service obligations.
 - b. The air carrier holds a valid air operator's certificate and air operating license issued by ENAC.
 - c. The air carrier operates aircrafts with a seating capacity of more than 19 seats.
 - d. On the date when it requests the compensation under the scheme, the air carrier applies to its employees that have their 'home base' pursuant to Commission Regulation 965/2012⁽³⁴⁾ in Italy, as well as to employees of third parties involved in the air carrier's activities, a remuneration not lower than the minimum established by the national collective agreement for the aviation sector⁽³⁵⁾ (the 'minimum remuneration requirement').
- (29) The Italian authorities indicated that three airlines fulfilled those requirements: Air Dolomiti S.p.A. ('Air Dolomiti'), Blue Panorama and Neos.

2.6. Eligible damage

- (30) The eligible damage under the scheme corresponds to the net losses incurred by the beneficiaries. Net losses amount to the losses of revenue that were directly caused by the containment measures enforced to limit the spread of the COVID-19 pandemic during the period 1 March–15 June 2020 ('reference period'), net of the avoided costs resulting from the corresponding reduction in the beneficiaries' activities and the relief granted by general social measures (e.g., unemployment support for their employees financed by the State).

⁽³⁴⁾ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1.

⁽³⁵⁾ I.e., the collective agreements for the aviation sector concluded by the employers' organizations and trade unions that are comparatively most representative at national level.

- (31) The Italian authorities explained that, to obtain compensation under the scheme for the period immediately preceding the Italian lockdown (see recital (15)), i.e., from 1 March to 9 March 2020, and for the period following the lifting of most travel restrictions (see recital (19)), i.e., from 3 June to 15 June 2020, each potential beneficiary was requested to provide concrete and well-justified evidence of the losses suffered, thereby proving a direct causal link between the damage suffered during those periods and the COVID-19 pandemic. That evidence related to the daily/weekly figures of ticket sales, number of no-shows, number of carried passengers, load factor, number of cancellations, and number of departures.
- (32) The Italian authorities explained that net losses would be quantified as the difference between the profits/losses (i.e., operating revenue minus operating costs) made by the beneficiaries in the reference period, as compared to those made in the period 1 March–15 June 2019, thus net of the avoided costs. Such quantification is based on the following elements.
- a. The operating revenue of the beneficiaries corresponds to the sum of the (i) fare revenue from the sale of tickets, and (ii) additional/ancillary revenue ⁽³⁶⁾.
 - b. The operating costs concern personnel, fuel, airport and air navigation charges, ground handling services, passenger services (baggage compensation, hotel expenses for transit passengers), maintenance, IATA commissions, and marketing costs. Avoided costs ⁽³⁷⁾ are taken into account to evaluate the eligible damage directly suffered by the beneficiaries as a result of the COVID-19 pandemic.
- (33) When requesting compensation under the scheme, each beneficiary had to submit to the granting authority a table detailing all monthly costs and revenue in the reference period ⁽³⁸⁾, as certified by an independent economic expert.
- (34) The Italian authorities also explained that, for the purpose of assessing the eligible damage, EBITDA ⁽³⁹⁾ figures recorded by the beneficiaries of the measure in the reference period, as compared to those related to the period 1 March–15 June 2019, had to be taken into account as well.
- (35) The Italian authorities explained, in that regard, that, for assessing the compensation to be granted to the beneficiaries of the measure, the lowest damage calculation (net losses calculation, as defined in recital (32), or EBITDA figures) had to be retained.
- (36) The Italian authorities provided the EBITDA figures for the reference period of the beneficiaries of the scheme identified by the Italian authorities. Those figures show

⁽³⁶⁾ I.e., the revenue stemming from the provision of services such as seat reservation and upgrades.

⁽³⁷⁾ Avoided costs are all costs that beneficiaries avoided due to the reduction of its activities. They concern all costs directly related to flight operations: fuel, airport and air navigation charges, ground handling services, onboard catering service, passenger services (baggage compensation, hotel expenses for transit passengers, etc.), etc.

⁽³⁸⁾ For the month of June, each beneficiary would only refer to the costs and revenue of the first half of the month.

⁽³⁹⁾ EBITDA stands for earnings before interest, taxes, depreciation and amortisation.

that the beneficiaries of the measure suffered losses during the reference period, compared to the same period in 2019, as detailed in Table 2.

Table 2- EBITDA-based estimation of eligible damage in the reference period for each beneficiary (EUR)

| Beneficiary | March 2020 | April 2020 | May 2020 | 1–15 June 2020 | Total estimated damage |
|--------------------|------------|------------|------------|----------------|-------------------------------|
| Air Dolomiti | 3 515 305 | 3 163 374 | 6 153 658 | 3 142 195 | 15 974 532 |
| Blue Panorama | 9 054 539 | 8 728 700 | 6 670 441 | 8 055 110 | 32 508 790 |
| Neos | 11 771 262 | 12 471 154 | 0 | 5 725 658 | 29 968 074 |
| Total | 24 341 106 | 24 363 228 | 12 824 099 | 16 922 963 | 78 451 396 |

- (37) Based on those EBITDA figures, the Italian authorities concluded that the total eligible damage suffered by the beneficiaries due to the COVID-19 pandemic in the reference period could be estimated at EUR 78.45 million. Therefore, given that net losses, as defined in recital (32), could be used to calculate the amount of compensation grantable to each beneficiary only if they were lower than EBITDA figures (see recital (35)), the total compensation under the scheme could not in any event exceed the amount of EUR 78.45 million.
- (38) The Italian authorities committed to providing the Commission with a report on the amount of compensation granted to each beneficiary and of the potential overcompensation recovered (see recitals (39) to (42)) within one year from the adoption of the 2020 Decision.

2.7. Cumulation

- (39) The Italian authorities confirmed that the grants paid under the scheme had to be net of any amount obtained for the same damage from insurance, litigation, arbitration, or any other source, and that the compensation granted under the scheme could not be cumulated with other forms of support covering the same eligible damage.
- (40) The Italian authorities also committed to recovering any exceeding amount in case other compensations for the same damage were paid after the granting of the compensation under the scheme.

- (41) The Italian authorities acknowledged that one of the beneficiaries of the scheme, Air Dolomiti, is a subsidiary of the Deutsche Lufthansa Group, whose parent company, Deutsche Lufthansa AG, benefitted from a recapitalisation aid of EUR 6 billion ⁽⁴⁰⁾, and from a loan guarantee of EUR 3 billion ⁽⁴¹⁾, both approved by the Commission.
- (42) The Italian authorities explained that the legal basis of the measure provides sufficient safeguards against any risk of overcompensation. More specifically, Article 2 of the decree excludes from compensation any damage already covered by other sources. In addition, Article 6 of the decree prohibits the cumulation of the compensation under the scheme with other forms of support for the same eligible damage. Article 6 of the decree also establishes an ex-post mechanism to recover any aid unduly granted or exceeding the eligible damage suffered by each beneficiary.
- (43) In addition, the Italian authorities committed to submitting a report on the implementation of the scheme within one year from the adoption of the 2020 Decision (see recital (38)).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (44) Article 107(1) TFEU defines State aid as ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods ... in so far as it affects trade between Member States ...’.
- (45) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether a measure constitutes State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. The measure must:
- a. be granted by the State or through State resources,
 - b. favour certain undertakings or the production of certain goods,
 - c. distort or threaten to distort competition, and
 - d. affect trade between Member States.
- (46) The measure under assessment fulfils all four cumulative conditions set out in Article 107(1) TFEU.
- (47) The measure is imputable to the State, since it is established by a Decree-Law adopted by the Italian government, as implemented by a joint ministerial decree (see

⁽⁴⁰⁾ See Commission Decision of 25 June 2020 in case SA.57153 (2020/N) – Germany – COVID_19 – Aid to Lufthansa, OJ C 397, 20.11.2020, p. 2. That decision was annulled by the judgment of the General Court of 10 May 2023, *Ryanair v Commission*, T-34/21 and T-87/21, EU:T:2023:248. An appeal to set aside that judgment, registered under Case C-457/23 P, is pending before the Court of Justice.

⁽⁴¹⁾ See Commission Decision of 22 March 2020 in case SA.56714 (2020/N) – Germany – COVID-19 measures, OJ C 112, 3.4.2020, p. 9.

recital (25)). The measure is also financed through State resources, since the grants under it are paid out from a compensation fund financed by the general budget of the Italian State (see recital (26)).

- (48) The measure confers an advantage on the beneficiaries in the form of grants (see recital (26)) to compensate the damage they suffered due to the COVID-19 pandemic (see recital (30)). The measure thus relieves the beneficiaries of costs that they would have to bear under normal market conditions. The measure is also selective, as compensation will be granted only to certain undertakings, namely the airlines that fulfil the eligibility requirements listed in recital (28), while other undertakings in a comparable legal and factual situation that were affected by the containment measures imposed by national authorities to limit the spread of the COVID-19 pandemic, within the passenger air transport sector or other sectors (considering that all economic operators should in principle cover their own costs), are not eligible for compensation under the measure and will thus not receive the same advantage.
- (49) The measure is liable to distort competition, since it strengthens the competitive position of the airlines benefitting from it.
- (50) The measure also affects trade between Member States, since these airlines are active in the aviation sector, in which intra-Union trade has been established.
- (51) The Commission therefore concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (52) Pursuant to Article 198 of Decree-Law 34 of 19 May 2020 (see recital (25)), the granting of the aid under the measure is subject to the prior authorisation of the Commission.
- (53) However, Decree-Law 104 of 14 August 2020⁽⁴²⁾ allowed the Ministry of Infrastructure and Transport to advance the granting of the aid under the measure up to EUR 50 million to each undertaking meeting the eligibility requirements listed in recital (28) and that requested it, pending the authorization procedure before the Commission.
- (54) Therefore, the Italian authorities adopted a legally binding act to grant compensation under the scheme before the prior authorization of the Commission, in breach of Article 108(3) TFEU.
- (55) Moreover, following the annulment of the 2020 Decision (see recital (4)), the scheme is to be considered unlawful in so far as it is no longer approved by a Commission decision.

⁽⁴²⁾ Decree-Law 104 of 14 August 2020 was converted into law, with amendments, by Law 126 of 13 October 2020.

3.3. Compatibility of the aid

- (56) Article 107(2)(b) TFEU provides that ‘aid to make good the damage caused by natural disasters or exceptional occurrences’ is to be considered compatible with the internal market. Since this is an exception to the general principle laid down in Article 107(1) TFEU that State aid is incompatible with the internal market, the provision contained in Article 107(2)(b) TFEU must be interpreted narrowly ⁽⁴³⁾.
- (57) For State aid to be declared compatible with the internal market pursuant to Article 107(2)(b), (i) there must be a direct link between the damage suffered by the beneficiary of the aid and the exceptional occurrence in question, and (ii) the compensation granted must not exceed that damage.

3.3.1. *The COVID-19 pandemic as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU*

- (58) Neither the TFEU nor Union secondary legislation give an exact definition of the notion of ‘exceptional occurrences’ contained in Article 107(2)(b) TFEU. For the reasons laid down in recital (56), the Commission, in line with the Union case law ⁽⁴⁴⁾, holds that the notions of ‘exceptional occurrences’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (59) To establish whether an event is to be considered an exceptional occurrence within the meaning of Article 107(2)(b) TFEU, the Commission makes a case-by-case assessment, having regard to its previous practice in the field ⁽⁴⁵⁾. In that context, the following conditions must be cumulatively met: (i) the event must be unforeseeable or difficult to foresee ⁽⁴⁶⁾; (ii) it must have a significant scale/economic impact ⁽⁴⁷⁾; and (iii) it must be extraordinary, i.e., differ sharply

⁽⁴³⁾ See judgment of the Court of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 20.

⁽⁴⁴⁾ See judgment of the Court of 23 February 2006, *Atzeni and Others*, C-346/03 and C-529/03, EU:C:2006:130, paragraph 79; and judgment of the Court of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37.

⁽⁴⁵⁾ In the past, the Commission considered wars, internal disturbances and strikes, and, depending on their extent, major industrial accidents which resulted in widespread economic loss, as exceptional occurrences within the meaning of Article 107(2)(b) TFEU. See paragraph 324 of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas, OJ C 485, 21.12.2022, p. 1.

⁽⁴⁶⁾ See Commission Decision of 1 August 2011 in case SA.32163 (2010/N) – Slovenia – Rectification of consequences of the damage caused to air carriers and airports by earthquake activity in Iceland and the resulting volcano ash in April 2010, OJ C 135, 9.5.2012, p. 1.

⁽⁴⁷⁾ The elements taken into account by the Commission to conclude that the occurrence was of a significant scale include: the fact that its negative consequences cannot be contained (see Commission Decision of 17 October 2000 in case NN 62/2000 – France – Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire, OJ C 380, 30.12.2000, p. 9), the number of dead or injured people (see Commission Decision of 2 May 2002 in case N 241/2002 – France – Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, OJ C 170, 16.7.2002, p. 16), or the scale of ecological and economic damage (see Commission Decision of 11 April 2012 in case SA.33487 (2011/N) – Hungary – Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud ‘Aluminium accident’), not yet published).

from the events linked to the conditions under which the market normally operates⁽⁴⁸⁾.

- (60) Following the first reports of cases of acute respiratory syndrome in the Wuhan municipality of China, at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2), which had not been previously identified in humans, as the main causative agent of that syndrome. The outbreak rapidly evolved and spread, affecting not only other parts of China but also the majority of countries worldwide, including all Member States.
- (61) Outbreaks of novel virus infections among humans are always a public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by such outbreaks, be it because of national containment measures, including travel restrictions, or supply chain disruptions.
- (62) The World Health Organization ('WHO') warned about the very high risk that COVID-19 would spread and have a global impact. In fact, COVID-19 spread rapidly in all the Member States and in third countries. The rapidity of the spread caused enormous consequences both in terms of deaths in high-risk groups and in terms of economic and societal disruption. The necessity to adopt containment measures aimed at interrupting transmission chains and encourage their respect stemmed from that acknowledgement⁽⁴⁹⁾.
- (63) On 11 March 2020, the WHO declared the COVID-19 outbreak a pandemic. The public health risks deriving from the absence of therapeutics or vaccines for the novel coronavirus determined the presence of very exceptional circumstances.
- (64) Since March 2020, Member States adopted various containment measures that aimed at limiting the spread of COVID-19, including travel restrictions (e.g., limitations on non-essential travels, closure of borders), closure of non-essential shops, obligation to work from home whenever possible, and various 'social distancing' measures. These containment measures were aimed at avoiding an exponential increase in the number of COVID-19 cases, and the subsequent social alarm.
- (65) In view of the above, the COVID-19 pandemic is an event that was not foreseeable and is clearly distinguishable from ordinary events, by its character and its social and economic effects, which therefore fall outside the normal functioning of the market (see recital (59)).
- (66) The Commission therefore concludes that the COVID-19 pandemic can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

⁽⁴⁸⁾ See Commission Decision of 19 May 2004 in case C 59/2001 – Italy – AIMA programme for the poultry industry, OJ L 32, 6.2.2007, p. 14.

⁽⁴⁹⁾ See the European Centre for Disease Prevention and Control's Rapid Risk Assessment of 2 March 2020 'Outbreak of novel coronavirus disease 2019 (COVID-19): increased transmission globally – fifth update', available online here: <https://www.ecdc.europa.eu/en/publications-data/rapid-risk-assessment-outbreak-novel-coronavirus-disease-2019-covid-19-increased>.

3.3.2. *Causal link between the damage to be compensated by the aid and the COVID-19 pandemic*

- (67) As explained in recital (57), to assess an aid measure under Article 107(2)(b) TFEU, the Commission needs to verify the existence of a direct link between the damage that the aid aims at compensating and the exceptional occurrence that caused it.
- (68) As explained in recitals (9) to (20), the COVID-19 pandemic led to the introduction of containment measures, including travel restrictions, all over the world, and to a halt of the vast majority of air passenger transport. Those containment measures were intended to avoid the spread of COVID-19, but they negatively affected the aviation sector (see recitals (21) and (22)).
- (69) The damage suffered by the beneficiaries of the scheme is directly linked to the containment measures (including travel restrictions on travels to and from Italy) imposed by the Italian authorities and other governments to limit the spread of the COVID-19 pandemic (see recitals (23) and (24)), and therefore, ultimately, to the COVID-19 pandemic itself. Indeed, the aid scheme aims at compensating eligible airlines for the damage suffered due to the imposition of those containment measures (see recital (8)).
- (70) The reference period considered by the Italian authorities for the calculation of the damage to be compensated through the scheme runs from 1 March to 15 June 2020 (see recital (30)).
- (71) For the reasons laid down in recitals (72) to (85), the Commission considers that net losses suffered during the Italian lockdown (i.e., from 10 March to 2 June 2020) and the days that immediately preceded and followed it (i.e., 1–9 March 2020 and 3–15 June 2020, respectively) can be considered as damage directly linked to the COVID-19 pandemic, i.e., to an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.2.1. *Period from 1 to 9 March 2020*

- (72) Italy was the first Member State to be severely affected by the COVID-19 pandemic and this led to the early adoption of containment measures, which included travel restrictions to/from Italy, both at national and international level, already in late February 2020 (see recitals (10) to (15)).
- (73) On 1 March 2020, the Italian government locked down several cities in Northern Italy and considerably restricted economic, transport, religious, cultural, teaching and sport activities in several regions of Northern Italy. The Italian government also imposed sanitary measures throughout the country. On 4 March 2020, the Italian authorities extended the containment measures imposed in the northern regions to the entire national territory (see recital (13)).
- (74) Around the same days, other Member States and third countries imposed travel restrictions on travel to/from/through Italy, including bans on the entry of persons coming from or through Italy (see recital (14)).
- (75) Those containment measures had an impact on the Italian aviation sector, and specifically on the beneficiaries of the scheme (see recital (24)).

- (76) The Commission also observes that the Italian authorities committed to granting compensation under the scheme for the period 1 March–9 March 2020 only if the beneficiaries demonstrate, based on concrete and well-justified evidence, that they were already affected by the COVID-19 pandemic in that period (see recital (31)).
- (77) Therefore, the Commission considers that the period from 1 to 9 March 2020 can be included as part of the reference period for the compensation granted under the scheme.

3.3.2.2. Period from 10 March to 2 June 2020

- (78) The Commission notes that, in the period from 10 March to 2 June 2020, the Italian lockdown was in force (see recital (15)). Moreover, in that period, wide-spread travel restrictions were implemented within the Union (see recital (17)).
- (79) Therefore, the Commission considers that the period from 10 March to 2 June 2020 can be included as part of the reference period for the compensation granted under the scheme.

3.3.2.3. Period from 3 to 15 June 2020

- (80) The Commission notes that the Italian lockdown was lifted on 3 June 2020 (see recital (19)). The data submitted by the Italian authorities shows, however, that, due to various containment measures, including travel restrictions, put in place at national and international level, by 15 June 2020, air traffic was still very limited (see recitals (19) and (20)).
- (81) As of 14 June 2020, only 24 out of 39 Italian airports were open, so that many important routes were still closed, such as those operated to/from Linate Airport (Milan) (see recital (18)).
- (82) As explained in recital (22), air traffic data shows that, in the first half of June 2020, the number of flights was still 88.5 % below the level recorded for the same period in 2019. This was also due to the fact that, taking the advice of the Commission to maintain restrictions on non-essential travel in place until 15 June 2020 (see recital (17)), many Member States kept travel restrictions such as warnings, travel bans and flight restrictions in place until mid-June 2020 (see recital (20)).
- (83) At the same time, the Italian authorities continued to limit to a great extent travel to third countries, while numerous third countries continued to apply travel restrictions, including bans on travel to/from Italy, so that air traffic started to resume noticeably only after 15 June 2020 (see recitals (19) and (20)).
- (84) The Commission also observes that the Italian authorities committed to granting compensation for the damage suffered between 3 and 15 June 2020 only if beneficiaries could demonstrate, based on concrete and well-justified evidence, that they were still directly affected by the COVID-19 pandemic in those days (see recital (31)).
- (85) Therefore, the Commission considers that the period from 3 to 15 June 2020 can be included as part of the reference period for the compensation granted under the scheme.

3.3.2.4. Conclusion on the direct link between the damage to be compensated by the aid and the COVID-19 pandemic

- (86) The Commission therefore concludes that the aid scheme aims at covering the net losses incurred by the beneficiaries as a direct effect of the COVID-19 pandemic, and related to the restrictions taken by public authorities between 1 March and 15 June 2020 to limit its spread.

3.3.3. *Proportionality of the aid scheme*

- (87) For an aid to be declared compatible with the internal market pursuant to Article 107(2)(b) TFEU, that aid must be proportional, i.e., it must exclusively compensate the damage directly caused by the exceptional occurrence it intends to address (see recital (57)).
- (88) To ensure proportionality of the scheme, it is necessary to analyse the assumptions and factual evidence on which the calculation of the eligible damage is based. More specifically, it is necessary to look at how the COVID-19 pandemic actually and directly affected the operations of the beneficiaries and what actual impact it had on their costs and revenue.
- (89) The Commission notes that the damage to be compensated under the scheme corresponds to the net losses, i.e., the loss of revenue net of the avoided costs (see recital (30)), suffered by the beneficiaries of the scheme as a consequence of the COVID-19 pandemic and linked to the containment measures taken by public authorities to limit its spread.
- (90) The Commission also notes that the net losses amount to the difference between the revenue that each beneficiary would have expected during the reference period, had said containment measures not been adopted, and the revenue that it actually made during that period (see recital (32)). To estimate the counterfactual revenue for the reference period, the Italian authorities considered the revenue made by the beneficiaries in the period from 1 March to 15 June 2019 (see recitals (32) and (34) to (37)), that is, the same period in the year preceding the outbreak of the COVID-19 pandemic and the introduction of the containment measures.
- (91) The Commission further notes that avoided costs amount to the costs that the beneficiaries would have had to have borne during the reference period if their activities had not been affected by the containment measures enforced to limit the spread of the COVID-19 pandemic, and that they did not bear as a result of their reduced activities (see recital (32)(32)). The Italian authorities estimated avoided costs by comparing the costs borne by the beneficiaries in the reference period with the costs borne in the period 1 March–15 June 2019 (see recital (32)).
- (92) The Commission also notes that the Italian authorities submitted a quantification of the damage suffered by the beneficiaries in the reference period based on a comparison between the monthly EBITDA figures for that period and those for the period 1 March–15 June 2019. Based on that quantification, the Italian authorities estimated the total net losses suffered by the beneficiaries in the reference period at EUR 78.45 million (see recitals (36) and (37)).
- (93) The Commission finally notes that, as explained by the Italian authorities, the amount of aid to be granted to the beneficiaries of the scheme corresponds to the

lowest damage calculation (net losses calculation as defined in recital (32) or EBITDA figures) provided by the beneficiaries, and that, therefore, the total amount or the aid cannot be more than EUR 78.45 million (see recitals (35) and (37)).

- (94) The Commission therefore finds that the aid amount that could be granted to the beneficiaries is calculated on the basis of a conservative and prudent estimation of the damage suffered.
- (95) In addition, the Commission takes due note of the fact that the aid cannot be cumulated with other forms of support covering the same eligible damage (see recital (39)). The Italian authorities also committed to implementing safeguards against any risk of overcompensation of damage already made good by the beneficiaries from other sources: in view of this, an ex-post mechanism to recover any aid unduly granted was established (see recital (40)).
- (96) Lastly, the Commission notes that the Italian authorities committed to provide the Commission with a report on the implementation of the scheme within one year from the date of adoption of the 2020 Decision (see recitals (38) and (43)(37)).
- (97) In light of the above, the Commission considers that the amount of aid that could be granted to the beneficiaries does not exceed the damage incurred as a direct consequence of the COVID-19 pandemic. The Commission therefore concludes that the measure is proportionate.

3.3.4. *Compliance of the aid scheme with other provisions of Union law*

- (98) State aid measures that breach provisions or general principles of Union law cannot be declared compatible with the internal market ⁽⁵⁰⁾.
- (99) It is settled case law that those aspects of State aid measures that contravene specific provisions of Union law other than Articles 107 and 108 TFEU may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately, so that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore be determined in the light of the procedure prescribed in Article 108 TFEU ⁽⁵¹⁾.
- (100) In the present case, the Commission notes that the Italian authorities established four eligibility requirements (see recital (28)). Those requirements are indissolubly linked to the object of the scheme, because they were specifically set out in order to select the undertakings that will be eligible for compensation under the scheme itself, and thus regulate the identification of the potential beneficiaries thereof. In other words, the eligibility requirements listed in recital (28) determine the scope of

⁽⁵⁰⁾ See judgment of the Court of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraph 96, and judgment of the Court of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44. See also judgment of the Court of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 50 and 51; and judgment of the Court of 21 May 1980, *Commission v Italy*, 73/79, EU:C:1980:129, paragraph 11.

⁽⁵¹⁾ See judgment of the Court of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 84; judgment of the Court of 15 June 1993, *Matra v Commission*, C-225/91, EU:C:1993:239, paragraph 41; and judgment of the Court of 22 March 1977, *Iannelli v Meroni*, 74/76, EU:C:1977:51, paragraph 14.

the measure, which is an aspect that must necessarily be taken into account in the assessment of the selectivity of the measure and hence of its qualification as State aid within the meaning of Article 107(1) TFEU (see recitals (44), (45) and (48)). The scope of an aid scheme is also an element to take into account in the assessment of its compatibility with the internal market, as it must be defined in coherence with the public interest objective allegedly pursued by the aid scheme itself. Therefore, the eligibility requirements to identify the beneficiaries of the measure must be examined by means of the procedure prescribed in Article 108 TFEU ⁽⁵²⁾.

- (101) The Commission further notes that one of the four eligibility requirements, namely the minimum remuneration requirement, is not inherent in the objective of the measure, however. While the objective of the scheme is to make good the damage suffered by its beneficiaries due to the COVID-19 pandemic (see recital (8)), the minimum remuneration requirement aims at ensuring that the beneficiaries of the scheme apply certain salary standards to their employees that have their ‘home base’ in Italy.
- (102) The Commission also notes that, on 29 June 2020, AICALF, the Italian Low Fares Airline Association, lodged a complaint with the Commission, alleging that Article 203 of Decree-Law 34 of 19 May 2020 ⁽⁵³⁾ breached the freedom to provide services (‘AICALF complaint’). Article 203 of Decree-Law 34 of 19 May 2020 imposes a minimum remuneration obligation to airlines operating in Italy which is overall comparable to the minimum remuneration requirement attached to the scheme (see recital (28)). The AICALF complaint was closed by the Commission on 19 August 2021, following a pre-closure letter sent to the complainant on 8 June 2021.
- (103) Given that context, the Commission concludes that, while the condition concerning the minimum remuneration requirement shall not be decoupled from the aid measure assessed in the present procedure and must be examined in the present decision, there is particular cause to examine whether that minimum remuneration requirement could breach relevant provisions of Union law other than Article 107 and 108 TFEU.
- (104) As explained in recital (28), the minimum remuneration requirement requires the beneficiaries of the scheme to apply to their employees based in Italy a remuneration not lower than the minimum established by the Italian national collective agreement for the aviation sector. As a condition to be eligible for aid, the minimum remuneration requirement thus limits the freedom for the beneficiaries of the scheme and their employees to choose the rules applicable to the employment contracts, as concerns, in particular, an essential feature of those contracts, i.e., remuneration. The minimum remuneration requirement applies irrespective of any transnational element that could be present in such contracts ⁽⁵⁴⁾. Therefore, the Commission will assess the compatibility of the minimum remuneration

⁽⁵²⁾ See judgment of the Court of 28 September 2023, *Ryanair v Commission*, C-320/21 P, EU:C:2023:712, paragraph 134.

⁽⁵³⁾ The same decree-law in which the legal basis of the scheme is provided for (see recital (25)).

⁽⁵⁴⁾ In other words, the salary standard imposed by the minimum remuneration requirement applies also to companies that are not incorporated under Italian law and to their employees, irrespective of whether or not they are resident in Italy or Italian nationals.

requirement with Article 8 of the Rome I Regulation, which sets the rules applicable to the choice of law for individual employment contracts.

- (105) The Commission also notes that, as the minimum remuneration requirement impacts on the freedom to choose the rules governing employment contracts, it could impact on the free provision of passenger air transport services as well. In that respect, the Commission notes that the AICALF complaint raised the question of compatibility of the minimum remuneration obligation imposed by Article 203 of Decree-Law 34 of 19 May 2020, which is in essence comparable to the minimum remuneration requirement of the measure, with the freedom to provide services (see recital (102)). Therefore, for the sake of completeness, the Commission will also assess the compatibility of the minimum remuneration requirement with the freedom to provide services.

3.3.4.1. Compliance of the minimum remuneration requirement with Article 8(1) of the Rome I Regulation

- (106) Article 8(1) of the Rome I Regulation provides that an individual employment contract shall be governed by the law chosen by the parties. However, such a choice of law may not have the result of depriving the employee of the protection granted by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of Article 8 of the Rome I Regulation.
- (107) Pursuant to Article 8(2) of the Rome I Regulation, individual employment contracts ‘shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract’.
- (108) The minimum remuneration requirement applies only to employees who have their ‘home base’⁽⁵⁵⁾ in Italy. The Court of Justice has ruled that the concept of ‘home base’ applicable to aircrews constitutes a significant indicium for the purpose of determining the ‘place where, or from which, the employee habitually performs his work’ within the meaning of Article 8(2) of the Rome I Regulation⁽⁵⁶⁾.
- (109) In the light of the above provisions, employees who have their ‘home base’ in Italy cannot be deprived of the protection imposed by rules of Italian law from which, pursuant to Article 8(1) of the Rome I Regulation, individual employment contracts cannot derogate. The minimum remuneration set by the national collective agreement is one of those rules. As a consequence, all airlines that have employees based on the Italian territory would in any case be bound to meet the minimum protection provided by Italian law, no matter the Member State where the airline is established and/or incorporated.

⁽⁵⁵⁾ Annex II of Commission Regulation (EU) No 83/2014 of 29 January 2014 amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 28, 31.1.2014, p. 17, defines the ‘home base’ as ‘the location, assigned by the operator to the crew member, from where the crew member normally starts and ends a duty period or a series of duty periods and where, under normal circumstances, the operator is not responsible for the accommodation of the crew member concerned’.

⁽⁵⁶⁾ See judgment of the Court of 14 September 2017, *Nogueira and Others* C-168/16 and C-169/16, EU:C:2017:688, paragraph 73.

(110) Therefore, the Commission concludes, for the purposes of this decision, that the minimum remuneration requirement appears to comply with the protection granted to employees by Article 8(1) of the Rome I Regulation.

3.3.4.2. Compliance of the minimum remuneration requirement with the freedom to provide services

(111) The Commission notes, that, pursuant to Article 58(1) TFEU, the free provision of services in the field of transport is governed by the provisions of the Title relating to transport, namely Title VI of the TFEU. The free provision of services in the field of transport is therefore governed, in primary law, by a special legal regime⁽⁵⁷⁾. Consequently, Article 56 TFEU, which enshrines the freedom to provide services, does not apply as such to the air transport sector, as confirmed by the Union courts⁽⁵⁸⁾.

(112) As concerns the air transport sector, Regulation 1008/2008⁽⁵⁹⁾ (the ‘Air Services Regulation’) sets out rules for the operation of air services. Consequently, to verify if the minimum remuneration requirement is in breach of the freedom to provide services, that assessment must be carried out in the light of the provisions contained in the Air Services Regulation, and, more specifically, in its Article 15.

(113) Article 15(1) of the Air Services Regulation grants air carriers the right to freely operate intra-Union air services. It guarantees that all air carriers have the same access to the air transport market, irrespective of where they are incorporated and/or where their principal place of business is located.

(114) That provision, however, does not release air carriers from their obligations deriving from Union and domestic social legislation that aim at protecting workers. This is confirmed by recital (9) of the Air Services Regulation itself, which provides that ‘[w]ith respect to employees of a [Union] air carrier operating air services from an operational base outside the territory of the Member State where that [Union] air carrier has its principal place of business, Member States should ensure the proper application of [Union] and national social legislation’.

(115) Therefore, the freedom to provide services in the air transport sector cannot be enjoyed to the detriment of relevant Union and national law protecting employees, such as those referred to by the minimum remuneration requirement, whose objective is to make sure that beneficiaries of the aid scheme apply to their employees based in Italy certain remuneration standards.

⁽⁵⁷⁾ See judgment of 18 March 2014, *International Jet Management*, C-628/11, EU:C:2014:171, paragraph 36.

⁽⁵⁸⁾ See judgment of 25 January 2011, *Neukirchinger*, C-382/08, EU:C:2011:27, paragraph 22; judgment of the General Court of 19 May 2021, *Ryanair v Commission*, T-628/20, EU:T:2021:285, paragraph 59; judgment of the General Court of 14 April 2021, *Ryanair v Commission*, T-379/20, EU:T:2021:195, paragraph 91; judgment of the General Court of 17 February 2021, *Ryanair v Commission*, T-238/20, EU:T:2021:91, paragraph 62; and judgment of the General Court of 17 February 2021, *Ryanair v Commission*, T-259/20, EU:T:2021:92, paragraph 55.

⁽⁵⁹⁾ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3.

- (116) In its Report ‘Aviation Strategy for Europe: Maintaining and promoting high social standards’⁽⁶⁰⁾, the Commission observed that ‘[a]ir transport rules have been harmonised within the [Union], guaranteeing that all operators, wherever they are located in the [Union], have the same access to the air transport market. However, social protection and labour law remain primarily a responsibility of the Member States. This means that while all aviation staff benefit from the protection offered by [Union] law they may enjoy different rights and levels of protection depending on the national law that applies to them. This situation can be particularly challenging for aircrew (i.e., cabin crew and pilots) due to the cross border nature of their jobs’. In the same report, the Commission concluded that ‘the Air Services Regulation applies without prejudice to the application of relevant [Union] law and national law protecting employees, such as rules on social security’.
- (117) Therefore, while the fundamental freedom to provide services within the Union applies to the air transport sector (see recitals (112) and (113)), that freedom does not operate to the detriment of applicable Union and national social legislation (see recital (114)). In the case of national social standards, they can differ significantly depending on the applicable law (see recital (116)): thus, the fact that certain Member States apply social standards that are higher than those applied by other Member States, cannot be regarded as violating the freedom to provide air transport services.
- (118) The minimum remuneration requirement requires the beneficiaries of the aid scheme to apply to their employees that have their ‘home base’ in Italy, as well as to employees of third parties involved in the air carrier’s activities, a remuneration not lower than the minimum established by the national collective agreement for the aviation sector (see recital (28)). That minimum remuneration can, in some cases, be higher than the one applied in other Member States. However, because of the reasons explained in recitals (116) and (117), the imposition of that requirement cannot be considered a breach of Article 15(1) of Regulation 1008/2008.
- (119) In the light of the above, the Commission concludes, for the purposes of this decision, that the minimum remuneration requirement appears to comply with Article 15(1) of Regulation 1008/2008 and therefore does not appear to breach the fundamental freedom to provide services.

3.3.4.3. Conclusion on the compliance of the minimum remuneration requirement with provisions of Union law other than Article 107 and 108 TFEU

- (120) For the reasons laid down in recitals (98) to (119) the Commission finds that, for the purposes of this decision, the minimum remuneration requirement appears to comply with the relevant provisions of Union law other than Article 107 and 108 TFEU.

⁽⁶⁰⁾ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Aviation Strategy for Europe: Maintaining and promoting high social standards’, COM(2019) 120 final, 1.3.2019.

3.3.5. *Conclusion on the compatibility of the aid scheme*

(121) In light of the above (see recitals (56) to (120)), the Commission considers that the aid scheme meets the need of making good the damage caused by an exceptional occurrence and is therefore compatible with the internal market pursuant to Article 107(2)(b) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid scheme on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) TFEU.

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

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

