

V

(Ogłoszenia)

POSTĘPOWANIA ZWIĄZANE Z REALIZACJĄ POLITYKI KONKURENCJI

KOMISJA EUROPEJSKA

POMOC PAŃSTWA – PORTUGALIA

Pomoc państwa SA.60165 (2021/C) – Portugalia – Pomoc na restrukturyzację dla TAP SGPS

Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej

(Tekst mający znaczenie dla EOG)

(2021/C 317/02)

Pismem z dnia 16 lipca 2021 r., zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Portugalię o swojej decyzji w sprawie wszczęcia postępowania określonego w art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej dotyczącego wyżej wspomnianego środka pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat pomocy, w odniesieniu do której Komisja wszczyna postępowanie, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i towarzyszącego mu pisma na następujący adres lub numer faksu:

European Commission
Directorate-General for Competition
State Aid Greffe
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Faks + 32 22961242
Stateaidgreffe@ec.europa.eu

Otrzymane uwagi zostaną przekazane Portugalii. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie klauzulą poufności ich tożsamości lub fragmentów zgłaszanych uwag.

TEKST STRESZCZENIA

TAP SGPS („TAP”) jest spółką holdingową zarejestrowaną w 2003 r. Transportes Aéreos Portugueses, S.A. („TAP Air Portugal”) jest największą spółką zależną TAP i wypracowuje ok. 98 % obrotów grupy. TAP posiada również udziały w innych przedsiębiorstwach, które prowadzą działalność w zakresie świadczenia usług związanych z transportem lotniczym w Portugalii i w innych krajach.

Decyzją z dnia 10 czerwca 2020 r. Komisja zatwierdziła udzielenie TAP pożyczki na ratowanie w wysokości 1,2 mld EUR. Po stwierdzeniu nieważności tej decyzji przez Sąd Unii Europejskiej w dniu 19 maja 2021 r. Komisja przyjęła nową decyzję dnia 16 lipca 2021 r. W kwietniu 2021 r. Komisja przyjęła decyzję o niewnoszeniu zastrzeżeń wobec odszkodowania na rzecz TAP Air Portugal w wysokości 462 mln EUR za nadzwyczajne szkody spowodowane pandemią COVID-19.

TAP boryka się od pewnego czasu z problemami w zakresie wypłacalności i płynności. Kryzys płynnościowy uległ gwałtownemu pogorszeniu w związku z pandemią COVID-19. Trudności TAP SGPS i TAP Air Portugal doprowadziły do znacznego pogorszenia pozycji kapitałowej obu przedsiębiorstw.

W dniu 10 czerwca 2021 r. Portugalia zgłosiła pomoc na restrukturyzację na rzecz TAP w wysokości 3,2 mld EUR, przeznaczoną na wsparcie długoterminowego planu restrukturyzacji do 2025 r., aby uniknąć wycofania się TAP Air Portugal z prowadzenia działalności. Pomoc miałaby formę, po pierwsze, następujących środków kapitałowych i quasi-kapitałowych o wartości 2,73 mld EUR: konwersja na kapitał własny pożyczki udzielonej w ramach pomocy na ratowanie i wynoszącej 1,2 mld EUR, państwowa pożyczka zamienna w wysokości [...] EUR oraz zastrzyk kapitałowy w wysokości [...] EUR, a po drugie, dodatkowego wsparcia w wysokości 512 mln EUR w formie gwarancji państwa dla pożyczek rynkowych lub zastrzyku kapitałowego, o którym to dodatkowym wsparciu Portugalia może zdecydować od 2022 r., jeżeli TAP nie będzie miał dostępu do rynków finansowych w latach 2023–2025.

[...]. TAP nie będzie mógł również dokonywać zakupów, będzie musiał zmniejszyć flotę i dostosować swoją siatkę połączeń poprzez zmniejszenie liczby tras. Ponadto TAP będzie nadal renegocjował warunki z dostawcami i leasingodawcami oraz ograniczał koszty personelu poprzez zwolnienia i ograniczenie świadczeń dla personelu.

Zgodnie ze wstępną oceną Komisji plan restrukturyzacji budzi wątpliwości co do zgodności pomocy na restrukturyzację z wytycznymi dotyczącymi ratowania i restrukturyzacji.

W szczególności wątpliwości Komisji dotyczą proporcjonalności pomocy (ograniczenia pomocy do minimum) oraz środków ograniczających zakłócenie konkurencji. Komisja zauważa, że wkład własny beneficjenta (lub wierzycieli lub inwestorów) w koszty restrukturyzacji, szacowany na [...] EUR, nie obejmuje prawie w ogóle nowego finansowania rynkowego i stanowi jedynie około 36 % kosztów restrukturyzacji szacowanych na [...] EUR, czyli znacznie poniżej poziomu 50 % ogólnie przyjętego w wytycznych dotyczących ratowania i restrukturyzacji. W odniesieniu do środków ograniczających zakłócenie konkurencji pojawiają się wątpliwości: (i) [...], (ii) braku zobowiązania do zbycia przydziałów czasu na start i lądowanie w Lizbonie, biorąc pod uwagę wysoki poziom obciążenia tego portu lotniczego i wysoki udział TAP ([50-60] %) w przydziałach czasu, oraz (iii) brak zobowiązania do utrzymania zmniejszonej liczby samolotów w całym okresie restrukturyzacji.

TEKST PISMA

The European Commission (the 'Commission') wishes to inform Portugal that, having examined the information supplied by your authorities regarding public financing in favour of TAP SGPS S.A., it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU').

The Commission has based its decision on the following considerations:

1. Procedure

- (1) On 10 June 2021, Portugal notified its plans to grant State aid in the amount of EUR 3.2 billion (the 'restructuring aid') under the Rescue and restructuring Guidelines ('R&R Guidelines')⁽¹⁾ to TAP SGPS S.A. ('TAP SGPS' or the 'beneficiary'). The notification was preceded by the granting of a rescue loan to TAP SGPS in the amount of EUR 1,2 billion, to which the Commission raised no objections in a decision of 10 June 2020 (the 'initial rescue aid decision')⁽²⁾ and by the submission by Portugal of a restructuring plan for TAP SGPS within the deadline set out in the initial rescue decision, i.e., on 10 December 2020 (the 'restructuring plan'). The notification was accompanied by an updated version of the restructuring plan and other additional documents.
- (2) On 7 January 2020, pursuant to Article 24(2) of Council Regulation (EU) 2015/1589 (the 'Procedural Regulation')⁽³⁾, Ryanair submitted a complaint to the Commission. By its complaint, Ryanair alleged that one of the restructuring measures provided for in the restructuring plan, namely, the suspension of the collective bargaining agreements between TAP SGPS and its subsidiaries and their employees, was executed under a specific legal regime applicable exclusively to companies in financial distress that are majority-owned by the Portuguese State and therefore that measure involved State aid. The Commission services forwarded that complaint to Portugal, which presented its views.
- (3) By letter of 12 May 2021, the Commission forwarded to Ryanair pursuant to the second subparagraph of Article 24(2) of the Procedural Regulation the reply of the Portuguese authorities and reached the preliminary conclusion that the measure contested by Ryanair did not constitute State aid due to the absence of State resources. The Commission invited the complainant to comment on the observations of the Portuguese authorities or inform the Commission of any new evidence that might demonstrate the existence of an infringement of the State aid rules within a period of one month. As Ryanair did not reply within the prescribed period, Ryanair's complaint is deemed to be withdrawn pursuant to the second subparagraph of Article 24(2) of the Procedural Regulation.
- (4) On 19 May 2021, the General Court annulled the initial rescue aid decision⁽⁴⁾. On 16 July 2021, the Commission adopted a new rescue aid decision in which it addressed the shortcomings in the statements of reasoning and raised no objections to the rescue aid to TAP SGPS⁽⁵⁾.
- (5) The Commission requested additional information on 16 and 29 June 2021. Portugal replied on 16 June and 2 July 2021.
- (6) Portugal agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958⁽⁶⁾ and to have the decision adopted and notified pursuant to Article 297 TFEU in English.

2. Description

2.1. *The beneficiary: activities and operating subsidiaries*

- (7) The beneficiary of the restructuring aid is TAP SGPS, a holding company incorporated in 2003. By 2017, TAP SGPS was controlled by Parpública — Participações Públicas, SGPS, S.A. ('Parpública'), a public undertaking managing the holdings of the Portuguese State, and by two companies, HPGB SGPS, S.A. ('HPGB') and DGN Coroporation ('DGN'), via a consortium Atlantic Gateways SGPS, Lda. ('AGW'). At the moment of the adoption of the initial rescue aid decision, Parpública held 50 % and AGW 45 % of TAP SGPS' shares, while the remaining 5 % of shares were held by the employees of TAP SGPS. That ownership situation changed in the context of the implementation of the ongoing rescue and restructuring process of TAP SGPS.

⁽¹⁾ 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).

⁽²⁾ Commission decision C(2020) 3989 final of 10 June 2020, SA. 57369 (2020/N) COVID-19 — Portugal Aid to TAP, OJ C 228, 10.7.2020, p. 1.

⁽³⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

⁽⁴⁾ Case T-465/20, *Ryanair v Commission (TAP COVID-19)*, EU:T:2021:284.

⁽⁵⁾ Commission decision C(2021) 5302 of 16 July 2021, SA.57369 (2021/N) — Portugal — Rescue aid to TAP SGPS, not yet published.

⁽⁶⁾ Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385, p. 58).

- (8) The Portuguese authorities explain that at the time of the adoption of the initial rescue aid decision, no changes of the shareholder structure of TAP SGPS were envisaged, as all shareholders of the beneficiary agreed on the need for State support in order to maintain the activity of the TAP Air Portugal airline and the viability of TAP SGPS in the long run. The issue of the control of TAP SGPS was only considered by the Portuguese authorities in early July 2020 in the context of a deadlock in negotiations with AGW concerning the implementation of the rescue loan agreement. The main disagreement between the Portuguese Republic as lender and AGW related to the fact that on one side, the Portuguese Republic wanted to subject the granting of the rescue loan to the acceptance by AGW of an increase of certain supervisory rights over TAP Air Portugal with respect to the use of the loan. On the other side, AGW argued that there were no grounds, despite the granting of the rescue loan, to modify the governance of TAP SGPS or its subsidiaries. Faced with a near financial collapse of TAP SGPS, which was urging the implementation of the rescue aid, the Portuguese authorities decided to conclude a private agreement with the shareholders of AGW in order to buy-out the shareholdings of DGN, which constituted the main obstacle to the implementation of the rescue loan agreement. On 2 October 2020, the Portuguese Ministry of the Treasury (Direcção-Geral do Tesouro E Finanças (DGTF)) acquired directly TAP SGPS' shares previously held by DGN and, as a consequence, the Portuguese State assumes today, directly and indirectly, a majority position corresponding to 72,5 % of the share capital and respective economic rights of TAP SGPS (50 % through Parpública and 22,5 % through DGTF). HPGB currently holds a 22,5 % stake in TAP SGPS (see also recital (30)).
- (9) The Portuguese authorities confirm that according to the shareholding agreement entered into by the Portuguese Republic via DGTF, Parpública and HPGB, the latter has no veto rights with regard to the strategic decisions relating to the management of TAP SGPS. [...] ⁽⁷⁾, [...] ⁽⁸⁾.
- (10) Transportes Aéreos Portugueses, S.A. ('TAP Air Portugal') was created in 1945 as the Portuguese flagship airline. When the rescue and restructuring process of TAP SGPS started in June 2020, TAP Air Portugal was fully owned by TAP SGPS and was its biggest subsidiary, accounting for around 98 % of TAP SGPS' turnover. TAP SGPS' shareholding in TAP Air Portugal was altered as a result of the implementation of a COVID-19 damage compensation under Article 107(2)(b) TFEU granted to TAP Air Portugal ⁽⁹⁾, in the form of a capital increase of EUR 462 million. As of 24 May 2021, the State, through DGTF, holds directly approximately 92 % of the share capital of TAP Air Portugal. TAP SGPS currently holds the remaining 8 %.
- (11) TAP Air Portugal is the sole shareholder of TAP Logistics Solutions, S.A., a company incorporated on 30 December 2019, to operate cargo and mail activities. TAP SGPS owns stakes in the following companies that are active in the provision of air transport-related services in Portugal and other countries:
- a) 100 % in Portugália Airlines– Companhia Portuguesa de Transportes Aéreos, S.A. ('Portugalia');
 - b) 100 % in U.C.S.– Cuidados Integrados de Saúde, S.A., a company active in healthcare services, whose main client is also TAP Air Portugal;
 - c) 100 % in TAPGER Sociedade de Gestão e Serviços, S.A. and 99,83 % in Aeropar Participações Lda, both acting as holding;
 - d) 78.72 % in TAP Manutenção e Engenharia Brasil, S.A ('M&E Brasil'), active in aircraft maintenance for TAP Air Portugal, and for third parties;
 - e) 49 % (43,9 % directly and 5,1 % via Portugalia) in SPdH–Serviços Portugueses de Handling, S.A. (also known as Groundforce Portugal), a company operating in the airport handling sector in Portugal; and
 - f) 51 % in CATERINGPOR– Catering de Portugal, S.A., active in the provision of catering for aviation, whose main client is TAP Air Portugal.
- (12) TAP Air Portugal is active in the air transport of passengers and cargo. In 2019, TAP Air Portugal operated a fleet of [...] aircraft (including aircraft operated under wet-lease agreement), and served [...] destinations in [...] countries, carried over [...] passengers and operated over [...] flights. Those flights were on routes from airports such as Lisbon (main hub, with 55 % market share by capacity) or Porto and four islands in the Azores and Madeira to various international destinations, including [...] airports in Europe (outside Portugal), [...] destinations in Brazil, [...] in Africa and [...] in North America planes in 2019.

⁽⁷⁾ [...]

⁽⁸⁾ [...]

⁽⁹⁾ Commission decision C(2021) 2991 final of 23 April 2021, SA.62304 (2021/N) — Portugal COVID 19: Damage compensation to TAP Portugal, (OJ C 240, 18.6.2021).

- (13) Portugal submits that TAP Air Portugal is a major provider of connectivity for passengers and cargo to, from and within Portugal. In particular, TAP Air Portugal plays a crucial role for the connectivity of Portugal and countries with lusophone diaspora. TAP Air Portugal is also considered to be a pillar of the Portuguese economy, in particular, due to its contribution to the development of tourism industry in Portugal.
- (14) Other airlines licensed in other Member States provide air passenger transport or cargo services to Portugal, such as Ryanair as the second-largest airline operating in Portugal and others such as Lufthansa, Air France-KLM, Finnair, Brussels Airlines, Austrian Airlines, Vueling and Iberia (IAG).

2.2. Origin of the difficulties of the beneficiary, its financial situation and immediate liquidity prospects

- (15) The current situation of difficulty of the beneficiary has been caused by both issues of solvency and liquidity, which were highly aggravated by an acute liquidity crisis provoked by the COVID-19 pandemic.
- (16) First, between 2006 and 2015, TAP SGPS accumulated a negative shareholders' equity of [...], mainly due to accumulated losses incurred since the acquisition of M&E Brazil that were related to some key factors including operational results in Brazil and Portugal, liabilities associated with the acquisition process and devaluation of the Brazilian Real. Considering the weight of the airline business on the revenues of TAP SGPS, until 2019 TAP SGPS had structured most of its debt issuances at the level of TAP Air Portugal, which meant that the latter financed other subsidiaries of TAP SGPS, and in particular the operations of M&E Brasil.
- (17) TAP SPGS also incurred extraordinary operational disruption costs in recent years which hindered greater profitability and competitiveness. This was the case of increased irregular operations (IROP) ⁽¹⁰⁾ costs in 2019 of [...], in comparison to [...] in 2016, driven by a high level of flight delays and cancellation, as well as very high foreign exchange exposure due to presence in Brazil and Angola.
- (18) Second, considering that TAP Air Portugal is responsible for around 98 % of the revenues of TAP SGPS, the air carrier's performance had a major impact for the overall financial situation of its holding parent. After privatisation in 2016, TAP Air Portugal launched a transformation process and had been in a growth trajectory in operational terms presenting [10-20 %] revenue growth until 2019. The transformation process was targeted to reduce TAP Air Portugal's above market average cost structure, focusing on fleet renewal. The actions pertaining to the transformation process mainly took place in 2018 and 2019, namely with the delivery of [...] fuel efficient A339 aircraft followed by the transformation of product, sales and tools, improvement of procurement and systems. On the operational side, TAP Air Portugal increased its operations on high value markets, such as Brazil and North America. The transformation process, particularly new fleet phase-ins and phase-outs executed until 2019, contributed to reduce overall Cost of Available Seat Kilometer (CASK) ⁽¹¹⁾ levels. However, it also entailed high one-off costs related [...]. In addition, TAP Air Portugal continued to be less competitive than its peers in labour costs and efficiency.
- (19) On 2 December 2019, TAP Air Portugal closed an offering of EUR 375 million of senior unsecured bonds with five-year maturity serving regular annual coupons of 5,625 % and effective interest of 5,75 % ⁽¹²⁾. The issuance was aimed at meeting general corporate expenditure and at partly repaying debt and extending its average maturity. The issuance attracted preliminary ratings of BB- (Standard & Poors) and B2 (Moody's), i.e., below 'investment grade' rating. A few months before, on 24 June 2019, TAP Air Portugal had issued EUR 50 million of bonds with four-year maturity serving regular annual coupons of 4,375 % ⁽¹³⁾. Whilst the amounts and conditions of the two issuances in June and December 2019 differ, the interest shown in those issuances indicate the conditions on which the beneficiary could access finance on the market before the COVID-19 outbreak.
- (20) The transformation process was interrupted as a result of the global pandemic of COVID-19 and the economic crisis that followed, at a time when TAP Air Portugal had not yet been able to considerably reduce its costs, in particular labour costs, compared to competitors, especially low cost airlines.
- (21) As a consequence, in light of the unprecedented government travel restrictions and quarantine orders due to the COVID-19 outbreak, on 20 March 2020, the rating agency Standard & Poors lowered the rating of TAP Air Portugal to B- long-term rating and an outlook on short-term liquidity rating of ccc+. In the same announcement, Standard & Poors assigned recovery prospects of 45 % to the EUR 375 million bonds issue. On 19 March 2020, the rating agency Moody's also downgraded the probability of default and corporate ratings of TAP Air Portugal to Caa1-PD and Caa1, respectively. On 28 May 2020, the annual yield to maturity (December 2024) of the EUR 375 million

⁽¹⁰⁾ Irregular Operations (IROPs) are identified by an airline or ground handler acting on behalf of an airline when a disruption on the day of travel or the day prior to travel causes the customer to not be able to use the flight(s) ticketed.

⁽¹¹⁾ Cost of Available Seat Kilometer is used to measure the unit cost expressed in cash value [EUR cent per seat] to operate each seat for every kilometer.

⁽¹²⁾ Statement: 'TAP Announces the pricing of EUR 375 million 5,625 % senior notes due 2024' on 22.11.2019. Demand from investors allowed the issuance to eventually raise more money (EUR 75 million over EUR 300 initial) and with lower pricing (20 bp) than initially envisaged.

⁽¹³⁾ Reference ISIN PTTAPBOM0007, TAP-SGPS 19/23.

senior notes issued in December 2019 was 9,45 % on the secondary market. In other words, at that stage buyers of those bonds issued by TAP Air Portugal required a discount on the nominal value of the security so as to obtain a return of 9,45 % to accept holding them to maturity. The information provided by the Portuguese authorities corroborates [...] the financial situation of TAP Air Portugal and the beneficiary [...] ⁽¹⁴⁾.

- (22) The difficulties of TAP SGPS and of its most important subsidiary cumulated and led to a sharp deterioration of the equity position of both companies. At the end of 2019, TAP SGPS registered a negative equity of [...], which grew to [...] in 2020 (of that amount EUR [...] was assigned to TAP Air Portugal).

2.3. Description of the restructuring plan and restructuring aid

- (23) The restructuring aid supports the implementation of the restructuring plan that covers the period from 2020 until the end of 2025 (the 'restructuring period'). The plan covers TAP SGPS and all its subsidiaries, including TAP Air Portugal. However, due to the weight of TAP Air Portugal for TAP SGPS, most restructuring measures and projections provided below refer to TAP Air Portugal.

2.3.1. The restructuring of operations

- (24) The restructuring plan identifies restructuring actions enumerated below that aim to mitigate the operational problems of TAP SGPS and TAP Air Portugal and improve competitiveness and profitability, as well as address the need for its restructuring to the core activity. [...]. The restructuring measures will affect TAP SGPS's subsidiaries, work force, overhead cost and its financial model, as well as TAP Air Portugal's fleet size and network of routes:
- a) *Fleet size reduction*: TAP Air Portugal plans to reduce fleet by [15-25 %] of the number of planes operated at the end of 2019 (from [...] to [...] aircraft) by the end of 2021. TAP Air Portugal has already implemented, as a part of the restructuring plan, a fleet reduction from [...] to [...] aircraft by February 2021 and will implement further reductions. In 2024-2025, TAP Air Portugal plans to adapt the fleet to the demand and increase it accordingly to a maximum of [...] planes.
 - b) *Routes reduction*: TAP Air Portugal will reduce the number of routes. In 2020 TAP Air Portugal has operated [...] fewer destinations than in 2019 (from [...] to [...]) and has suspended indefinitely the opening of [...] further routes;
 - c) *Staff related measures*: TAP SGPS will reduce its workforce, with savings of [...] to [...] per year, by terminating around [...] Full-Time Equivalent (FTE) employees contracts ([...] workforce by comparison to 2019) until [...]. It has been further considering reasonable reductions of up to [...] of salaries and suspension of the Collective Bargaining Agreements' Clauses in order to increase productivity and reduce costs;
 - d) *Structural measures*: The restructuring plan has identified a group of non-core businesses that will be divested, [...], in order to focus TAP SGPS on its core air transport business, [...].

2.3.2. Overview of restructuring costs and sources of financing including own contribution

- (25) The implementation of the restructuring plan triggers total net costs that are estimated at [...] until 2025. The restructuring costs of TAP SGPS have been calculated as a gross value between cash needs for the period from 2021 to 2025 and the cost savings which constitute sources of own contribution and which reduce the total amount of those needs. The restructuring costs calculation submitted by Portugal integrates the liquidity shortfall identified for the restructuring period without which TAP SGPS's operations would be at risk, up to the amount of [2,7-3,2 billion]. The rest of the EUR [...] are further cash needs that will be covered by own contribution. Those costs include also the costs associated with the implementation of the strategy for divestments [...]. At the present stage, the plan does not earmark specific instruments or types of funding to specific cost items expected to be incurred throughout the restructuring period.
- (26) According to Portugal, due to the worsened financial situation and the severe impact of the COVID-19 outbreak in the sector and in the economy, TAP SGPS is currently unable to proceed [...] without support from the State. Portugal considers that the implementation of substantial equity enhancing measures should allow TAP SGPS to have access to the capital markets between [...], in order to raise the additional necessary funds from private investors. However, the current restructuring plan for TAP SPGS is based on a conservative approach according to which the beneficiary may not be able to access the financial markets [...] and provides for a specific State aid buffer in order to face such situation. Thus, the notified State funding of EUR 3,2 billion breaks down to:

⁽¹⁴⁾ Earnings before interest, taxes, depreciation, amortization, and restructuring or rent costs. EBITDAR is a metric used primarily to analyse the financial health and performance of companies that have gone through restructuring within the past year.

- a) equity or quasi equity measures of a total of EUR 2,726 billion ('the equity measures'), to be implemented as follows:
- (i) EUR 1,2 billion rescue loan to be converted into equity in the same nominal value plus accrued interest around [...] in 2021;
 - (ii) [...] State guaranteed loan to be granted in the second half of 2021 and repaid in 2022 through an equivalent equity injection. The loan will have an interest rate in line with the market terms applicable at the moment of granting but will not exceed the reference rate set out pursuant to the Commission Reference Rate Communication⁽¹⁵⁾. Should the Portuguese State budget allow it, the Portuguese authorities envisage a direct equity injection instead of granting that State guaranteed loan;
 - (iii) [...] direct equity injection to be executed in 2022;
 - (iv) if the [...] State guaranteed loan mentioned in point (a)(ii) is granted in the form of a loan, a conversion of that loan into equity will be executed in June 2022;
- and
- b) additional support of up to EUR 512 million, in the form of a State guarantee to market loans, which Portugal may decide to implement as of 2022 ('additional support'), provided in order to ensure the resilience of the restructuring plan in the event of an adverse scenario in which TAP SGPS could not access the markets as early as currently expected (2023-2025). Portugal notes that in case of the most adverse scenario, the additional support would be provided in the form of an equity injection.
- (27) The measures will be provided directly from the Portuguese State budget⁽¹⁶⁾ and require the necessary acts of implementation, including corporate approval of modifications to share capital and loan and guarantee agreements to be concluded.
- (28) According to the restructuring plan, the contribution of TAP SGPS to the restructuring costs will consist of [...] spread over the period from 2020 to 2025 and integrating the following measures:
- a) labour cost reduction during the entire restructuring period ([...]); the labour cost savings will be achieved through productivity gains; deployment of staff salary reductions across categories of staff, freeze of salary increase and promotions; renegotiation of agreements with trade unions, lay-off and negotiated exits, pre-retirement and early retirement; a reduction of [...] FTEs corresponding to [...] of the workforce of TAP SGPS has already been implemented in 2021;
 - b) negotiations with original equipment manufacturers (OEM), [...];
 - c) new contracts for [...] aircraft leases arriving in 2021 ([...]);
 - d) fleet restructuring, including phasing out of [...] aircraft and spare engine fleet ([...]);
 - e) negotiation of third party costs and reduction of products costs, handling, distribution crew logistic, IT and other specialised services ([...]).
- (29) Portugal submits that all the measures of own contribution identified in recital (28) above are largely implemented or on the verge of implementation. They are based on binding agreements with the respective parties and/or internal instructions to be executed. With regard to the labour restructuring measures, the costs savings are based on emergency agreements concluded between TAP SGPS and the employees' unions, after the suspension of the collective labour agreements that were previously in force.
- (30) With regard to the burden sharing, Portugal submits that TAP SGPS has a total share capital of [...], including share capital, supplementary payments and shareholders loans subscribed by Parpública, DGTF, HPGB and the employees.

⁽¹⁵⁾ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

⁽¹⁶⁾ State Budget Laws approved during the years of the restructuring plan. In the case of the year 2021, Article 166, Law no. 75-B/2020, of 31 December, that approves the State Budget for 2021.

In order to ensure due burden sharing by the shareholders of the beneficiary, the total amount of share capital will be reduced to [...] in the accounts of TAP SGPS. Prior to that reduction, all non-equity shareholders' non-equity (namely the supplementary payments of Parpública and HPGB) will be converted into equity in order to allow for its full reduction for the purposes of the loss absorption. It should be noted that HPGB is entitled under the shareholder agreement entered into between Parpública, the Portuguese Republic and HPGB on 2 October 2020, [...]. Portugal assumes that [...] in the present circumstances. Following the capital reduction and loss absorption referred above, the Portuguese State, via DGTF, as the sole shareholder of TAP SGPS at that stage, will subscribe a capital increase of approximately [...] in TAP SGPS. In addition, TAP Air Portugal will also be subject to a capital reduction for the purposes of loss absorption. Only after that operation will the first State aid restructuring measures, the conversion into equity of the existing rescue loan of EUR 1.2 billion, be executed.

2.3.3. Solvency and liquidity needs: prospective return to viability

- (31) The projections provided by Portugal in the baseline scenario of the restructuring plan are based on an overall conservative demand recovery scenario in relation to the IATA expectations⁽¹⁷⁾. Based on conservative demand projections and taking into account the effects of restructuring measures, earnings before interest and tax (EBIT) would [...], like the operating cash flow [...] and [...] net income [...] (Table 1). In addition, the implementation of the restructuring plan and the restructuring aid is expected to enable TAP Air Portugal to access the capital markets during the period from [...] and to achieve a net debt/EBITDA ratio of [...] in 2025. With regard to other key financial ratios, TAP Air Portugal's Return on Equity (ROE) should attain a level of [...] in 2024 and [...] in 2025; TAP Air Portugal's Return on Capital Employed (ROCE) should [...]; finally TAP Air Portugal's Equity to Assets ratio should [...].
- (32) Portugal considers that the financial and operational measures supporting the restructuring plan are devised to allow TAP Air Portugal to [...]. By then, TAP Air Portugal would have been scaled down and starting from [...] allowing it to access market finance without any State guarantee. Portugal submits that other combinations of aid instruments or amounts would compromise the objectives or imply an unbearable financial cost, hampering the long-term viability of TAP Air Portugal, and thus the objective of the restructuring process of TAP SGPS.

Table 1

Financial projections of the restructuring plan (baseline scenario)

EUR million	Restructuring period					
	2020	2021	2022	2023	2024	2025
Revenues	1 060	[...]	[...]	[...]	[...]	[...]
EBIT	(965)	[...]	[...]	[...]	[...]	[...]
Net income	(1 230)	[...]	[...]	[...]	[...]	[...]
Net debt	4 110	[...]	[...]	[...]	[...]	[...]
Operational cash flow	(244)	[...]	[...]	[...]	[...]	[...]
Equity	[...]	[...]	[...]	[...]	[...]	[...]

Source: Company information. All date refer to TAP Air Portugal

- (33) According to the restructuring plan, the return to profitability will be driven mainly by the reduction of unitary cost through fleet renovation, allowing for an increased fuel efficiency, and labour restructuring. The restructuring plan is based on an assumption that the Cost of Available Seat Kilometer (CASK) will drop from around [...] in 2020 and 2021 to [...] in 2023 and later.

⁽¹⁷⁾ According to IATA' projections of the demand recovery, the return to the 2019 demand level is expected in mid-2023. The baseline scenario of the restructuring plan is based on an assumption that in mid-2023 the demand will reach around 85 % of the 2019 level and in 2025 it will be at 94 % of the level of 2019.

- (34) The restructuring plan provides for different adverse scenarios based on a pessimistic evolution of three parameters: fuel cost, demand and yield. It is to be noted that in each of the adverse scenarios, TAP Air Portugal's operational cash flow and EBIT should turn positive, respectively, [...], the pessimistic assumption changing only the magnitude of the results. Only in the worst case scenario, assuming negative evolution of all three parameters concerned, [...].

2.3.4. Measures limiting distortion of competition

- (35) In terms of divestments of assets, reduction of capacity or market presence committed to be undertaken, Portugal puts forward [...]. The restructuring plan contemplates also a reduction in capacity, as a result of fleet resizing, network streamlining and adjustment to demand reduction. TAP Air Portugal has already implemented a fleet reduction from [...] to [...] aircraft by February 2021 and will implement further reductions in 2021 up to [...] operating passenger aircraft, which has been identified as the minimum fleet size in order not to affect connectivity and compromise the company's hub business model. TAP Air Portugal is contemplating adjusting the fleet size up to [...] aircraft by the end of the restructuring period in order to meet the expected increase in demand.
- (36) Moreover, the beneficiary agrees to commit to the generally applicable behavioural measures set forth in point 84 of the R&R Guidelines, i.e.: (i) acquisition ban regarding shares in any company during the restructuring period, except where indispensable to ensure its long-term viability and subject to Commission approval, and (ii) to refrain from publicising State support as a competitive advantage when marketing its products and services

2.4. Position of the Portuguese authorities

- (37) Portugal takes the view that the aid measures set forth in the restructuring plan can be declared compatible with the internal market pursuant to the R&R Guidelines.
- (38) First, with regard to proportionality of the aid, Portugal observes that in the current circumstances, with an uncertain outlook in which the air transport industry is and will remain, heavily affected by the direct and indirect effects of the COVID-19 outbreak, the beneficiary is unable to secure any sources of fresh financing at market terms supporting the restructuring plan, other than [...] resulting from new contracts secured for aircraft leases for four aircrafts arriving in 2021. Considering that the restructuring plan integrates several cost saving measures that are borne by stakeholders of the beneficiary, those measures amount to real and actual sources of own contribution to the restructuring plan in the current circumstances, considering that they are effective and lasting. Portugal points out that those cost saving measures have a considerable impact on reducing the financing needs of the beneficiary and that without them it would require further approximately [...] of State funding to achieve long-term viability. Accordingly, Portugal submits that the own contribution of TAP SGPS will effectively contribute to addressing its liquidity issues, in combination with the restructuring aid, therefore limiting the amount of State aid to the minimum.
- (39) Portugal also stresses that the employees are creditors of the company and active stakeholders on its performance. Thus, the massive labour cost reduction should be considered as a contribution from the beneficiary.
- (40) Portugal recognises that the amount of the own contribution provided for in the restructuring plan correspond to 36 % of [...] total restructuring costs and is, therefore, below the threshold determined in point 64 of the R&R Guidelines. However, Portugal submits that the level of own contribution is significant as it corresponds to the maximum level that the beneficiary is able to undertake in the current particular circumstances related to the COVID-19 pandemic and notes that the percentage of own contribution to the restructuring cost may be raised to circa [40-50 %] if: (i) the beneficiary is able to obtain financing of [...] in the financial markets from [...], consequently not requiring the use of State aid buffer in the form of additional support referred to in recital (26)b); and ii) a potential COVID-19 damage compensation State aid is approved by the European Commission for the 2nd semester of 2020 and the 1st quarter of 2021, which is estimated by Portugal to be at least [...].
- (41) Second, Portugal acknowledges that other airlines, such as Lufthansa and Air France, have slot release commitments with regards to recapitalisation aid under the Communication from the Commission of 19 March 2020 — Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended⁽¹⁸⁾ (the 'Temporary Framework'). However, according to Portugal in the case of TAP Air Portugal, a commitment to give up additional slots in the Lisbon airport would be premature and most probably unnecessary to ensure effective competition, involving a risk of compromising connectivity and the hub model of that company and potentially jeopardizing its return to viability.

⁽¹⁸⁾ Communication from the Commission — Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91 I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112 I, 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 340 I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

- (42) Portugal maintains, in particular, that TAP Air Portugal's competitive position should be assessed not only from a supply-side perspective, where its position is assessed on an airport-by-airport basis taking into account its slots portfolio, but also from the demand-side perspective, considering the pairs of point of origin/point of destination⁽¹⁹⁾ in which TAP Air Portugal is active. Portugal adds that from the demand-side perspective, TAP Air Portugal is subject to effective competition as in the seven most relevant O/D routes to Europe in which it holds a market share [...], its competitors hold strong positions and, therefore, exercise effective competitive constraints.
- (43) With regard to the supply-side approach, Portugal observes that while TAP Air Portugal's average slot holding attained [50-60 %] of slots at Lisbon airport (IATA summer 2019 season), having its three highest slot holdings above [60-70 %], none of those three highest slot holdings corresponded to the highest congestion rate hour bands at that airport. In addition, unlike the cases of Frankfurt and Munich airports where the main competitors of Lufthansa held individual slot holdings of 4 % and 2 % respectively, Ryanair's average slot holding in Lisbon airport in 2019 was [5-10 %], while that of easyJet was [5-10 %], Vueling [0-5 %] and Transavia [0-5 %]. Portugal also maintains that TAP Air Portugal's slot holding position at the Lisbon airport is lower when compared to that of its competitors in their respective European hubs. Finally, Portugal submits that, a potential release of slots by TAP Air Portugal in Lisbon at a level comparable to that required from Lufthansa and Air France in connection with the recapitalisation aid granted to them would have a significant impact on TAP Air Portugal, making connection times for [...] uncompetitive in [...] routes, and less competitive in [...] routes. In case of the [...], [...] competitive routes would become less competitive and [...] would become uncompetitive ([...] would lose any chance of being competitive). Portugal concludes that TAP Air Portugal actually needs its hub and more flights to ensure competitiveness and that, unlike Lufthansa or Air France, it cannot mitigate a slot deficit with the assistance [...]. As Portugal is a small economy and a peripheral market where tourism plays an important role, enhancing the Lisbon hub is key for TAP Air Portugal as it needs more connectivity in order to compensate for a smaller market and a lesser domestic demand.
- (44) Finally, with regard to the fleet size reduction, Portugal observes that the figure of [...] aircrafts has been identified as the minimum fleet size in order to not affect connectivity and compromise the company's hub business model. In addition, while TAP Air Portugal plans to increase the number of operated aircraft up to [...] by the end of the restructuring period, in order to meet the expected increase in demand, Portugal points out that the total number of aircraft in 2025 [...].

3. Assessment of the measures

- (45) The Commission first assesses whether the notified equity measures and the additional support as mentioned in recital (26) to be provided to finance TAP SGPS' restructuring plan entail State aid to the beneficiary under Article 107(1) TFEU, and if so, whether such aid is lawful and compatible with the internal market.

3.1. Existence of State aid

- (46) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (47) The qualification of a measure as aid within the meaning Article 107(1) TFEU requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must distort or threaten to distort competition and affect trade between Member States; (iii) the measure must confer an advantage on its recipient; and (iv) that advantage must be selective. It is therefore appropriate to examine separately whether the guaranteed rescue loan and the capital increases qualify as aid.
- (48) Prior to examining whether the equity measures and the additional support involve State aid pursuant to Article 107(1) TFEU, the Commission notes that Portugal has notified it as constituting State aid. That declaration does not discharge the Commission from examining itself whether the notified equity measures and additional support involve State aid and, in particular, whether they favour the beneficiary in that a market operator holding shares in a situation as close as possible to that of Portugal would not take a similar decision and grant the same measures at the same conditions, leaving aside any benefits expected in its situation as public authority⁽²⁰⁾.
- (49) The equity measures and the additional support are to be granted by Portugal with resources from its budget (recital (27)). For the purposes of Article 107(1) TFEU, those measures are therefore imputable to the Portuguese State and they involve State resources.

⁽¹⁹⁾ In its decision practice related to airlines, the Commission usually defined market for scheduled passenger air transport services on the basis of the "point definition of origin/point of destination" ("O&D") city-pair approach (See e.g. Cases M.7541 — IAG/Aer Lingus, paragraph 14; M.7333 — Alitalia/Etihad, paragraph 63; M.6447 — IAG/bmi, paragraph 31). Under the O&D approach, every combination of an airport or city of origin to an airport or city of destination is defined as a distinct market.

⁽²⁰⁾ Case C-300/16 P *Commission v Frucona Košice*, EU:C:2017:706, paragraph 59; and Case C-124/10 P *Commission v EDF*, EU:C:2012:318, paragraphs 78, 79 and 103.

- (50) The Commission has to examine whether the equity measures and the additional support qualify as aid in that they confer an economic advantage on the beneficiary. The presence of such an advantage can be inferred and established from the fact that the beneficiary cannot obtain capital or raise debt finance at market conditions without a public support.
- (51) The assessment of whether a market operator in a situation as close as possible to that of DGTF or Parública would provide the same funding ('market economy operator test') shows that the public funding in question provides an advantage with regard to market conditions.
- a) First, there is no *prima facie* evidence that the funding can be ascribed to behaviour and decisions which a market shareholder would take. The funding is premised on reasons of public policy to guarantee air transport connectivity of Portugal and to avoid negative spill-over effects of the bankruptcy of TAP Air Portugal for the Portuguese economy (recital (13)). Such considerations, however pertinent for a public authority, would not be relevant for a market shareholder. Therefore, the market economy operator test appears not to be applicable.
- b) Second, the funding cannot be assessed as being necessary to preserve or increase the value of the direct or indirect shareholding of the Portuguese State in TAP SGPS, or as being capable of providing a shareholder return commensurate with the risk taken. Portugal does not claim that such return would actually be achieved between now and the end of the restructuring plan.
- (52) Therefore, the measures provide funding that the beneficiary cannot and could not obtain on the market. A market operator in a situation as close as possible to that of DGTF or Parública would not provide similar funding. Therefore, the equity measures and the additional support appear to confer an economic advantage on the beneficiary.
- (53) The equity measures and additional support are to be granted through the exercise of discretion for an *ad hoc* amount determined by reference to the specific needs of the beneficiary's restructuring plan (recital (25)). The public funding is not, whether by instruments or amount, part of a broader, general, economic policy measure to provide support to undertakings in a comparable legal and economic situation that are active in the air transport or other economic sectors. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective⁽²¹⁾. This is so regardless of whether there are operators on the relevant markets that are in a comparable factual and legal situation. Therefore, the equity measures and additional support are selective.
- (54) The air passenger transport and cargo services sector in which the beneficiary is active is open to competition and trade between Member States. Other airlines licensed in the European Union provide air transport services connecting the Portuguese airports, in particular Lisbon, with other cities of the Union. Therefore, by sustaining the continued operation of the air transport services that the beneficiary provides, the equity measures and the additional support are liable to affect trade between Member States.
- (55) By granting access to funding at conditions which it would not otherwise obtain on the market, the public funding is liable to improve the position of the beneficiary in relation to actual competing undertakings or potential ones, that have not access to similar State support from Portugal or that have to finance operations at market conditions. The capital increase and the guarantee on loans consequently distort or threaten to distort competition.

3.2. **Conclusion on the existence of aid**

- (56) In light of the above, the Commission preliminarily concludes that the capital increase and the guarantee on loans in favour of TAP SGPS involve State aid under Article 107(1) TFEU.
- (57) The Commission will therefore assess their lawfulness and compatibility with the internal market.

3.3. **Lawfulness of the aid**

- (58) With the exception of the rescue loan, approved by the Commission decision (recitals (1) and (4)), Portugal has not put into effect the equity measures and the additional support provided for in the restructuring plan. Therefore, those latter measures are lawful.

3.4. **Compatibility of the aid with the internal market**

- (59) Under Article 107(3)(c) TFEU, the Commission can authorise aid if it is granted to promote the development of certain economic sectors and if that aid does not adversely affect trading conditions to an extent contrary to the common interest.

⁽²¹⁾ Case C-15/14 P *Commission v MOL*, EU:C:2015:362, paragraph 60.

- (60) Thus, in order to be capable of being considered compatible with the internal market under that provision, State aid must meet two conditions, the first being that it must be intended to facilitate the development of certain economic activities or of certain economic areas and the second, expressed in negative terms, being that it must not adversely affect trading conditions to an extent contrary to the common interest, without prejudice to the fact that decisions adopted by the Commission on that basis must ensure compliance with EU law ⁽²²⁾.
- (61) In the R&R Guidelines, the Commission sets out the conditions under which State aid for rescuing and restructuring non-financial undertakings in difficulty may be considered to be compatible with the internal market on the basis of Article 107(3)(c) TFEU.
- (62) It does not result from the notification that the restructuring aid or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a relevant provision of Union law. In particular, the Commission has not sent a reasoned opinion to Portugal on a possible infringement of Union law that would bear a relation to this case and the Commission has not received any complaints or information that might suggest that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law, other than Article 107 and 108 TFEU.
- (63) Portugal considers that the restructuring aid can be declared compatible with the internal market pursuant to the R&R Guidelines.
- (64) In view of the nature and aims of the State aid at stake and the claims of the Portuguese authorities, the Commission will assess whether the planned funding supporting the restructuring aid complies with the relevant provisions laid down in the R&R Guidelines.

3.4.1. *The aid facilitates the development of an economic activity or an economic area*

3.4.1.1. Eligibility

- (65) In order to be eligible for restructuring aid, a beneficiary must qualify as being an undertaking in difficulty for the purposes of section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines explains that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in letters a) to d) of point 20 of the R&R Guidelines occurs.
- (66) As explained in recital (22), TAP SGPS presented a negative equity amount of approximately [...] at the end of 2019. Since then, the financial situation of TAP SGPS got worse as, according to the consolidated account of TAP SGPS of 2020, the total negative equity increased up to the level of [...] (see recital (22)). Those figures show that at least half of the subscribed share capital of the beneficiary has disappeared and thus it qualifies as an undertaking in difficulty pursuant to point 20(a) of the R&R Guidelines.
- (67) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid. The beneficiary is not a newly created undertaking for the purposes of the R&R Guidelines since it was established in 2003, so more than three years ago (see recital (7)).
- (68) According to point 22 of the R&R Guidelines, a company belonging to or being taken over by a larger business group is not normally eligible for restructuring aid, unless it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (69) Following the modification of the capital structure of TAP SGPS, which is the consequence of the acquisition of 22,5 % the shares of TAP SGPS by DGTF, TAP SGPS is controlled by the State since October 2020 (see recital (7)). Therefore, TAP SGPS cannot be considered as being part of a larger business group, which could be considered as independent from the State providing the notified restructuring aid. In addition, it follows from recitals (15) to (22), that the difficulties of TAP SGPS are intrinsic and particular to the air transport sector.

3.4.1.2. Prevention of social hardship or market failure contributing to the development of economic activity

- (70) Under point 38(a) of the R&R Guidelines, in assessing whether the restructuring aid can be declared compatible with the internal market, the Commission examines whether the State aid aims to prevent social hardship or address a market failure. Under point 44 of the R&R Guidelines, this can be demonstrated in particular by showing that one of the circumstances listed from points (a) to (g) are met.

⁽²²⁾ Case C-594/18 P, *Austria v Commission (Hinkley Point C)*, EU:C:2020:742, paragraphs 18-20.

- (71) The objective of the restructuring aid is to avoid that TAP SGPS and, as a consequence, TAP Air Portugal, goes out of business due to the difficulties it has been experiencing and which were acutely aggravated by the COVID-19 crisis. On the basis of the information provided by the Portuguese authorities, the Commission finds that there is indeed a concrete risk of an immediate failure of the beneficiary to meet its payment obligations leading to a disruption of the ongoing air transport activity of TAP Air Portugal. In particular:
- a) first, the condition provided for in point 44(b) of the R&R Guidelines is met. TAP Air Portugal is a major provider of connectivity for passengers of lusophone diaspora. In particular, that company plays a crucial role for the connectivity of Portugal and the whole of Europe with Brazil, Angola, Mozambique and São Tomé. While the services of TAP Air Portugal could theoretically be replaced by several operators within the time-span of the restructuring plan, such replacement could only be partial and would entail an important worsening of services in particular for customers located in Portugal. The most prominent competitors of TAP Air Portugal (Ryanair, easyJet) provide connectivity between Portugal and other Member States of the Union only and their business model excludes long haul intercontinental flights. Other major EU air carriers offering intercontinental connections via Lisbon operate in hub-and-spoke model. That means that instead of providing direct flights to overseas destinations from Lisbon airport, they would rather transfer passengers from Portugal to their hubs in other Member States before transporting them to such destinations. This in turn would importantly extend the overall duration of flights from Portugal to overseas destinations;
 - b) second, the condition provided for in point 44(c) of the R&R Guidelines is met. TAP SGPS, through TAP Air Portugal, undoubtedly plays a key role in the Portuguese economy⁽²³⁾. In particular, TAP Air Portugal is closely associated with the tourism sector in Portugal, which has been of great importance for the country's economy and recovery after the 2008 crisis⁽²⁴⁾. Finally, with approximately [...] employees (in 2019), TAP SGPS is one of the biggest employers in the country and accounts for more than 110 000 indirect jobs. Those figures demonstrate that a possible insolvency that TAP SGPS would face in the absence of the restructuring aid would have a significant negative spill-over effect on the entire Portuguese economy.
- (72) In addition, under point 46 of the R&R Guidelines, granting of a restructuring aid must be conditional on implementation of a restructuring plan that would restore the viability of the beneficiary. The Commission notes that the equity measures and the additional support are part of the restructuring plan encompassing all TAP SGPS subsidiaries that was submitted to the Commission with the notification of those measures and that the grant of equity measures and the additional support is conditional on the implementation of that restructuring plan, in particular, the mutually reinforcing measures described in recital (24).
- (73) The financial assessment and projections provided by Portugal (see section 2.3.3) evidence that the planned restructuring measures supported with the aid would allow the beneficiary to attain [...] net earnings in [...] and possibly access funding at market conditions [...]. The projections evidence a return on equity around [...] in [...], by the end of the restructuring period. The assessment expected returns sustain the argument of Portugal that the restructuring plan would secure the long-term viability of the beneficiary. In effect, they compare favourably with the (opportunity) cost of equity across economic sectors in Portugal, that is 10,9 % or for the aviation sector, that is 8,5 %.⁽²⁵⁾ Other key indicators such as ROCE and Equity to Assets ratio [...] and remain robust in an adverse scenario (recitals (31)(33) and (34)).
- (74) However, those projections are fraught with several uncertainties, the most significant being the evolution of the demand by the end of 2025 in very stressed scenarios, that would require more aid. As a result, the plan needs to be checked on its solidity, the assumptions, and its various elements in such scenarios. Moreover, the duration to a return to long term viability is premised on a restructuring plan which is longer than five years and which, furthermore, raises doubts regarding the proportionality of the restructuring aid and the measures limiting the distortions of competition, which the Commission deems insufficient at this stage (see recitals (89) and (100)).
- (75) In conclusion, the information provided by Portugal demonstrates that, by allowing the beneficiary to continue and restructure operations whilst meeting its payment obligations in the coming years, the restructuring aid meets the requirements provided for in points 44(b) and (c) and 46 of the R&R Guidelines, whilst contributing also to developing the economic activity at hand, provided however, the plan assures a return to long-term viability in an appropriate and short time frame, which is not established at present.

3.4.2. *The aid does not unduly affect competition and trading conditions to an extent contrary to the common interest*

- (76) In order to assess whether the aid does not unduly affect the competition and trading conditions it is necessary to examine the necessity, appropriateness and proportionality of the aid. It is also necessary to examine the effects of the aid on competition and trade and weight the positive effects of the aid on the development of activities that the aid intends to support against its negative effects of it on the internal market.

⁽²³⁾ In 2019, TAP SGPS has contributed [...] to the Portuguese GDP, accounting for [...] of total GDP of the country and [...] in direct taxes and social contributions. TAP SGPS's contribution to Portuguese exports is close to [...], while the value of services and goods purchased by TAP SGPS from more than [...] national suppliers is close to [...].

⁽²⁴⁾ Tourism contributes ca. EUR 19 billion to Portugal's GDP, which represented 8,7 % of 2019 GDP.

⁽²⁵⁾ Damoradan <http://people.stern.nyu.edu/adamodar/pc/datasets/wacc.xls>; update 8.1.2021, accessed 21.6.2021.

3.4.2.1. Necessity

- (77) Under point 53 of the R&R Guidelines, Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating that the relevant objective of section 3.1.1 of the R&R Guidelines will not be attained or would be attained to a lesser degree.
- (78) The objective of the restructuring aid is to avoid that TAP SGPS goes out of business, through the implementation of the restructuring plan, partially financed by the restructuring aid. The restructuring plan shows that both liquidity and solvency issues of the beneficiary need to be addressed to resolve its financial problems. In the short term, TAP SGPS and its subsidiaries, including TAP Air Portugal, are not able to ensure the continued provision of essential air transport, [...]. The restructuring aid is therefore necessary for the successful completion of the restructuring plan.

3.4.2.2. Appropriateness

- (79) Under points 38(c) and 54 of the R&R Guidelines, the Commission will not consider restructuring aid to be compatible with the internal market if other less distortive measures allow the same objective to be achieved. Restructuring aid must fulfil the conditions laid down in point 58 of the R&R Guidelines, so that the instruments chosen must be appropriate to the solvency or the liquidity issue that it is intended to address.
- (80) TAP SGPS estimates its liquidity needs for 2021 between [...] and [...] ⁽²⁶⁾. The restructuring aid was construed to provide liquidity support for the implementation of the measures of the restructuring plan and balance the negative equity position of the beneficiary. The restructuring measures provided for in the plan, together with the State aid equity measures, which are to be implemented in [...], are expected to allow TAP SGPS to access the capital markets during the period [...]. Only in an adverse scenario, where the beneficiary is unable to access the capital markets without State support, would the additional support of EUR 512 million be required and it should at first take the form of a State guarantee for a market loan ⁽²⁷⁾. At the present stage and without prejudice to the assessment of the proportionality of the restructuring aid, the planned aid instruments and amounts appear to be adequate to address TAP SGPS's problems of solvency and liquidity and could therefore be deemed to be appropriate.

3.4.2.3. Proportionality of the aid / aid limited to the minimum

- (81) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs (point 61 of the R&R Guidelines). In particular, a sufficient level of own contribution to the costs of the restructuring aid, where State support is given in a form that enhances the beneficiary's equity position, burden sharing must be ensured. The assessment of those requirements will take account of any rescue aid granted beforehand.
- (82) The own contribution of the beneficiary to the restructuring plan must be real and actual and should normally be comparable to the aid granted in terms of effect on the solvency or liquidity position of the beneficiary. Pursuant to point 63 of the R&R Guidelines, the Commission needs to assess whether the various sources of own contribution are actual and aid-free. According to point 64 of the R&R Guidelines, the Commission normally considers the own contribution to be adequate if it amounts to more than 50 % of the restructuring costs.
- (83) In the present case, Portugal has not provided a detailed breakdown of all the expected [...] restructuring costs singling out the nature and amount of main costs items, whether stemming from social costs incurred, investment costs or operating costs necessary to ensure the continued operation of TAP SGPS until its revenues suffice to cover them (see recital (25)). Moreover, most sources of own contribution that Portugal puts forward come from cost reductions, i.e., avoidance of costs only, and there is no fresh funding (meaning no private market investor or lender), apart from [...] resulting from new contracts for aircraft leases arriving in 2021, provides backing for the restructuring plan at this stage. In addition, no banks or other market operator(s) finance part of the investments required or costs incurred for the restructuring of TAP SGPS. The documents submitted with the notification of the restructuring aid confirm that the beneficiary has negotiated [...] in firm and binding financial concessions from a wide range of partners (aircraft/part suppliers, lessors) and stakeholders (staff, other suppliers) already set out in binding agreements. Considering a total amount of restructuring costs of [...], this would result in an own contribution corresponding to only 36 % of the restructuring costs as a minimum, not including financial leases. That amount is significantly below the threshold set out by point 64 of the R&R Guidelines.

⁽²⁶⁾ According to the restructuring plan, without the State support, the beneficiary will reach negative cash position in 2021 and 2022.

⁽²⁷⁾ In the most adverse scenario, Portugal intends to provide the additional support in the form of an equity injection (see recital (26)b).

- (84) In line with point 64 of the R&R Guidelines, the Commission may accept a contribution that does not reach 50 % of the restructuring costs provided that the amount of that contribution remains significant and that the Member State demonstrates the existence of exceptional circumstances or particular hardship.
- (85) In this context, Portugal claims, first, that the amount of the own contribution may be increased up to [40-50 %], if, as a consequence of the implementation of the restructuring measures and the restructuring aid, TAP SGPS is able to access financial markets starting from [...] and if it can obtain further compensation for damage caused by travel restrictions and other containment measures linked to the COVID-19 outbreak under Article 107(2)(b) TFEU. In that regard, the Commission observes that any further compensation for damage would not be an aid free source of own contribution. Moreover, any future market funding that may affect the level of own contribution is at the present stage, hypothetical and, thus, cannot be considered as real and actual.
- (86) Second, Portugal observes that in the current circumstances, with an uncertain outlook in which the air transport industry is and will remain heavily affected by the direct and indirect effects of the COVID-19 outbreak, TAP SGPS is [...] at market terms supporting the restructuring plan, apart from [...] from new leases contracts. In that regard, the Commission notes examples of private investment in EU airlines during the challenging times of the COVID-19 outbreak, with examples of IAG, one of the biggest EU air carriers, Finnair and Air France with concomitance of public and private investment, including for compatible restructuring aid ⁽²⁸⁾. It is therefore dubious that no market funding could be obtained to reduce the amount of aid at any rate or for any amount.
- (87) [...], it must be noted that according to point 62 of the R&R Guidelines, the own contribution to the restructuring costs is required from own resources of the beneficiary, its shareholders or creditors. It is unclear whether, in that context, [...] that would be freeing resources for the implementation of the restructuring measures or to new market funding amounting to real and actual own contribution.
- (88) [...]. Subject to concrete and detailed explanations from Portugal, it is therefore doubtful that proper and satisfactory burden sharing accompanies the restructuring aid.
- (89) For all the above mentioned reason, the Commission has doubts at this stage that the restructuring aid is proportional, i.e., restricted to a minimum amount and in line with points 61, 62 to 64 and 65 to 69 of R&R Guidelines.

3.4.2.4. Negative effects

- (90) Pursuant to point 38(f) of the R&R Guidelines, when restructuring aid is granted, measures must be taken to limit distortions of competition, so that adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. To that effect, recipients of rescue or restructuring aid should in principle not have received similar aid in the past ten years. Moreover, when restructuring is granted, measures must be taken to limit distortions of competition, preferably structural in the form of divestments of self-standing activities favouring expansion of small competitors or cross-border activity.
- (a) One time last time principle
- (91) Under points 70 and 71 of the R&R Guidelines, aid can be granted to undertakings in difficulty in respect of only one rescue or restructuring operation. Therefore, where less than ten years have elapsed since rescue aid, restructuring aid or temporary restructuring support were granted to the beneficiary in the past, including any such aid granted before the entry into force of the R&R Guidelines and any non-notified aid, the Commission will not allow further aid (the 'one time, last time' principle).
- (92) During the last 10 years, TAP SGPS (or any of the entities that had exercised joint control over it for a certain period) did not benefit from any rescue or restructuring aid, apart from the EUR 1.2 billion rescue aid which has been approved by the Commission decision of 16 July 2021 and constitutes a part of the restructuring aid.
- (93) In April 2021, TAP Air Portugal benefitted from EUR 462 million damage compensation under Article 107(2)(b) TFEU. However, as noted in point 15 of the Temporary Framework, the principle of 'one time last time' of the R&R Guidelines does not cover aid that the Commission declares compatible under Article 107(2)(b) TFEU, since the latter type of aid is not 'rescue aid, restructuring aid or temporary restructuring support' within the meaning of point 71 of the R&R Guidelines.

⁽²⁸⁾ See also the case of French airline Corsair in December 2020, Commission decision C(2020) 9221 final of 11 December 2020 — Aide d'État SA.58463 (2020/N) –FR- Aide à la restructuration de Corsair (OJ C 41, 5.2.2021, p. 1).

(b) Measures limiting distortions of competition

- (94) As explained further in points 87 to 93 of the R&R Guidelines, competition measures should be set out in proportion to the distortive effects of the aid, and in particular: (i) to the size and the nature of the aid and the conditions and circumstances under which it is granted; (ii) to the size and relative importance of the beneficiary in the market and the characteristics of the market concerned and (iii) to the extent to which moral hazard concerns remain following the application of the own contribution and burden-sharing measures.
- (95) The structural measures might include divestment of assets, reducing capacity or market presence. They should favour the entry of new competitors, the expansion of existing small competitors or cross-border activity, taking into account the market or markets where the beneficiary will have a significant market position after the restructuring, in particular those with excess capacity. Behavioural measures should ensure that aid finances only the restoration of long-term viability.
- (96) In terms of divestments of assets and reduction of capacity or market presence, Portugal puts forward mainly the [...] (recital (24)d)). Portugal also contends that any commitment to divest slots at Lisbon airport would be premature, most probably unnecessary to ensure effective competition and could hamper the return to viability of TAP Air Portugal, and thus the beneficiary.
- (97) In that regard, the Commission notes, first, that according to point 78 of the R&R Guidelines, divestments, write-offs and closure of loss-making activities which would at any rate be necessary to restore long-term viability will generally not be considered sufficient to address distortions of competition. The Commission takes note of the data put forward in the restructuring plan showing losses in the activities [...]. In those circumstances, the Commission has doubts whether such divestitures of loss-making activities can be considered as measures that address the distortion of competition created by the restructuring aid, on the market or markets on which the beneficiary will have a significant position after the restructuring, and it also has doubts whether, even if they do constitute such measures, they be considered, combined with the behavioural measures put forward by Portugal (recital (36)), as sufficient to address any such distortion.
- (98) Second, the Commission observes that Portugal's statement on the premature and unnecessary character of slots divestiture is not based on any quantitative analysis demonstrating that such divestments would indeed jeopardise the return to viability of TAP Air Portugal. The fact remains that TAP Air Portugal holds a strong position on slots in the highly congested Lisbon airport.
- (99) Finally, the Commission notes that while TAP Air Portugal has reduced its capacities, there is no commitment in the restructuring plan that such lower capacity will be maintained during the entire restructuring period. To the contrary, TAP Air Portugal plans to increase its capacities in order to adjust to demand. While TAP Air Portugal intends to keep the overall capacity on a level below the level attained before the restructuring period, there is nothing that allows the Commission to verify that the newly created capacities will not be excessive.
- (100) Accordingly, the Commission doubts that the measures aimed at limiting the distortions of competition put forward by Portugal are sufficient to mitigate the distortive effect of substantial State support planned to be granted to TAP SGPS.

3.4.2.5. Transparency

- (101) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that Portugal must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that Portugal undertakes to respect those obligations. The relevant information will be made available on the website:

<https://www.portaldiplomatico.mne.gov.pt/sobre-nos/gestao-e-transparencia/documentos-legais>

3.4.2.6. Weighing up the positive effects of the aid with the negative effect on the internal market

- (102) An aid measure is adequately designed when it facilitates the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.
- (103) The Commission considers that the restructuring aid does not meet all the criteria set out in the R&R Guidelines and affects trading conditions to an extent contrary to the common interest (points 36, 38 and 39 of the R&R Guidelines).

(104) At this stage, the Commission doubts that the aid is proportionate and that negative effects on trade and competition in the internal market are mitigated to a sufficient extent.

3.5. *Conclusion on the compatibility of the restructuring aid*

(105) In the light of the findings above, the Commission concludes that, at this stage, the restructuring aid does not appear to meet the conditions of compatibility with the internal market pursuant to Article 107(3)(c) TFEU, in particular those set out in the R&R Guidelines.

4. **Conclusion**

In the light of the foregoing considerations, the Commission has accordingly decided, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, request the Portuguese Republic to submit, within one month of the date of receipt of this letter, its comments and to provide all such information as may help to assess the compatibility of the restructuring aid with all the conditions applicable.

The Commission requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately and wishes to remind the Portuguese Republic that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns the Portuguese Republic that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.
