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⁽¹⁾ Text with EEA relevance.

EN

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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/1219

of 17 May 2023

amending Delegated Regulation (EU) 2016/1675 as regards adding Nigeria and South Africa to the table in point I of the Annex and deleting Cambodia and Morocco from that table*(Text with EEA relevance)*

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) The Union has to ensure the effective protection of the integrity and proper functioning of its financial system and the internal market from money laundering and terrorist financing. Directive (EU) 2015/849 therefore provides that the Commission should identify high-risk third countries which have strategic deficiencies in their regimes on anti-money laundering and countering financing of terrorism (AML/CFT) that pose significant threats to the financial system of the Union.
- (2) Commission Delegated Regulation (EU) 2016/1675 ⁽²⁾ identifies high-risk third countries with strategic deficiencies.
- (3) Considering the high level of integration of the international financial system, the close connection of market operators, the high volume of cross-border transactions to and from the Union, as well as the degree of market openness, any AML/CFT threat posed to the international financial system is also a threat to the financial system of the Union.
- (4) In accordance with Article 9(4) of Directive (EU) 2015/849, the Commission takes into account recent available information, in particular the recent Financial Action Task Force (FATF) public statements, the FATF list of 'Jurisdictions under Increased Monitoring', and FATF reports of the International Cooperation Review Group in relation to the risks posed by individual third countries.

⁽¹⁾ OJ L 141, 5.6.2015, p. 73.

⁽²⁾ Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

- (5) Since the latest amendments to Delegated Regulation (EU) 2016/1675, the FATF has updated its list of 'Jurisdictions under Increased Monitoring'. At its plenary meeting in February 2023, the FATF added Nigeria and South Africa to that list and deleted Cambodia and Morocco from that list. Given those changes, the Commission has conducted an assessment for the identification of high-risk third countries in accordance with Article 9 of Directive (EU) 2015/849.
- (6) In February 2023, Nigeria made a high-level political commitment to work with the FATF and the *Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest* (GIABA), which is its FATF-style regional body (FSRB), to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its mutual evaluation report in August 2021, Nigeria has made progress on some of the actions recommended in that report to improve its system, including by improving its AML/CFT legislative framework and updating its assessment of inherent money laundering/terrorism financing/proliferation financing risks, and has strengthened its implementation of targeted financial sanctions. Nigeria will work to implement its FATF action plan by: (1) completing its residual money laundering/terrorism financing risk assessment and updating its national AML/CFT strategy to ensure alignment with other national strategies relevant to high-risk predicate offences; (2) enhancing formal and informal international cooperation in line with money laundering/terrorism financing risks; (3) improving AML/CFT risk-based supervision of financial institutions and designated non-financial businesses and professions, and enhancing implementation of preventive measures for high-risk sectors; (4) ensuring that competent authorities have timely access to accurate and up-to-date beneficial ownership information on legal persons, and applying sanctions for breaches of beneficial ownership obligations; (5) demonstrating an increase in the dissemination of financial intelligence by the Financial Intelligence Unit and its use by law enforcement authorities; (6) demonstrating a sustained increase in money laundering investigations and prosecutions in line with money laundering risks; (7) proactively detecting violations of currency declaration obligations, and applying appropriate sanctions and maintaining comprehensive data on frozen, seized, confiscated and disposed assets; (8) demonstrating a sustained increase in investigations and prosecutions of different types of terrorism financing activities in line with risk, and enhancing inter-agency cooperation on terrorism financing investigations; and (9) conducting risk-based and targeted outreach to non-profit organisations at risk of terrorism financing abuse and implementing risk-based monitoring for the subset of non-profit organisations that are at risk of terrorism financing abuse without disrupting or discouraging legitimate activities of non-profit organisations.
- (7) In February 2023, South Africa made a high-level political commitment to work with the FATF and the Eastern and Southern Africa AML Group (ESAAMLG), which is its FSRB, to strengthen the effectiveness of its AML/CFT regime. Since the adoption of its mutual evaluation report in June 2021, South Africa has made significant progress on many of the actions recommended in that report to improve its system, including by developing national AML/CFT policies to address higher risks and newly amending the legal framework for terrorism financing and targeted financial sanctions, among others. South Africa will work to implement its FATF action plan by: (1) demonstrating a sustained increase in outbound mutual legal assistance requests that help facilitate money laundering/terrorism financing investigations and confiscations of different types of assets in line with its risk profile; (2) improving risk-based supervision of designated non-financial businesses and professions, and demonstrating that all AML/CFT supervisors apply proportionate and effective sanctions for noncompliance; (3) ensuring that competent authorities have timely access to accurate and up-to-date beneficial ownership information on legal persons and arrangements, and applying sanctions for breaches of violation by legal persons to beneficial ownership obligations; (4) demonstrating a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre for its money laundering/terrorism financing investigations; (5) demonstrating a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of terrorism financing activities in line with its risk profile; (6) enhancing its identification, seizure and confiscation of proceeds and instrumentalities of a wider range of predicate crimes, in line with its risk profile; (7) updating its terrorism financing risk assessment to inform the implementation of a comprehensive national counter financing of terrorism strategy; and (8) ensuring the effective implementation of targeted financial sanctions and demonstrating an effective mechanism to identify individuals and entities that meet the criteria for domestic designation.

- (8) The Commission's assessment therefore concludes that Nigeria and South Africa should be considered as third-country jurisdictions which have strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the EU. Nigeria and South Africa should therefore be added to the table in point I of the Annex to Delegated Regulation (EU) 2016/1675.
- (9) The Commission has reviewed the progress in addressing the strategic deficiencies of Cambodia and Morocco. These are countries listed in Delegated Regulation (EU) 2016/1675 but deleted from the FATF list of 'Jurisdictions under Increased Monitoring' in February 2023.
- (10) The FATF has welcomed the significant progress made by Cambodia and Morocco in improving their AML/CFT regimes and has noted that these countries have established legal and regulatory frameworks to meet the commitments in their respective action plans on the strategic deficiencies identified by the FATF. Cambodia and Morocco are therefore no longer subject to the FATF's monitoring process under its ongoing global AML/CFT compliance process and will continue to work with their FSRBs to further strengthen their AML/CFT regimes.
- (11) As Cambodia and Morocco have strengthened the effectiveness of their AML/CFT regimes and addressed technical deficiencies to meet the commitments in their action plans on the strategic deficiencies identified by the FATF, the Commission's assessment of the available information leads it to conclude that Cambodia and Morocco no longer have strategic deficiencies in their AML/CFT regimes. It is therefore appropriate to delete Cambodia and Morocco from the table in point I of the Annex to Delegated Regulation (EU) 2016/1675.
- (12) Delegated Regulation (EU) 2016/1675 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Delegated Regulation (EU) 2016/1675, in point I, the table is replaced by the table in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 May 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

No	High-risk third country ⁽¹⁾
1	Afghanistan
2	Barbados
3	Burkina Faso
4	Cayman Islands
5	Democratic Republic of the Congo
6	Gibraltar
7	Haiti
8	Jamaica
9	Jordan
10	Mali
11	Mozambique
12	Myanmar
13	Nigeria
14	Panama
15	Philippines
16	Senegal
17	South Africa
18	South Sudan
19	Syria
20	Tanzania
21	Trinidad and Tobago
22	Uganda
23	United Arab Emirates
24	Vanuatu
25	Yemen

⁽¹⁾ Without prejudice to the legal position of the Kingdom of Spain with regard to sovereignty and jurisdiction in relation to the territory of Gibraltar.

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1220**of 16 June 2023****entering a name in the register of protected designations of origin and protected geographical indications ('Lesachtaler Brot' (PGI))**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Austria's application to register the name 'Lesachtaler Brot' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no reasoned statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Lesachtaler Brot' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Lesachtaler Brot' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 2.3. Bread, pastry, cakes, confectionery, biscuits and other baker's wares, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 June 2023.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 78, 2.3.2023, p. 31.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1221**of 19 June 2023****entering a name in the register of protected designations of origin and protected geographical indications ('Pită de Pecica' (PGI))**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Romania's application to register the name 'Pită de Pecica' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no reasoned statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Pită de Pecica' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Pită de Pecica' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 2.3. – Bread, pastry, cakes, confectionery, biscuits and other baker's wares, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 June 2023.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 80, 3.3.2023, p. 79.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1222**of 19 June 2023****approving non-minor amendments to the product specification for a name entered in the register of protected designations of origin and protected geographical indications ('Strachitunt' (PDO))**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Italy's application for the approval of amendments to the product specification for the protected designation of origin 'Strachitunt', registered under Commission Implementing Regulation (EU) No 244/2014 ⁽²⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*The amendments to the product specification published in the *Official Journal of the European Union* regarding the name 'Strachitunt' (PDO) are hereby approved.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 June 2023.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 244/2014 of 7 March 2014 entering a name in the register of protected designations of origin and protected geographical indications [Strachitunt (PDO)] (OJ L 74, 14.3.2014, p. 31).

⁽³⁾ OJ C 82, 6.3.2023, p. 8.

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1223**of 19 June 2023****approving non-minor amendments to the product specification for the protected geographical indication ‘Carota dell’Altopiano del Fucino’ (PGI)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) In accordance with Article 5(2) of Regulation (EU) 2021/2117 of the European Parliament and of the Council ⁽²⁾, the rules applicable before 7 December 2021 continue to apply to applications for approval of amendments to a product specification received by the Commission pursuant to Regulation (EU) No 1151/2012 before 8 June 2022.
- (2) On 15 April 2022 the Commission received from Italy an application for the approval of amendments to the product specification for the protected geographical indication ‘Carota dell’Altopiano del Fucino’, registered under Commission Regulation (EC) No 148/2007 ⁽³⁾, as amended by Implementing Regulation (EU) No 162/2014 ⁽⁴⁾.
- (3) The Commission has examined Italy’s application in accordance with Article 50(1) of Regulation (EU) No 1151/2012 in conjunction with the first subparagraph of Article 53(1) of that Regulation, as applicable before 7 December 2021.
- (4) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, as applicable before 7 December 2021, the Commission published the amendment application in the *Official Journal of the European Union* ⁽⁵⁾ as required by Article 50(2)(a) of that Regulation.
- (5) As no reasoned statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the product specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*The amendments to the product specification published in the *Official Journal of the European Union* regarding the protected geographical indication ‘Carota dell’Altopiano del Fucino’ are hereby approved.⁽¹⁾ OJ L 343, 14.12.2012, p. 1.⁽²⁾ Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union (OJ L 435, 6.12.2021, p. 262).⁽³⁾ Commission Regulation (EC) No 148/2007 of 15 February 2007 registering certain names in the Register of protected designation of origin and protected geographical indications (OJ L 46, 16.2.2007, p. 14).⁽⁴⁾ Commission Implementing Regulation (EU) No 162/2014 of 19 February 2014 approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Carota dell’Altopiano del Fucino (PGI)] (OJ L 52, 21.2.2014, p. 11).⁽⁵⁾ OJ C 80, 3.3.2023, p. 71.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 June 2023.

*For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission*

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1224**of 19 June 2023****approving non-minor amendments to the product specification for a name entered in the register of protected designations of origin and protected geographical indications ('Riviera Ligure' (PDO))**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Riviera Ligure', registered under Commission Regulation (EC) No 123/97 ⁽²⁾, as amended by Commission Regulation (EU) No 718/2011 ⁽³⁾.
- (2) Since the amendment in question is not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽⁴⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the product specification published in the *Official Journal of the European Union* regarding the name 'Riviera Ligure' (PDO) are hereby approved.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EC) No 123/97 of 23 January 1997 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ L 22, 24.1.1997, p. 19).

⁽³⁾ Commission Implementing Regulation (EU) No 718/2011 of 20 July 2011 approving a non-minor amendment to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Riviera Ligure (PDO)) (OJ L 193, 23.7.2011, p. 15).

⁽⁴⁾ OJ C 78, 2.3.2023, p. 14.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 19 June 2023.

*For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission*

COMMISSION DELEGATED REGULATION (EU) 2023/1225**of 22 June 2023****on temporary exceptional measures derogating from certain provisions of Regulation (EU) No 1308/2013 of the European Parliament and of the Council to address the market disturbance in the wine sector in certain Member States and derogating from Commission Delegated Regulation (EU) 2016/1149**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 219 in conjunction with Article 228 thereof,

Whereas:

- (1) The current economic situation is characterised by general high costs of living, which affect wine consumption and sales, and increased input costs for the agricultural production and wine processing, which affect wine prices. These circumstances threaten to disturb significantly the Union wine market as they affect several key producing Member States by increasing the available wine stocks to levels that risk becoming unsustainable in view of the forthcoming harvest and production season and by causing financial difficulties and cash-flow problems to wine producers.
- (2) The global inflation and the related reduction in purchase power of the consumers is further exacerbating the general declining trend observed in wine consumption in the last years. The apparent decline in consumption in the ongoing marketing year is estimated at 7 % in Italy, 10 % in Spain, 15 % in France, 22 % in Germany and 34 % in Portugal compared to the pre-COVID-19 market situation. This trend affects in particular certain wine market segments, namely red and rosé wines.
- (3) The figures available show a drop in wine sales in the current marketing year, consistent with the observed reduced domestic demand, e.g. a decline in sales amounting to 5,3 % in Spain and France, with some strongly affected areas where the sales dropped by 25 % to 35 % in comparison with the same period of the previous marketing year. In the meantime, Union wine exports for the period from January to April 2023 are 8,5 % lower than for the same period of 2022.
- (4) The general increase of key input costs for agricultural production such as costs for fertilisers, energy and bottles required for wine production, which is partially also due to the Russia's war of aggression against Ukraine, has led to an exceptional increase of production costs reaching in some Member States up to an estimated average increase of 30 % to 40 %. These circumstances are putting further pressure on Union wine producers and reducing their capacity for marketing actions and investments. Furthermore, in spite of the increasing costs along the full cycle of wine production, available data suggest an abrupt drop in prices for certain wines in the most affected by the crisis regions, compared to the pre-COVID-19 situation, for example a price decline in the range of 10 % to 26 % for some regions in France.
- (5) Combined, these factors point to a general reduction in the demand and sales of Union wines, in a context where production in the Union increased by 4 % in comparison with the previous marketing year, adding to an already high level of initial stocks (+ 2 % compared to the last 5-year average). If no action is taken rapidly to reduce the growing oversupply, the situation threatens to severely disturb the market by causing a major and general market imbalance at the latest with the arrival of the new harvest when wine producers will be left with no storage capacity for the new production and forced to sale at even lower prices.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

- (6) At this stage, the current market circumstances are generating disparate market disturbances to the wine sector in different production regions, due to the fact that the Union wine market is highly segmented. These are significant in certain regions of several Member States, and affect in particular the market segments of red and rosé wines. Examples that illustrate this fragmentation of the market are, for instance, 27 % higher stocks than the 5-year average in Extremadura in Spain, 24 % and 14 % higher stocks than in the previous year in the Lisbon and Alentejo regions in Portugal, respectively, and 26 % higher stocks for rosé wines at the beginning of the current marketing year than at the beginning of the previous one in Languedoc-Roussillon in France.
- (7) At the same time, the Union wine market has been already subject to aggravating conditions, in particular throughout years 2019, 2020 and 2021 as a consequence of past trade restrictions, a decrease in consumption during the COVID-19 pandemic and several extreme weather events. The current difficult circumstances are delivering a further blow to an already fragile sector and leading to significant losses of income for all actors therein. Wine growers in the most affected regions of Member States experience financial difficulties and cash-flow problems. Therefore, an immediate action is required also in this respect to efficiently respond to such heterogeneous market situation by allowing Member States to reorient part of the financial resources allocated to their national support programmes in the wine sector and to offer a more tailor-made support to the different actors in the sector.
- (8) Removing from the market of the most affected regions some of the quantities of wine that are not finding appropriate market outlets should help to address the market imbalances and prevent the current disturbances from turning into a more severe or prolonged disturbance of the entire Union wine sector. Where justified, the distillation of wine should be introduced temporarily as an eligible measure under the support programmes in the wine sector to help improve the market balance and the economic situation of wine producers in the most affected production regions. To avoid distortion of competition, the use of the obtained alcohol should not be permitted for the food and drink industry and should be limited to use for industrial purposes, including disinfection and pharmaceutical, and for energy purposes. To avoid any abuse or overcompensation following the implementation of this exceptional measure, it is pertinent to request Member States to target the measure to the regions with market imbalance, to base it on objective criteria and to limit to recent market prices the compensation that they will provide for.
- (9) The 'green harvesting' measure, as provided for in Article 47 of Regulation (EU) No 1308/2013, is used as a market management measure when an excessive production of grapes is expected. To help operators respond to the current market circumstances and to reduce the risk that the situation reproduces again in the upcoming marketing year, it is appropriate to allow certain flexibility in implementing this measure during the financial year 2023. In particular, it is necessary, as an exceptional measure, to provide for derogations from Article 47(1) and (3) of Regulation (EU) No 1308/2013 to allow the full destruction or removal of immature grape bunches on part of a holding, provided that this is carried out on entire parcels, and to provide for the temporary increase of the maximum Union contribution to this measure.
- (10) The addition of 'crisis distillation' to eligible measures as well as the flexibility introduced for 'green harvesting' represent a form of financial support, which, however, does not require additional Union financing since the budgetary limits for the national support programmes in the wine sector for the financial year 2023 laid down in Annex VII to Regulation (EU) 2021/2115 of the European Parliament and of the Council ⁽⁷⁾ continue to apply. Member States may thus decide to allocate higher amounts to the measures in question only within the yearly budget provided for in that Annex. The financial support to the two above mentioned crisis measures is aimed, therefore, at providing support to the sector in the given unstable market situation without having to mobilise additional funds in the first place.

⁽⁷⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

- (11) In order to increase the effectiveness of Union financial resources that can be allocated to these crisis measures, Member States should be allowed to complement the Union financial assistance with national payments covering up to 50 % of the support granted for the two crisis measures provided for in this Regulation.
- (12) The negative market development, the increase of costs and the consequent cash-flow problems of the operators in the wine sector are making difficult to execute the measures of the wine national support programs at a time when the improvement of market orientation of the sector is mostly necessary. To ensure the effectiveness of the implementation of programmes in the prevailing market and economic context of the wine sector, it is pertinent to temporarily increase the maximum Union contribution to the measures 'promotion', 'restructuring and conversion of vineyards', 'green harvesting' and 'investments'.
- (13) In addition, it is further important to provide beneficiaries with appropriate flexibilities for the implementation of their operations under the national support programmes so that they can react to the current market uncertainties and adapt the operations whenever needed. Such flexibilities represent a further market support measures to prevent the current economic disturbances from turning into a more severe or prolonged disturbance of the Union wine market and are ensuring that the other exceptional measures set out in this Regulation, once decided by a Member State, can be efficiently implemented also at the level of the beneficiaries. Therefore, as a further exceptional measure, it is necessary to derogate from Commission Delegated Regulation (EU) 2016/1149 ⁽³⁾ and allow Member States to provide some flexibilities to beneficiaries in order to adapt the planned operations following a simplified procedure and to allow their partial implementation in duly justified cases.
- (14) Provided that the reasons to apply increased Union financial rates for certain measures and to allow certain flexibilities in the management of the programmes relate to the current economic situation of the wine sector and because the measures are temporary, it is pertinent to limit their scope of application to operations that started to be implemented during the financial year 2023. By contrast, these measures should not apply, for instance, to operations implemented in previous financial years and only paid in financial year 2023.
- (15) For imperative grounds of urgency, considering the ongoing market disturbance as well as the short time available to Member States to implement the measures included in this Regulation within the current financial year, and to prevent further market deterioration, it is necessary to take immediate action. On the one hand, in the most affected regions, the excess of supply needs to be removed from the market as soon as possible and in any case before the start of the new harvest, by end of August or early September 2023, otherwise the market situation would further deteriorate and the current imbalance would be carried over into the new marketing year threatening to cause a prolonged crisis of the entire Union wine market. On the other hand, all the measures included in this Regulation, have to be implemented before the end of the current wine national support programmes, which apply only until 15 October 2023 as provided for in Article 5(7) of Regulation (EU) 2021/2117 of the European Parliament and of the Council ⁽⁴⁾. Pursuant to that provision, Articles 39 to 54 of Regulation (EU) No 1308/2013 continue to apply after 31 December 2022 as regards expenditure incurred and payments made for operations implemented before 16 October 2023. Therefore, delaying action would risk making difficult or even impossible for the affected Member States to implement the measures within the financial year 2023, which is the last implementation year of the current national support programmes in the wine sector.
- (16) In view of the above-referred imperative grounds of urgency, this Regulation should be adopted pursuant to the urgency procedure laid down in Article 228 of Regulation (EU) No 1308/2013.

⁽³⁾ Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector and amending Commission Regulation (EC) No 555/2008 (OJ L 190, 15.7.2016, p. 1).

⁽⁴⁾ Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union (OJ L 435, 6.12.2021, p. 262).

- (17) In view of the necessity to take immediate action, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

Temporary derogations from Article 43 and Article 44(3) of Regulation (EU) No 1308/2013

1. By way of derogation from Article 43 of Regulation (EU) No 1308/2013, the measure set out in Article 2 of this Regulation may be financed under support programmes in the wine sector.
2. By way of derogation from Article 44(3) of Regulation (EU) No 1308/2013, Member States may finance with national payments up to 50 % of the support granted under Article 2 of this Regulation and under Article 47 of Regulation (EU) No 1308/2013.

Article 2

Temporary crisis distillation of wine

1. Support may be granted for the distillation of wine in accordance with the conditions laid down in this Article. Such support shall be proportionate, duly justified by the Member State and targeted to the most affected wines and production regions, in accordance with the second subparagraph. It may be implemented at national or regional level for red or rosé wines, separately or for both colours together, which can be wines with a protected designation of origin or a protected geographical indication or wines without a protected designation of origin or a protected geographical indication.

The Member States, which decide to implement this measure, shall demonstrate for each type and colour of eligible wine, either at regional or at national level, as appropriate, the occurrence of one or more of the following market circumstances:

- (a) a substantial increase on the latest available wine stocks at production level compared to the average amount of stocks for the same time in the previous 5 marketing years, or compared to the average amount of stocks for the same time in the 5 previous marketing years excluding the highest and the lowest values;
- (b) a substantial decrease of the average market price at production level for the ongoing marketing year compared to the average price of the 3 previous marketing years, or compared to the average price over the 5 previous marketing years excluding the highest and the lowest values of yearly averages;
- (c) a substantial decrease of cumulated market sales at production level for the ongoing marketing year compared to the average of the 3 previous marketing years for the same period, or compared to the average over the 5 previous marketing years, excluding the highest and the lowest values of cumulated sales for the same period, and provided such a decrease does not result from a decrease in production.

2. The alcohol resulting from the supported distillation referred to in paragraph 1 shall be used exclusively for industrial purposes, including disinfection or pharmaceutical, or for energy purposes so as to avoid distortion of competition.

3. The beneficiaries of the support referred to in paragraph 1 shall be wine enterprises producing or marketing the products referred to in Part II of Annex VII to Regulation (EU) No 1308/2013, wine producer organisations, associations of two or more producers, interbranch organisations or distillers of grapevine products.

4. Only the costs of the supply of wine to distillers and of the distillation of this wine shall be eligible for support. The wine to be distilled under this measure shall be originating in the Union and shall conform to the requirements to be marketed within the Union and to the relevant product specifications for wines bearing a protected designation of origin or a protected geographical indication.

5. Member States may establish in their national support programmes priority criteria for the beneficiaries. Such priority criteria shall be based on the specific strategy and objectives set out in the support programme and shall be objective and not discriminatory.

6. Member States shall lay down rules on the application procedure for the support referred to in paragraph 1, which shall include rules on:

- (a) the natural or legal persons that may submit applications;
- (b) the submission and selection of applications, which shall include at least the deadlines for the submission of applications, for the examination of the suitability of each proposed action and for the notification of the results of the selection procedure to the operators;
- (c) the verification of compliance with the provisions on eligible actions and the costs referred to in paragraph 4 and priority criteria where priority criteria are applied;
- (d) the selection of the applications, which shall at least include the weighting attributed to each priority criterion where priority criteria are applied;
- (e) arrangements for the payment of advances and the provision of securities.

7. Member States shall fix the amount of support to beneficiaries based on objective and non-discriminatory criteria. The amount of support shall be fixed at regional or national level, as appropriate, for each type and colour of eligible wine as referred to in paragraph 1. The amount of support cannot exceed 80 % of the lowest monthly average price recorded at production level in the marketing year 2022/2023 for each type and colour of eligible wine, for which the measure applies, in the given region or in the territory of the Member State. Where recorded market prices are not available, they may be estimated by a competent authority of the Member State concerned based on the best available data.

8. Articles 1 and 2, Article 43 and Articles 48 to 54 and Article 56 of Commission Delegated Regulation (EU) 2016/1149 ⁽⁵⁾ and Articles 1, 2 and 3, Articles 19 to 23, Articles 25 to 31, Article 32(1), second subparagraph, and Articles 33 to 40 of Commission Implementing Regulation (EU) 2016/1150 ⁽⁶⁾ shall apply *mutatis mutandis* to the support for crisis distillation of wine.

9. By 31 August 2023, Member States shall notify to the Commission the types and colour of eligible wine and the regions, in which the measure is to apply, as well as its justification in accordance with paragraph 1, the amounts of compensation to be applied in accordance with paragraph 7 and their justification and the volumes expected to be distilled.

Article 3

Temporary derogation from Article 47(1) of Regulation (EU) No 1308/2013 on green harvesting

By way of derogation from Article 47(1) of Regulation (EU) No 1308/2013, during the financial year 2023, 'green harvesting' means the total destruction or removal of grape bunches while still in their immature stage, on the whole holding or on part of the holding provided that the green harvesting is carried out on entire parcels.

⁽⁵⁾ Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector and amending Commission Regulation (EC) No 555/2008 (OJ L 190, 15.7.2016, p. 1).

⁽⁶⁾ Commission Implementing Regulation (EU) 2016/1150 of 15 April 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector (OJ L 190, 15.7.2016, p. 23).

*Article 4***Temporary derogations from Article 45(3), Article 46(6), Article 47(3) and Article 50(4) of Regulation (EU) No 1308/2013 on financial rates**

1. By way of derogation from Article 45(3) of Regulation (EU) No 1308/2013, during the financial year 2023, the Union contribution to information or promotion measures shall not exceed 60 % of the eligible expenditure.
2. By way of derogation from Article 46(6) of Regulation (EU) No 1308/2013, during the financial year 2023, the Union contribution to the actual costs of the restructuring and conversion of vineyards shall not exceed 60 %. In less developed regions, the Union contribution to the costs of restructuring and conversion shall not exceed 80 %.
3. By way of derogation from Article 47(3), second sentence, of Regulation (EU) No 1308/2013, during the financial year 2023, the support granted for green harvesting shall not exceed 60 % of the sum of the direct costs of the destruction or removal of grape bunches and the loss of revenue related to such destruction or removal.
4. By way of derogation from Article 50(4) of Regulation (EU) No 1308/2013, during the financial year 2023, the following maximum aid rates concerning the eligible investment costs shall apply to the Union contribution:
 - (a) 60 % in less developed regions;
 - (b) 50 % in regions other than less developed regions;
 - (c) 80 % in the outermost regions referred to in Article 349 of the Treaty;
 - (d) 75 % in the smaller Aegean islands as defined in Article 1(2) of Regulation (EU) No 229/2013 of the European Parliament and of the Council ⁽⁷⁾.

*Article 5***Temporary derogations from Delegated Regulation (EU) 2016/1149**

1. By way of derogation from Article 22 of Delegated Regulation (EU) 2016/1149, during the financial year 2023, green harvesting may be applied on the same parcel for 2 or more consecutive years.
2. By way of derogation from Article 53(1) of Delegated Regulation (EU) 2016/1149, during the financial year 2023:
 - (a) Member States may allow changes by beneficiaries to the initially approved operation that occur not later than 15 October 2023, to be implemented without prior approval by the competent authorities provided that they do not affect the eligibility of any part of the operation and its overall objectives and provided that the total amount of approved support for the operation is not exceeded. Such changes shall be notified to the competent authority by the beneficiaries within the deadlines set by the Member States;
 - (b) Member States may, in duly justified cases, allow beneficiaries to submit changes that occur not later than 15 October 2023 and that modify the objective of the overall operation already approved under the measures referred to in Articles 45, 46, 50 and 51 of Regulation (EU) No 1308/2013, provided that any ongoing individual actions which are part of an overall operation are completed. Such changes shall be notified to the competent authority by the beneficiaries within the deadline set by the Member States, and shall require the prior approval of the competent authority.

⁽⁷⁾ Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006 (OJ L 78, 20.3.2013, p. 41).

3. By way of derogation from Article 54(1) of Delegated Regulation (EU) 2016/1149, where a change to an already approved operation has been notified to and approved by the competent authority in accordance with paragraph 2, point (b), of this Article, support shall be paid for the individual actions already implemented under this operation if these actions have been implemented in full and have been subject to administrative and, where applicable, on-the-spot checks in accordance with Chapter IV, Section 1, of Commission Implementing Regulation (EU) 2016/1150 ⁽⁸⁾.

4. By way of derogation from Article 54(4), third, fourth, fifth and sixth subparagraphs, of Delegated Regulation (EU) 2016/1149, during the financial year 2023, for payment claims submitted not later than 15 October 2023, where operations supported under Article 46 of Regulation (EU) No 1308/2013 are not implemented on the total surface for which support was requested, Member States shall calculate the support to be paid on the basis of the area determined by the on-the-spot checks following implementation.

Article 6

Application of the temporary exceptional market measures

Articles 1, 2 and 3 shall apply to operations selected by the competent authorities in the Member States as of the date of entry into force of this Regulation and implemented not later than 15 October 2023.

Articles 4 and 5 shall apply to operations that started to be implemented in financial year 2023.

Article 7

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁸⁾ Commission Implementing Regulation (EU) 2016/1150 of 15 April 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector (OJ L 190, 15.7.2016, p. 23).

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1226**of 22 June 2023****amending Annexes V, XIV and XV to Implementing Regulation (EU) 2021/404 as regards the entries for Canada, Chile and the United Kingdom in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ⁽¹⁾, and in particular Articles 230(1) and 232(1) and (3) thereof.

Whereas:

- (1) Regulation (EU) 2016/429 provides that consignments of animals, germinal products and products of animal origin must come from a third country or territory, or zone or compartment thereof, listed in accordance with Article 230(1) of that Regulation in order to enter the Union.
- (2) Commission Delegated Regulation (EU) 2020/692 ⁽²⁾ lays down the animal health requirements that consignments of certain species and categories of animals, germinal products and products of animal origin, from third countries or territories, or zones thereof, or compartments thereof in the case of aquaculture animals, must comply with in order to enter the Union.
- (3) Commission Implementing Regulation (EU) 2021/404 ⁽³⁾ establishes the lists of third countries, or territories, or zones or compartments thereof, from which the entry into the Union of the species and categories of animals, germinal products and products of animal origin falling within the scope of Delegated Regulation (EU) 2020/692 is permitted.
- (4) More particularly, Annexes V and XIV to Implementing Regulation (EU) 2021/404 set out the lists of third countries, or territories, or zones thereof authorised for the entry into the Union, respectively, of consignments of poultry, germinal products of poultry, and of fresh meat of poultry and game birds.
- (5) Chile has notified the Commission of one outbreak of highly pathogenic avian influenza (HPAI) in poultry in the region of Metropolitana, which was confirmed on 4 June 2023 by laboratory analysis (RT-PCR).
- (6) Following this recent outbreak of HPAI, the veterinary authorities of Chile established a restricted zone of at least 10 km around the affected establishment and implemented a stamping-out policy in order to control the presence of HPAI and limit the spread of that disease.
- (7) Chile has submitted information to the Commission on the epidemiological situation on its territory and the measures taken to prevent the further spread of HPAI.

⁽¹⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2020/692 of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin (OJ L 174, 3.6.2020, p. 379).

⁽³⁾ Commission Implementing Regulation (EU) 2021/404 of 24 March 2021 laying down the lists of third countries, territories or zones thereof from which the entry into the Union of animals, germinal products and products of animal origin is permitted in accordance with Regulation (EU) 2016/429 of the European Parliament and of the Council (OJ L 114, 31.3.2021, p. 1).

- (8) That information has been evaluated by the Commission. The Commission considers that, in view of the animal health situation in the area under restrictions established by the veterinary authorities of Chile, the entry into the Union of consignments of poultry, germinal products of poultry, and fresh meat of poultry and game birds from that area should be suspended, in order to protect the animal health status of the Union.
- (9) Canada and the United Kingdom have provided updated information in relation to situations that gave rise to the suspension of the entry of some products into the Union.
- (10) In particular, Canada has submitted updated information on the epidemiological situation on its territory in relation to two outbreaks of HPAI in poultry establishments in the provinces of Ontario and Quebec, which were confirmed on 5 April 2023 and 18 April 2023, respectively.
- (11) In addition, the United Kingdom has submitted updated information on the epidemiological situation on its territory in relation to four outbreaks of HPAI in poultry establishments in the counties of Powys in Wales (3) and South Yorkshire in England (1), United Kingdom, which were confirmed between 13 April 2023 and 29 April 2023.
- (12) Canada and the United Kingdom have also submitted information on the measures they have taken to prevent the further spread of HPAI. In particular, following those outbreaks of that disease, Canada and the United Kingdom have implemented a stamping out policy in order to control and limit the spread of that disease, and they have also completed the requisite cleaning and disinfection following the implementation of the stamping out policy on the infected poultry establishments on their territories.
- (13) The Commission has evaluated the information submitted by Canada and the United Kingdom. The Commission considers that Canada and the United Kingdom have provided appropriate guarantees that the animal health situation that gave rise to the suspensions, no longer represents a threat to animal or public health within the Union, and that, consequently, the entry into the Union of poultry commodities from the zones of those countries from which entry into the Union had been suspended should be reauthorised.
- (14) Annexes V and XIV to Implementing Regulation (EU) 2021/404 should be therefore amended to take account of the current epidemiological situation as regards HPAI in Canada, Chile and the United Kingdom.
- (15) In addition, Commission Implementing Regulation (EU) 2022/215 (*) amended Annex V and Annex XIV to Implementing Regulation (EU) 2021/404 by adding zone CA-2.1 to the entries for Canada in Annex V and in Annex XIV. As one error has been detected, the row for the zone CA-2 in Part 2 of Annex V should be corrected accordingly.
- (16) Furthermore, entries in Part 1, Section A of Annex XV to Implementing Regulation (EU) 2021/404 have been frequently amended. For clarity reasons, this section in Annex XV should be replaced as a whole.
- (17) Taking into account the current epidemiological situation in Canada, Chile and the United Kingdom as regards HPAI and the serious risk of its introduction into the Union, the amendments to be made to Annexes V and XIV to Implementing Regulation (EU) 2021/404 by this Regulation should take effect as a matter of urgency.
- (18) The correction for the entry for Canada in the row for the zone CA-2 in Part 2 of Annex V to Implementing Regulation (EU) 2021/404 should apply from the date of application of Implementing Regulation (EU) 2022/215.
- (19) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

(*) Commission Implementing Regulation (EU) 2022/215 of 17 February 2022 amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for Canada and the United States of America in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds (OJ L 37, 18.2.2022, p. 28).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2021/404

Annexes V XIV and XV to Implementing Regulation (EU) 2021/404 are amended in accordance with the Annex to this Regulation.

Article 2

Correction to Implementing Regulation (EU) 2021/404

In Annex V, Part 2 in the entry for Canada, the row for the description of zone CA-2 is replaced by the following:

'Canada	CA-2	Territory of Canada corresponding to:';
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Article 3

Entry into force and applicability

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. However, Article 2 shall apply from 19 February 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Annexes V and XIV to Implementing Regulation (EU) 2021/404 are amended as follows:

(1) Annex V is amended as follows:

(a) in Part 1, Section B is amended as follows:

(i) in the entry for Canada, the row for the zone CA-2.181 is replaced by the following:

'CA Canada	CA-2.181	BPP, BPR, DOC, DOR, SP, SR, POU-LT20, HEP, HER, HE-LT20	N, P1		5.4.2023	14.6.2023'
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(ii) in the entry for Canada, the row for the zone CA-2.187 is replaced by the following:

'CA Canada	CA-2.187	87BPP, BPR, DOC, DOR, SP, SR, POU-LT20, HEP, HER, HE-LT20	N, P1		18.4.2023	14.6.2023'
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(iii) in the entry for Chile, following row for the zone CL-2.11 is added after the row for the zone CL-2.10:

'CL Chile	CL-2.11	BPP, BPR, DOC, DOR, SP, SR, POU-LT20, HEP, HER, HE-LT20	N, P1		4.6.2023'	
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(iv) in the entry for the United Kingdom, the row for the zone GB-2.298 is replaced by the following:

'GB United Kingdom	GB-2.298	BPP, BPR, DOC, DOR, SP, SR, POU-LT20, HEP, HER, HE-LT20	N, P1		13.4.2023	7.6.2023'
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(v) in the entry for the United Kingdom, the rows for the zones GB-2.300, GB-2.301 and GB-2.302 are replaced by the following:

'GB United Kingdom	GB-2.300	BPP, BPR, DOC, DOR, SP, SR, POU-LT20, HEP, HER, HE-LT20	N, P1		23.4.2023	7.6.2023
	GB-2.301		N, P1		27.4.2023	7.6.2023
	GB-2.302		N, P1		29.4.2023	7.6.2023'

(b) in Part 2, in the entry for Chile, the following description of the zone CL-2.11 is added after the description of the zone CL-2.10:

'Chile	CL-2.11	Metropolitana Region, Province of Melipilla, Commune of San Pedro Latitude -33.9728 Longitude -71.2964 PZ: Communities: Santa Rosa de la Sierra, Lo Chacón and Las Palmas SZ: Communities: Santa Rosa de la Sierra, El Membrillo, El Ajial, San Vicente, El Peumo and Longovilo'
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(2) in Annex XIV, in Part 1, Section B is amended as follows:

(i) in the entry for Canada, the rows for the zone CA-2.181 are replaced by the following:

'CA Canada	CA-2.181	POU, RAT	N, P1		5.4.2023	14.6.2023
		GBM	P1		5.4.2023	14.6.2023'

(ii) in the entry for Canada, the rows for the zone CA-2.187 are replaced by the following:

'CA Canada	CA-2.187	POU, RAT	N, P1		18.4.2023	14.6.2023
		GBM	P1		18.4.2023	14.6.2023'

(iii) in the entry for Chile, the following rows for the zone CL-2.11 are added after the rows for the zone CL-2.10:

'CL Chile	CL-2.11	POU, RAT	N, P1		4.6.2023	
		GBM	P1		4.6.2023'	

(iv) in the entry for the United Kingdom, the rows for the zone GB-2.298 are replaced by the following:

'GB United Kingdom	GB-2.298	POU, RAT	N, P1		13.4.2023	7.6.2023
		GBM	P1		13.4.2023	7.6.2023'

(v) in the entry for the United Kingdom, the rows for the zones GB-2.300, GB-2.301 and GB-2.302 are replaced by the following:

'GB United Kingdom	GB-2.300	POU, RAT	N, P1		23.4.2023	7.6.2023
		GBM	P1		23.4.2023	7.6.2023
	GB-2.301	POU, RAT	N, P1		27.4.2023	7.6.2023
		GBM	P1		27.4.2023	7.6.2023
	GB-2.302	POU, RAT	N, P1		29.4.2023	7.6.2023
		GBM	P1		29.4.2023	7.6.2023'

(3) in Part 1 of Annex XV, Section A is replaced by the following:

Section A: List of third countries, territories or zones thereof authorised for the entry into the Union of consignments of processed meat products which have undergone the non-specific risk-mitigating treatment A (*) or treatments B, C or D for meat products (in accordance with Annex XXVI to Delegated Regulation (EU) 2020/692) required for each species of origin of the meat

ISO code and name of the third country or territory	Zone as set out in Part 2	Species of origin of the processed meat, cf. the definitions referred to in Article 2											
		Bovine animals	Ovine and caprine animals	Porcine animals	Farmed game ungulates (except porcine animals)	Farmed game porcine animals (except domestic breeds of porcine animals)	Wild game ungulates (except porcine animals)	Wild game porcine animals (except domestic breeds of porcine animals)	Poultry other than ratites	Ratites	Wild Game birds	Animal health certificates	Specific conditions as set out in Part 3
1	2	3	4	5	6	7	8	9	10	11	12	13	14
AR Argentina	AR-0	C	C	C	C	C	C	C	D	D	D	MPST	
	AR-1	C	C	C	C	C	C	C	D	D	D	MPST	
	AR-2	A	A	C	A	A	C	C	D	D	D	MPNT (**) MPST	
AU Australia	AU-0	A	A	A	A	A	A	A	D	D	D	MPNT (**) MPST	
BA Bosnia and Herzegovina	BA-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	A	Not authorised	Not authorised	MPNT (**) MPST	
BH Bahrain	BH-0	B	B	B	B	B	C	C	Not authorised	Not authorised	Not authorised	MPST	
BR Brazil	BR-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	D	D	D	MPST	
	BR-1	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	D	A	A	MPNT (**) MPST	

	BR-2	C	C	C	C	C	C	Not authorised	D	D	D	MPST	
	BR-3	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	A	D	D	MPNT (**) MPST	
	BR-4	B	Not authorised	Not authorised	B	Not authorised	Not authorised	Not authorised	D	D	D	MPST	
BW Botswana	BW-0	B	B	B	B	B	B	B	Not authorised	D	Not authorised	MPST	
BY Belarus	BY-0	C	C	C	C	C	C	C	Not authorised	Not authorised	Not authorised	MPST	
CA Canada	CA-0	A	A	A	A	A	A	A	Not authorised	Not authorised	Not authorised	MPNT (**) MPST	
	CA-1	A	A	A	A	A	A	A	A	A	A	MPNT (**) MPST	
	CA-2	A	A	A	A	A	A	A	D	D	D	MPNT (**) MPST	
CH Switzerland	CH-0	Subject to the Agreement referred to in point 7 of Annex I											
CL Chile	CL-0	A	A	A	A	A	B	B	Not authorised	Not authorised	Not authorised	MPNT (**) MPST	
	CL-1	A	A	A	A	A	B	B	A	A	A	MPNT (**) MPST	
	CL-2	A	A	A	A	A	B	B	D	D	D	MPNT (**) MPST	
CN China	CN-0	B	B	B	B	B	B	B	B	B	B	MPST	
	CN-1	B	B	B	B	B	B	B	D	B	B	MPST	

CO Colombia	CO-0	B	B	B	B	B	B	B	Not authorised	A	Not authorised	MPNT (**) MPST	
ET Ethiopia	ET-0	B	B	B	B	B	B	B	Not authorised	Not authorised	Not authorised	MPST	
GB United Kingdom	GB-0	A	A	A	A	A	A	A	Not authorised	Not authorised	Not authorised	MPNT (**) MPST	
	GB-1	A	A	A	A	A	A	A	A	A	A	MPNT (**) MPST	
	GB-2	A	A	A	A	A	A	A	D	D	D	MPNT (**) MPST	
GG Guernsey	GG-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised		
GL Greenland	GL-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	A	MPNT (**) MPST	
HK Hong Kong	HK-0	B	B	B	B	B	B	B	D	D	Not authorised	MPST	
IL Israel	IL-0	B	B	B	B	B	B	B	D	D	D	MPST	
IM Isle of Man	IM-0	Not authorised	A	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	MPNT (**) MPST	
IN India	IN-0	B	B	B	B	B	B	B	Not authorised	Not authorised	Not authorised	MPST	
JE Jersey	JE-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised		

[illegible]

MY-1	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	D	D	D	MPST		
NA Namibia	NA-0	B	B	B	B	B	B	B	D	A	D	MPNT (**) MPST	
NC New Caledonia	NC-0	A	Not authorised	Not authorised	A	Not authorised	A	Not authorised	Not authorised	Not authorised	Not authorised	MPNT (**) MPST	
NZ New Zealand	NZ-0	A	A	A	A	A	A	A	A	A	A	MPNT (**) MPST	
PM Saint Pierre et Miquelon	PM-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	D	Not authorised	Not authorised	MPST	
PY Paraguay	PY-0	C	C	C	C	C	C	C	Not authorised	Not authorised	Not authorised	MPST	
RS Serbia	RS-0	A	A	B or C	A	D	D	D	D	D	Not authorised	MPNT (**) MPST	
RU Russia	RU-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	C	C	D	Not authorised	Not authorised	MPST	
	RU-2	C or D1	C or D1	C or D1	C or D1	C or D1	C	C	D	Not authorised	Not authorised	MPST	
SG Singapore	SG-0	B	B	B	B	B	B	B	D	D	Not authorised	MPST	

SZ Eswatini	SZ-0	B	B	B	B	B	B	B	Not authorised	Not authorised	Not authorised	MPST	
TH Thailand	TH-0	B	B	B	B	B	B	B	A	A	D	MPNT (**) MPST	
TN Tunisia	TN-0	C	C	B	C	B	B	B	A	A	D	MPNT (**) MPST	
TR Turkey	TR-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	D	D	D	MPST	
UA Ukraine	UA-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised		
	UA-1	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	A	A	A	MPNT (**) MPST	
	UA-2	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	D	D	D	MPST	
US United States	US-0	A	A	A	A	A	A	A	Not authorised	Not authorised	Not authorised	MPNT (**) MPST	
	US-1	A	A	A	A	A	A	A	A	A	A	MPNT (**) MPST	
	US-2	A	A	A	A	A	A	A	D	D	D	MPNT (**) MPST	
UY Uruguay	UY-0	C	C	B	C	B	Not authorised	Not authorised	D	A	D	MPNT (**) MPST	
XK Kosovo	XK-0	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	Not authorised	C or D	Not authorised	Not authorised	MPST	1

ZA South Africa	ZA-0	C	C	C	C	C	C	C	D	D	D	MPST	
ZW Zimbabwe	ZW-0	C	C	B	C	B	B	B	D	D	D	MPST	

(*) "A" means that none of the risk-mitigating treatments B, C or D (in accordance with Annex XXVI to Delegated Regulation (EU) 2020/692) are required.
(**) Only for those commodities with treatment "A" assigned.'

DECISIONS

COUNCIL DECISION (EU) 2023/1227

of 20 June 2023

on the position to be taken on behalf of the European Union within the Commission established by the Convention for the Protection of the Marine Environment of the North-East Atlantic as regards amendments to OSPAR Decision 2021/01 on the establishment of the North Atlantic Current and Evlanov Sea basin Marine Protected Area and OSPAR Recommendation 2021/01 on the Management of the North Atlantic Current and Evlanov Sea basin Marine Protected Area

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention for the Protection of the Marine Environment of the North-East Atlantic ⁽¹⁾ ('the Convention'), to which the Union is a Contracting Party, entered into force on 25 March 1998.
- (2) Pursuant to Article 10(3) of the Convention, the Commission established by Article 10(1) of the Convention ('the OSPAR Commission') is able to adopt decisions and recommendations in accordance with Article 13 of the Convention.
- (3) During the ministerial segment of its 24th annual meeting on 1 October 2021, the OSPAR Commission adopted OSPAR Decision 2021/01 on the establishment of the North Atlantic Current and Evlanov Sea basin Marine Protected Area ('OSPAR Decision 2021/01') and OSPAR Recommendation 2021/01 on the Management of the North Atlantic Current and Evlanov Sea basin Marine Protected Area ('OSPAR Recommendation 2021/01'). At the same time, it was also decided that the conservation scope of the North Atlantic Current and Evlanov Sea basin Marine Protected Area ('the NACES MPA') would need to be reviewed, with a view to expanding it.
- (4) A review of the conservation scope of the NACES MPA has been carried out and has resulted in two proposed acts of the OSPAR Commission: a decision amending OSPAR Decision 2021/01 and a recommendation amending OSPAR Recommendation 2021/01. The OSPAR Commission is to adopt the envisaged decision and the envisaged recommendation during its 26th regular meeting on 26 June 2023.
- (5) The envisaged decision of the OSPAR Commission extends the conservation scope of the existing NACES MPA and indicates the geographical coordinates (latitude and longitude) of its boundaries.
- (6) The envisaged recommendation of the OSPAR Commission aims to guide Contracting Parties in their actions and in the adoption of measures to achieve the revised conservation objectives, in accordance with the extended conservation scope of the envisaged decision.
- (7) As there is a close link between the two envisaged OSPAR Commission acts, it is appropriate for them to be covered by the same position of the Union.

⁽¹⁾ OJ L 104, 3.4.1998, p. 2.

- (8) The envisaged acts relate to the protection of the environment, which is a shared competence between the Union and its Member States under Article 4(2), point (e), of the Treaty. The envisaged acts do not fall within an area which is largely covered by Union rules concerning such protection. The Union does not intend to make use of the possibility to exercise its external competence with regard to areas covered by those acts in relation to which its competence has not yet been exercised internally.
- (9) It is appropriate to establish the position to be taken on the Union's behalf within the OSPAR Commission with regard to the proposed amendments to OSPAR Decision 2021/01 and OSPAR Recommendation 2021/01, as the decision to be taken by the OSPAR Commission will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 26th meeting of the OSPAR Commission shall be to support the adoption of a decision amending OSPAR Decision 2021/01 on the establishment of the North Atlantic Current and Evlanov Sea basin Marine Protected Area as regards the extension of its conservation scope, and to support the adoption of a recommendation amending OSPAR Recommendation 2021/01 on the Management of the North Atlantic Current and Evlanov Sea basin Marine Protected Area as regards the extension of its conservation objectives.

Article 2

Refinement of the position referred to in Article 1 may be agreed to, in the light of developments at the 26th meeting of the OSPAR Commission, by the representatives of the Union, in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 20 June 2023.

For the Council
The President
R. POURMOKHTARI

COMMISSION IMPLEMENTING DECISION (EU) 2023/1228**of 7 June 2023****on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to the award of contracts for the activity related to express parcel delivery services in Lithuania***(notified under document C(2023)3641)***(Only the Lithuanian text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC ⁽¹⁾, and in particular Article 35(3) thereof,

After consulting the Advisory Committee for Public Contracts,

Whereas:

1. FACTS

- (1) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee for Public Contracts.
- (2) On 6 January 2023 Lietuvos paštas, AB ('the applicant') submitted a request to the Commission pursuant to Article 35(1) of Directive 2014/25/EU ('the request'). The request complies with the formal requirements set out in Article 1(1) of Commission Implementing Decision (EU) 2016/1804 ⁽²⁾ and in Annex I to that Implementing Decision.
- (3) The applicant is a postal service provider in Lithuania and a contracting entity within the meaning of Article 4(2) of Directive 2014/25/EU. The applicant is the only contracting entity in Lithuania providing postal services within the meaning of Article 13(2), point (b), of Directive 2014/25/EU. The request concerns certain postal services, as referred to in Article 13(1)(a) of Directive 2014/25/EU, provided by the applicant in the territory of Lithuania, in particular, express parcel delivery services ⁽³⁾. Standard parcel delivery services are not subject matter of the Request. The applicant provides express parcel delivery services under brand name 'LP Express', which include delivery of parcels from a pick-up point (e.g., clients' home, business place, pick-up parcel locker) to a delivery point specified by the client (home, office, post office or pick-up parcel lockers) ⁽⁴⁾.
- (4) The request was not accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the condition for the applicability of Article 34(1) of Directive 2014/25/EU to the activity concerned, in accordance with paragraphs 2 and 3 of that Article. In accordance with point 1(a) of Annex IV to Directive 2014/25/EU, considering that free access to the market can be presumed on the basis of Article 34(3), first subparagraph, of that Directive, the Commission is to adopt an Implementing Decision on the request within 105 working days.

⁽¹⁾ OJ L 94, 28.3.2014, p. 243.

⁽²⁾ Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 275, 12.10.2016, p. 39).

⁽³⁾ Request, point 6.

⁽⁴⁾ Request, point 6.

- (5) Following a request by the Commission on 13 February 2023, the applicant submitted additional information on 20 February 2023. On 23 February 2023, the Commission submitted an additional request for information to the applicant. On the same day, the Commission sent a request for information to the Lithuanian authorities. The applicant submitted additional information on 9 March 2023 and the Lithuanian authorities replied to the request for information on 14 March 2023.

2. LEGAL FRAMEWORK

- (6) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to postal services referred to in Article 13(2), point (b), of that Directive.
- (7) Pursuant to Article 34(1) of Directive 2014/25/EU, contracts intended to enable the performance of an activity to which that Directive applies are not to be subject to that Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted.
- (8) Direct exposure to competition is to be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. This assessment is, however, limited by the short deadlines applicable and by the need to rely on the information available to the Commission. That information originates either from already available sources or from the information obtained in the context of the request pursuant to Article 35 of Directive 2014/25/EU and cannot be supplemented by more time-consuming methods, including, in particular, public inquiries addressed to the economic operators concerned.
- (9) Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are by themselves decisive.
- (10) For the purposes of assessing whether the relevant activities are subject to direct competition in the markets concerned by this decision, the market share of the main players and the number of market players is to be taken into account.

3. ASSESSMENT

- (11) The aim of this Decision is to establish whether the activities concerned by the request are, in markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU, exposed to a level of competition which ensures that, also in the absence of the procurement discipline brought about by the detailed procurement rules laid down in Directive 2014/25/EU, procurement for the pursuit of the activity concerned will be carried out in a transparent and non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.
- (12) This Decision is based on the legal and factual situation as of January 2023 and on the information submitted by the applicant, the authorities of Lithuania and the information that is publicly available. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 34(1) of Directive 2014/25/EU are no longer met.

3.1. Unrestricted access to the market

- (13) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legal acts opening a given sector or a part of it. Those legal acts are listed in Annex III to Directive 2014/25/EU, which includes, as regards postal services, Directive 97/67/EC of the European Parliament and of the Council ⁽⁵⁾.

⁽⁵⁾ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

- (14) As confirmed by Lithuania ⁽⁶⁾, and on the basis of the information available to the Commission, Lithuania has transposed ⁽⁷⁾ and applies Directive 97/67/EC. Consequently, access to the relevant market is deemed to be unrestricted in accordance with Article 34(3) of Directive 2014/25/EU.

3.2. Competition assessment

3.2.1. Relevant product market definition

- (15) According to the applicant, the relevant product markets could be segmented as follows: (a) domestic express delivery (courier) services; and (b) international express delivery (courier) services (international outgoing and international incoming) ⁽⁸⁾.
- (16) The Commission has held in previous decisions ⁽⁹⁾ that the market for mail delivery services can be segmented into express and standard (also referred to as 'deferred') delivery services. This segmentation takes into account that express services are faster and more reliable than a standard service, that each of those services requires a different infrastructure and that express services comprise additional value added service features, such as track and trace services, and are usually also more expensive.
- (17) The Commission has also made in previous decisions ⁽¹⁰⁾ a distinction between domestic and international parcel delivery services. The Commission held that domestic parcel delivery services are provided by companies operating national distribution networks whereas international parcel delivery consists in collecting parcels to be transported and delivered abroad.
- (18) The applicant takes the view that the relevant product markets for express parcel delivery services correspond to the two types of postal services regarding parcels which are covered by the Request and are set out in points (a) and (b) of recital 15. This approach is in line with Commission previous practice.
- (19) Narrower market definitions might be envisaged in certain cases (i.e. domestic express parcel delivery services Consumer to consumer/business (C2X) and domestic express parcel delivery services Business to consumer/business (B2X)). However, the precise definition of the relevant market can be left open for the purposes of this Decision. The result of the analysis remains unchanged whether it is based on a narrow or a broader definition ⁽¹¹⁾.

⁽⁶⁾ Reply of the Lithuanian authorities to the request for information on 14 March 2023.

⁽⁷⁾ Republic of Lithuania Postal Law, 15 April 1999 No VIII-1141. New version of the law as of 1 January 2013: No XI-2379 of 8 November 2012, Official Gazette 2012, No 135-6867 (22 November 2012).

⁽⁸⁾ Request, point 33 and point 39.

⁽⁹⁾ Commission Implementing Decision (EU) 2020/737 of 27 May 2020 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for activities related to the provision of certain postal services in Denmark (OJ L 172, 3.6.2020, p. 23), Commission Implementing Decision (EU) 2019/1204 of 12 July 2019 concerning the applicability of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for certain activities related to the provision of certain postal services and other services than postal services in Croatia (OJ L 189, 15.7.2019, p. 75). Commission Implementing Decision 2013/154/EU of 22 March 2013 exempting certain services in the postal sector in Hungary from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services (OJ L 86, 26.3.2013, p. 22). See also Commission Decision 90/456/EEC of 1 August 1990 concerning the provision in Spain of international express courier services (OJ L 233, 28.8.1990, p. 19) and COMP/M.5152 of 21 April 2009 – Posten AB/Post Danmark A/S; Commission Decision of 30 January 2013 in Case COMP/M.6570 – UPS/TNT Express.

⁽¹⁰⁾ Commission Implementing Decision (EU) 2020/737 of 27 May 2020 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for activities related to the provision of certain postal services in Denmark (OJ L 172, 3.6.2020, p. 23), Commission Implementing Decision (EU) 2019/1204 of 12 July 2019 concerning the applicability of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for certain activities related to the provision of certain postal services and other services than postal services in Croatia (OJ L 189, 15.7.2019, p. 75). See also Case COMP/M.5152 – Posten AB/Post Danmark A/S, of 21.4.2009, para 54.

⁽¹¹⁾ See in this regard Annex 16 to the Request, where the applicant provides estimates of its market share and of its main competitors, with respect to narrower market definitions.

3.2.2. Relevant geographical market definition

- (20) According to the applicant, relevant geographic market for both domestic express delivery services and international express delivery services should be defined as national, comprising the territory of the Republic of Lithuania ⁽¹²⁾.
- (21) As regards the geographical market, in its previous practice ⁽¹³⁾, the Commission took the view that the markets for express parcel delivery, irrespective of the distinction between domestic and international express delivery services, are national in scope. The applicant's position is in line with Commission practice.
- (22) The applicant provides both domestic and international parcel delivery services in Lithuania.
- (23) In the absence of any indication of a different scope of the geographic market, for the purposes of the assessment under this Decision and without prejudice to competition law, the geographic scope of the domestic and international express parcel delivery services can be considered to cover the territory of Lithuania.

3.2.3. Market analysis

3.2.3.1. Domestic express parcel delivery services

- (24) There are around 60 express parcel delivery services providers in Lithuania ⁽¹⁴⁾. Based on the information submitted by the applicant, there are 4 postal services providers who hold more than 10 % in the market of domestic express parcel delivery services ⁽¹⁵⁾. According to available information, the market share of the applicant in this segment of the market was [20-25] % for the period between 2019 and 2021, both in terms of value and volume ⁽¹⁶⁾.
- (25) The market shares of the competitors of the applicant are bigger or comparable to those of the applicant. The market shares of the biggest competitors both in terms of value and volume ⁽¹⁷⁾ for the period between 2019 and 2021 are as follows: DPD Lietuva [30-35] %, Venipak Lietuva [15-20] % and Omniva LT [10-15] %;
- (26) Even if the alternative product markets are defined (i.e. domestic express parcel delivery services (C2X) and domestic express parcel delivery services (B2X)), the competitive situation remains unchanged. Hence, as far as domestic express parcel delivery services (C2X) is concerned, the first market operator in this segment, Omniva LT, had a [35-40] % share for the period between 2019 and 2021, both in terms of value and volume. Omniva LT is in the leading position in this segment of the market. Applicant's share was [30-35] % for the period between 2019 and 2021, both in terms of value and volume. DPD Lietuva had a [15-20] % share and Venipak Lietuva had a [5-10] % share. Regarding domestic express parcel delivery services (B2X), there are 4 postal services providers who hold more than 10 % in this segment. According to available information, the market share of the applicant in this segment of the market was [15-20] % for the period between 2019 and 2021, both in terms of value and volume. The market shares of the competitors of the applicant are bigger or comparable to those of the applicant. The market shares of the biggest competitors both in terms of value and volume for the period between 2019 and 2021 are as follows: DPD Lietuva [35-40] %, Venipak Lietuva [25-30] % and Omniva LT [10-15] % volume ⁽¹⁸⁾.

⁽¹²⁾ Request, point 56.

⁽¹³⁾ Commission Implementing Decision (EU) 2019/1204 of 12 July 2019 concerning the applicability of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for certain activities related to the provision of certain postal services and other services than postal services in Croatia (OJ L 189, 15.7.2019, p. 75). See also Case COMP/M.5152 – Posten AB/Post Danmark A/S, of 21.4.2009, paras 66 and 74.

⁽¹⁴⁾ Information based on the market knowledge of the applicant, taking also into consideration the evaluation of the number of postal service providers indicated in the report of the Communications Regulatory Authority of the Republic of Lithuania (RTT). In their reply of 14 March 2023, the Lithuanian authorities confirmed that there is a large number of domestic express parcel delivery service operators active in Lithuania.

⁽¹⁵⁾ See in this regard Annex 16 to the Request, where the applicant provides estimates of its market share and of its main competitors, with respect to narrower market definitions.

⁽¹⁶⁾ Ibid.

⁽¹⁷⁾ Ibid.

⁽¹⁸⁾ Ibid.

- (27) Based on the information submitted by the applicant ⁽¹⁹⁾, there are no regulatory barriers to market entry for the provision of domestic express parcel delivery services. Performance of postal activities does not require any formal permission of state institutions. According to the information submitted by the applicant ⁽²⁰⁾, and as confirmed by the information submitted by the Lithuanian authorities ⁽²¹⁾, the only obligation for the provider is to notify the Communications Regulatory Authority of the Republic of Lithuania (RRT) of the beginning of the provision of services and comply with the requirements set for the postal service provider ⁽²²⁾.
- (28) In addition, the Commission notes, based on the information submitted by the applicant, that certain competitors expanded their services by introducing infrastructure of pick-up parcel lockers. Moreover, all main competitors are planning further investments and expansion of pick-up parcel lockers infrastructure ⁽²³⁾. According to information published by the RRT, pick-up parcel lockers are gaining popularity in general and are now one of the two most popular delivery points. Delivery by couriers and to pick-up parcel lockers accounting for 50-60 % and 35-46 % respectively, whereas delivery to post offices accounts only for about 2 % of total parcel delivery in Lithuania ⁽²⁴⁾. In this regard, although the applicant runs a network of post offices, which other courier services providers do not have, it may not be considered as a factor providing a significant competitive advantage to the applicant vis-à-vis its competitors in this segment of the market.
- (29) For the purposes of this Decision and without prejudice to competition law, the factors described in recitals 24, 25, 26, 27 and 28 should be taken as an indication of exposure to competition of that activity in Lithuania. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it should be established that Directive 2014/25/EU does not apply to contracts intended to enable the pursuit of the activity in Lithuania.

3.2.3.2. International express parcel delivery services

- (30) There are strong services providers active in the international express parcel delivery services, including international market operators, such as DHL or FedEx. According to available information, the applicant's share in this segment of the market was [0-5] % for the period between 2019 and 2021, both in terms of value and volume ⁽²⁵⁾.
- (31) The applicant's share in this segment of the market is very low compared to its competitors. According to available information, the first market operator in this segment, DPD Lietuva had a [40-45] % share for the period between 2019 and 2021, both in terms of value and volume. DHL's share was [10-15] % for the period between 2019 and 2021, both in terms of value and volume. Two other competitors, Omniva LT and Venipak Lietuva have comparable market shares to those of DHL at [10-15] % for the period between 2019 and 2021, both in terms of value and volume ⁽²⁶⁾. Considering the very low market share of the applicant in this segment, there is no need to assess separately the market share for international C2X and B2X express parcel delivery services. The market shares indicate that competitors are able to exert significant competitive pressure on the applicant in this segment.

⁽¹⁹⁾ Request, point 111.

⁽²⁰⁾ Request, point 64.

⁽²¹⁾ Reply of Lithuanian authorities to the request for information on 14 March 2023.

⁽²²⁾ The requirements prescribed by Article 10 of the Postal law concern rights and obligations of the postal services providers, i.e., detailing how postal items should be delivered and returned, requirement to publish terms and conditions for postal services, places of business of the provider and other relevant information, reply to customers within 14 days, and report to RRT. Rules on provision of postal services adopted by RRT further detail requirements for postal services (Order No 1V-332 of the Director of the Communications Regulatory Authority of the Republic of Lithuania of 28 February 2013).

⁽²³⁾ Request, point 106.

⁽²⁴⁾ Report of RRT (2021 IV quarter), Annex No 9 to the Request.

⁽²⁵⁾ See in this regard Annex 16 to the Request, where the applicant provides estimates of its market share and of its main competitors, with respect to narrower market definitions.

⁽²⁶⁾ Ibid.

- (32) For the purposes of this Decision and without prejudice to competition law, the factors listed in recitals 30 and 31 should be taken as an indication of exposure to competition of that activity in Lithuania. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it should be established that Directive 2014/25/EU does not apply to contracts intended to enable the pursuit of the activity in Lithuania.

4. CONCLUSION

- (33) In view of the factors examined in recitals 6 to 32, the condition of direct exposure to competition laid down in Article 34(1) of Directive 2014/25/EU should be considered to be met in Lithuania in respect of the activity related to domestic express parcel delivery services and in respect of the activity related to international express parcel delivery services.
- (34) Since the condition of unrestricted access to the market is deemed to be met, Directive 2014/25/EU should not apply when contracting entities award contracts intended to enable the activities referred to in recital 33 of this Decision to be carried out in Lithuania, nor when design contests are organised for the pursuit of such an activity in that geographic area.
- (35) This Decision is without prejudice to the application of the Union rules on competition and of the provisions in other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 of the Treaty or Council Regulation (EC) No 139/2004 ⁽²⁷⁾ as confirmed by the General Court ⁽²⁸⁾,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall not apply to the award of contracts by contracting entities and intended to enable the following activities to be carried out in Lithuania:

- domestic express parcel delivery services
- international express parcel delivery services

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 7 June 2023.

For the Commission
Thierry BRETON
Member of the Commission

⁽²⁷⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

⁽²⁸⁾ Judgment of the General Court of 27 April 2016, *Österreichische Post AG v. Commission*, T-463/14, EU:T:2016:243, paragraph 28. See also Directive 2014/25/EU, recital 44.

COMMISSION DECISION (EU) 2023/1229**of 7 June 2022****on the State aid SA.58101 (2020/C ex 2020/N) and SA.62043 (2021/C ex 2021/N) which Portugal is planning to implement for rescuing and restructuring the SATA Group***(notified under document C(2022) 3816)***(Only the English version is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2), first subparagraph, thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to the decisions by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of aid SA.58101(2020/C) ⁽¹⁾ and SA.62043 (2021/C) ⁽²⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to the comments submitted by one interested party and other third parties,

Whereas:

1. PROCEDURE

- (1) By letter dated 13 August 2020, amended and completed on 14 August 2020, Portugal notified the Commission of its intention to grant rescue aid to SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A. ('SATA' or 'the beneficiary') in the form of a public guarantee on a bank loan of EUR 169 million pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU').
- (2) On 18 August 2020, the Commission informed Portugal that it had decided to initiate the procedure laid down in Article 108(2) TFEU to assess further the compatibility of the abovementioned rescue aid in light of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ('R&R Guidelines') ⁽³⁾. The Commission decided to initiate that procedure as it had doubts as to whether the 'one time, last time' principle was met in that case, namely as to whether the three increases of SATA's share capital totalling EUR 72,6 million subscribed by the Autonomous Region of Azores ('ARA' or the 'Region') since 2017, referred to in recital 13 of that

⁽¹⁾ OJ C 294, 4.9.2020, p. 41.

⁽²⁾ OJ C 223, 11.6.2021, p. 37.

⁽³⁾ 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).

decision (the 'past capital increases'), would amount to previous rescue or restructuring aid. In the same decision, on the basis of Article 107(3), point (c) and Article 106(2) TFEU, the Commission approved EUR 133 million liquidity support to allow SATA to fulfil its genuine public service obligations ('PSOs') and provide essential services of general economic interest ('SGELs') in its small airports and maintain the connectivity of the outermost Region of the Azores.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ('the opening decision') ⁽⁴⁾ on 4 September 2020. The Commission called on interested parties to submit their comments.
- (4) The Commission received comments from 19 parties. On 13 October 2020, it forwarded those comments to Portugal, which submitted its own written reply on them by letter dated 16 November 2020.
- (5) On 17 February 2021, Portugal submitted a restructuring plan for SATA. On 14 April 2021, Portugal notified the Commission of its intention to grant restructuring aid supporting the restructuring plan, in the form of a EUR 186,7 million of a capital increase and EUR 144,2 million in public guarantee on loans.
- (6) By letters dated 29 March 2021 and 16 April 2021, the ARA requested that the guarantees on loans that the Commission authorised on 18 August 2020 continue until 18 November 2021 and that more guarantees up to an additional amount of EUR 122,5 million be authorised for a seven-month period, pending the assessment of the restructuring plan.
- (7) By letter dated 30 April 2021, the Commission informed Portugal of its decision to extend the procedure laid down in Article 108(2) TFEU in respect of the notified restructuring aid, while approving on the basis of Article 107(3), point (c) and Article 106(2) TFEU EUR 122,5 million further liquidity support to secure the continued operation of the PSOs and SGELs until the end of 21 November 2021 or until the Commission had taken a final decision, whichever came earlier. That decision was also published in the *Official Journal of the European Union* ('the extension decision') ⁽⁵⁾ on 11 June 2021.
- (8) Portugal submitted its comments on the extension decision by letter dated 10 June 2021 and amended and further updated the restructuring plan on 15 July and 2 December 2021.
- (9) On 1 June 2021 and on 30 November 2021, Portugal informed the Commission that the beneficiary had reimbursed the past capital increases to the ARA with interest, in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽⁶⁾.
- (10) The Commission received comments on the extension decision from fourteen parties. On 14 July 2021, the Commission forwarded them to Portugal, which submitted observations received by letter dated 12 August 2021.
- (11) On 5 November 2021, the Commission authorised on the basis of Articles 107(3), point (c) and 106(2) TFEU a modification and temporal extension of the approved liquidity support to SATA pending the closure of the procedure ⁽⁷⁾.
- (12) On 6 April 2022, Portugal withdrew the notification of the rescue aid to SATA, confirming that the rescue aid had not been granted. In the same submission of 6 April 2022, Portugal also provided additional updated information.

⁽⁴⁾ OJ C 294, 4.9.2020, p. 41.

⁽⁵⁾ OJ C 223, 11.6.2021, p. 37.

⁽⁶⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

⁽⁷⁾ Commission Decision of 5 November 2021, SA.58101 and SA.62043 – Portugal – Rescue and restructuring aid to SATA – Urgent liquidity support, published in the European Commission's website (https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_58101), where the Commission raised no objections, within the limit of the already authorised budget amount of EUR 255,5 million, to (i) the prolongation of the guarantees already granted on loans, or (ii) the replacement of such loans by shareholder loans directly provided to SATA Azores Airlines.

- (13) Portugal agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation No 1/1958 ⁽⁸⁾ and to have the decision adopted and notified pursuant to Article 297 TFEU in English.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. The beneficiary: operating subsidiaries and activities

- (14) SATA is an operating airline company, a Sociedade Anónima (limited liability company) ⁽⁹⁾, and it holds shares in other companies based in the ARA. SATA was incorporated in 1941 and is fully owned by the Regional Government. SATA is the sole shareholder of SATA Internacional - Azores Airlines, S.A. ('Azores Airlines'), Gestão de Aeródromos, S.A. ('SATA Gestão de Aeródromos' or 'SGA') and the tour operator Azores Vacations America, Inc. ('Azores Vacations America'), which is inactive and is currently undergoing liquidation proceedings. In addition, SATA used to be the sole shareholder of another tour operator, namely Azores Vacations Canada, Inc. ('Azores Vacations Canada'), which has already been liquidated (recital 62).
- (15) Any reference to SATA or the beneficiary undertaking supported by the restructuring aid in this decision includes SATA Air Açores and all its subsidiaries, unless otherwise indicated in order to distinguish its operation of air carrier (performed as 'SATA Air Açores') from the activities of its subsidiaries.
- (16) SATA employs around 1 400 people, of which 1 150 locally in the Region, corresponding to around 10 % of all tourism employment and 1 % of the total employment in Azores and 250 in Lisbon ⁽¹⁰⁾. As described in the opening decision ⁽¹¹⁾ and the extension decision ⁽¹²⁾, SATA provides: (i) directly and through its wholly-owned subsidiary, Azores Airlines, air transport passenger and cargo services on routes under PSOs and on a commercial basis; and (ii) SATA provides an SGEI through SGA in relation to small airports and airfields in the Region. Sections 2.1.1 to 2.1.3. describe the two sets of activities separately.

2.1.1. PSOs discharged by SATA and Azores Airlines

- (17) To ensure the continuity of the provision of the scheduled air service on the routes serving the Azores some scheduled passenger air transport services in the Region have been subject to PSOs pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council ⁽¹³⁾. The obligations cover, *inter alia*, minimum flight frequency, timetables, the category of aircraft used and maximum internal configuration capacity, fares, service continuity and punctuality and marketing of flights ⁽¹⁴⁾. The PSOs help offsetting the isolation of the Azores Archipelago due to distance from mainland and weather conditions especially in winter.
- (18) SATA Air Açores only operates inter-island flights with PSOs with exclusivity and compensation, while Azores Airlines operates flights from the Azores to mainland Portugal, Madeira and to international destinations, with PSOs on routes to mainland Portugal and Madeira without exclusivity and without compensation. In both cases, those obligations are enshrined in public service contracts ('PSCs') or entrustment acts that impose minimum

⁽⁸⁾ 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. 385/58).

⁽⁹⁾ Sociedade Anónima is listed in Annex I (Types of undertaking referred to in point (a) of Article 1(1)) to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁽¹⁰⁾ Portugal's submission of 2 December 2021, Annex 1 – SATA Restructuring and Strategic Plan 2021-25, p. 21-24.

⁽¹¹⁾ Opening decision, recital 7.

⁽¹²⁾ Extension decision, recitals 7 to 9.

⁽¹³⁾ 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).

⁽¹⁴⁾ By way of example, Law 105/2019, which amends Law-Decree 134/2015 (concerning the grant of a social mobility allowance to citizens who are beneficiaries, in the context of air and maritime services between the mainland and the Autonomous Region of Madeira and between the latter and the Autonomous Region of the Azores, pursuing objectives of social and territorial cohesion) states that the maximum ticket fee is EUR 30,00.

requirements in terms of continuity, regularity, tariffs and capacity, which must be *inter alia* appropriate, in normal circumstances, for the provision of scheduled air services on the routes in question. In 2019, SATA Air Açores operated more than 15 000 flights, with six Dash Bombardier planes which carried around 766 000 passengers.

- (19) In particular, SATA Air Açores has been serving the nine islands of the Region through inter-island air transport, for a total of 14 routes within the Azores, corresponding to 100 % of the air transport within the Region ⁽¹⁵⁾, under PSOs since 1996. SATA Air Açores is the only airline that ever submitted bids for those PSO routes ⁽¹⁶⁾. The PSOs were last entrusted exclusively to SATA Air Açores by means of a public service contract, including compensation under Regulation (EC) No 1008/2008, with a new contract signed on 28 September 2021 ⁽¹⁷⁾ for a new five-year term starting from 1 November 2021 ⁽¹⁸⁾.
- (20) Azores Airlines was established in 1990 under the name 'OceanAir' and was incorporated by SATA in December 1994. It has an administrative hub in Ponta Delgada and one operational base in Lisbon. Azores Airlines operates: (i) three PSO routes (open PSOs without exclusivity and without compensation) connecting to mainland Portugal three gateways of the Azores (Santa Maria, Horta and Pico islands), and (ii) a PSO route (open PSO without exclusivity and without compensation) linking Ponta Delgada to Funchal (Madeira island). No other air carrier is operating in competition with Azores Airlines on such routes, although there is no exclusivity in the PSC, as explained above (recital 18).
- (21) As underlined by Portugal, the PSOs on those four routes are not based on economic profitability, but rather on the Region's interest in ensuring the continuity of such routes for reasons of public interest ⁽¹⁹⁾. Indeed, although the four PSO routes are open to all operators, Azores Airlines is the only operator that has expressed an interest in meeting the PSOs without compensation. On 27 March 2021 an emergency COVID-19 PSO ⁽²⁰⁾ was imposed on two routes (Lisbon – Horta - Lisbon and Lisbon - Santa Maria – Lisbon) for the 2021 IATA (International Aviation Transport Association) summer season, and on 28 October 2021 prolonged for the 2021-2022 IATA winter season. Portugal, together with the ARA, is currently assessing the situation of these four routes and their possible modifications in the future ⁽²¹⁾ (recitals 57 to 59 and 106).

⁽¹⁵⁾ Portugal's submission of 2 December 2021, Annex 1 – SATA Restructuring and Strategic Plan 2021-25, p. 24.

⁽¹⁶⁾ The routes defined as inter-island PSOs and published in the Official Journal (see the information notices in OJ C 29, 28.1.2020, p. 8 and p. 9) are the following 15 routes, which are essentially organised in three clusters of main urban centres that correspond to Ponta Delgada, Terceira and Horta: a) Ponta Delgada-Santa Maria-Ponta Delgada (PDL-SMA-PDL), b) Ponta Delgada-Terceira-Ponta Delgada (PDL-TER-PDL), c) Ponta Delgada – Graciosa – Ponta Delgada (PDL-GRW-PDL), d) Ponta Delgada-Horta-Ponta Delgada (PDL-HOR-PDL), e) Ponta Delgada-Pico-Ponta Delgada (PDL-PIX-PDL), f) Ponta Delgada-São Jorge-Ponta Delgada (PDL-SJZ-PDL), g) Ponta Delgada-Flores-Ponta Delgada (PDL-FLW-PDL), h) Ponta Delgada – Corvo – Ponta Delgada (PDL-CVU-PDL), i) Terceira-Graciosa-Terceira (TER-GRW-TER), j) Terceira-São Jorge-Terceira (TER-SJZ-TER), k) Terceira-Pico-Terceira (TER-PIX-TER), l) Terceira-Horta-Terceira (TER-HOR-TER), m) Terceira-Flores-Terceira (TER-FLW-TER), n) Horta-Flores-Horta (HOR-FLW-HOR) and o) Horta-Corvo-Horta (HOR-CVU-HOR). Since some routes can be aggregated – notably, PDL-FLW-PDL can be combined with TER-FLW-TER or HOR-FLW-HOR and HOR-CVU-HOR can be combined with HOR-FLW-HOR – the actual number of PSO routes operated by SATA Air Açores is currently 14.

⁽¹⁷⁾ Azores Government Official website, publication titled 'Novas Obrigações de Serviço Público do Transporte Aéreo nos Açores' of 29 October 2021: <https://portal.azores.gov.pt/en/web/comunicacao/news-detail?id=4797175>

⁽¹⁸⁾ In particular, the Regional Government of Azores approved, on 2 June 2021, Resolution n. 141/2021 in which it officially authorised the launch of the International Public Tender for the inter-islands PSO for the award of a contract for 5 years, in line with the procedure set out in Regulation (EC) No 1008/2008.

⁽¹⁹⁾ Portugal's submission of 2 December 2021, Annex 1 – SATA Restructuring and Strategic Plan 2021-25, p. 24.

⁽²⁰⁾ See Overview of the State aid rules and public service obligations rules applicable to the air transport sector during the COVID-19 outbreak, available at https://ec.europa.eu/competition/state_aid/what_is_new/air_transport_overview_sa_rules_during_coronavirus.pdf

⁽²¹⁾ The competent authority to subscribe the public service contracts is the Portuguese Republic, and not the ARA, pursuant to national law (Decree-Law No 138/99 of 23 April 1999).

2.1.2. SGEIs provided by SGA

- (22) SGA, incorporated by SATA in 2005, manages the airports of Pico, Graciosa, Corvo and São Jorge, as well as the Flores island terminal, as an SGEI until the expiry of its entrustment in July 2025 ⁽²²⁾. Air traffic in each of those airports and that terminal has been below 200 000 passengers per year in the three previous years ⁽²³⁾. Hence, Portugal reported to the Commission the SGEI concerning those five airports in 2016-2017 ⁽²⁴⁾. Indeed, Portugal considers that the need to ensure the connectivity of an isolated area of the Union justifies the SGEI, in view of the lack of alternative means of transport available and in light of the criteria set out in the Guidelines on State aid to airports and airlines ⁽²⁵⁾ ('Aviation Guidelines').
- (23) Portugal considers that, on grounds of the limited, mostly seasonal traffic and the remoteness of their location, the management of those airports is not economically attractive for private parties, unlike the airports of São Miguel and Terceira. The concession awarded to SGA in relation to the services of operation and management of the airfields of Graciosa, Pico, São Jorge and Corvo, provides for compensation for its SGEI to be paid to SGA for each year of duration of the contract. The compensation for the period from 2020 until 2025 has been set at EUR 17 million.

2.1.3. Services offered by SATA on a commercial basis

- (24) Besides the PSO and SGEI services provided, SATA also provides air transport services on a commercial basis, such as air cargo and, through Azores Airlines, passenger transport services on liberalised routes, including flights to facilitate travel for the significant Portuguese diaspora in the United States of America (USA) and in Canada, as well as to provide better access conditions for travellers to the Azores. In terms of connections to the Union, however, in addition to mainland Portugal, SATA has only two direct flights to other European destinations, namely London and Frankfurt, as further detailed below (recital 28) ⁽²⁶⁾.
- (25) In particular, SATA Air Açores provides 100 % of the regional air cargo transported in the nine islands of the archipelago, corresponding to around 2 900 tons of goods each year, while Azores Airlines carries over [60-70] % of the air cargo from and to outside the Azores, corresponding to over 1 300 tons of cargo, including fish, post and medical supplies ⁽²⁷⁾. In competition with Azores Airlines, only TAP operates in the cargo services to/from the Azores, with a market share that, in 2019, was around [30-40] % ⁽²⁸⁾.
- (26) As for the international flights, which have an important role in the economy of the Region, mainly through investment and private expenditure, Azores Airlines operates regular routes in the North Atlantic to Boston, Oakland, Toronto and Montreal. Azores Airlines also operates niche tourist markets and charter services. Overall, in 2019 Azores Airlines operated around 7 000 flights (including on the PSO routes), through six medium course Airbus 320 planes, serving around 946 000 passengers, corresponding to 40 % of the passengers transported to the Azores from abroad.
- (27) Furthermore, with a view to connecting North America, mainland Portugal and the Region throughout the year, since 1985 SATA controlled two tour operators in North America, Azores Vacations America and Azores Vacations Canada.

⁽²²⁾ The concession relating to airport public services in support to civil aviation in Graciosa, Pico, São Jorge and Corvo islands was awarded to SGA by contract of 1 of July 2005, executed under the terms of Regional Government Resolution No 102/2005, of 16 of June 2005, for a period of 10 years, renewable for periods of five years, up to a maximum duration of 20 years.

⁽²³⁾ In 2019, when the number of passengers (departing and arriving) between 2017 and 2019 was the highest in all five airports, the number of passengers was as follows: Pico (144 787), Graciosa (57 013), Corvo (8 825) São Jorge (80 629) and Flores (63 568).

⁽²⁴⁾ Report at https://ec.europa.eu/competition/state_aid/public_services/2016_2017/portugal_en.pdf

⁽²⁵⁾ Guidelines on State aid to airports and airlines, points 72 and 75(a) (OJ C 99, 4.4.2014, p. 3). In point 72, the Commission considers that the overall management of an airport can be considered an SGEI especially in the case of outermost regions -islands- of the Union and in point 75 (a) the Commission recalls that Decision 2012/21/EU covers public service compensation granted airports where the average annual traffic does not exceed 200 000 passengers over the duration of the entrustment.

⁽²⁶⁾ Portugal's reply of 6 August 2020 to a Commission's request of information.

⁽²⁷⁾ Data for 2019, in Portugal's submission of 2 December 2021, Annex 1 – SATA Restructuring and Strategic Plan 2021-25, p. 24.

⁽²⁸⁾ Source: *Reporting services-Market shares*, in Portugal's reply of 6 August 2020, quoted above.

- (28) In competition with SATA, commercial routes between the Azores archipelago and the rest of the territory of the Union are operated, in order of size, by TAP-Transportes Aéreos Portugueses S.A., Ryanair, Arkefly and Jetairfly – although some of these routes have been discontinued after the COVID-19 outbreak. As for direct routes, in 2019 Ryanair connected the Azores with Lisbon and Porto (in Portugal) and with London, Manchester and Frankfurt (outside Portugal). On the London and Frankfurt routes, in 2019 Azores Airlines had market shares equal to, respectively, 70 % and 23,6 %, while Ryanair had market share equal to 30 % and 76,4 % ⁽²⁹⁾. Jetairfly had a route connecting Azores with Brussels. Arkefly connected Azores with Amsterdam and Tenerife in the Canary Islands (Spain) ⁽³⁰⁾.
- (29) Finally, in terms of alternative modes of transport, ferries only ensure connections between the two closest islands (Faial and Pico) and from those to the island of São Jorge, with daily frequency over the summer period, but only weekly frequency during the winter. Hence, due to geographical distance and weather conditions, as evidenced by Portugal ⁽³¹⁾, the Azorean population is dependent on air transport throughout the year for inter-island mobility, as well as travelling outside the archipelago ⁽³²⁾.

2.2. Description of the financial situation of the beneficiary and origins of the financial difficulty

2.2.1. Financial situation with regard to equity, losses and subscribed share capital

- (30) As described in the opening and in the extension decisions ⁽³³⁾, SATA has been facing financial difficulties since at least 2014, with steady and substantial operating losses and negative equity of EUR -55,8 million in 2014. In the subsequent years, due to the steady accumulation of losses, SATA registered increased negative equity (EUR -94,6 million in 2016, EUR -135,6 million in 2017 ⁽³⁴⁾ and -156,3 million in 2018 ⁽³⁵⁾). In 2019, SATA presented a considerably increased total negative equity amount of EUR -230,3 million. This showed that more than half – actually all – of its subscribed share capital had been depleted. Furthermore, around 70 % of total debt to suppliers in 2019 was overdue and the EUR 464 million in liabilities greatly exceeded its assets worth EUR 234 million. Accordingly, SATA also fulfilled the criteria under national law for being placed in collective insolvency proceedings at the request of its creditors.
- (31) The equity position and financial situation of SATA has further deteriorated since the opening and the extension decisions. SATA's net result was negative in 2020 (EUR -87,1 million), and is estimated to remain so in 2021 (EUR -32,7 million) and 2022 (EUR [...] million). As a result, equity was negative in 2020 (EUR -369,3 million) and in 2021 (EUR -319,5 million) and is expected to remain so in 2022 (EUR [...] million) ⁽³⁶⁾.

2.2.2. Structural causes and sources of financial and operational difficulties

- (32) Portugal explains that, in addition to the underfunding of its PSO/SGEI operations (recitals 17 to 23, 57 and 129), SATA's overall difficult situation was and remains mainly caused by Azores Airlines' poor performance. By way of illustration, in 2019 SATA Air Açores had registered EUR 84 million revenues and a positive EUR 2 million in earnings before interest and tax (EBIT) and equally positive EUR 2 million net income. SGA registered a revenue of EUR 3 million, an EBIT close to zero, but still positive, and net income of EUR 0,1 million. However, Azores Airlines registered EUR 157 million revenue, but negative EBIT of EUR -33 million and net losses of EUR 56 million that cancelled out the net earnings of the other operating subsidiaries.

⁽²⁹⁾ Source: Amadeus market Insight, in Portugal's reply of 6 August 2020, quoted. The data refers only to direct connections, as there are other indirect offers, namely by TAP Air Portugal, via Lisbon.

⁽³⁰⁾ Portugal's submission of 20 July 2020, Annex 6 - Competitive landscape in aviation in the Azorean market.

⁽³¹⁾ Portugal's submission of 2 December 2021, Annex 1 – SATA Restructuring and Strategic Plan 2021-25, p. 18.

⁽³²⁾ Portugal's submission of 20 July 2020, point 42 and ff.

⁽³³⁾ Opening decision, recitals 11 to 22 and extension decision, recitals 13 and 14.

⁽³⁴⁾ Portugal's notification of 13 August 2020, Consolidated annual accounts and Annex 2.2 of notification.

⁽³⁵⁾ Portugal's notification of 13 August, Annex 1.1. – SATA Group's Consolidated Balance Sheet 2018 and 2019.

⁽³⁶⁾ Portugal's submission of 2 December 2021, Annex 4 – SATA Funding Requirements, p. 10.

- (33) Based on the information provided by Portugal, six key factors contributed to the origin of Azores Airlines' difficulties ⁽³⁷⁾: (i) the reduced capacity utilisation (40-50 % below benchmark block hours per plane, its network plan being historically highly dependent on seasonal traffic and lack of overnight flights), (ii) a rise in the compensation costs due to irregularities in the flight schedule: from EUR 1,5 million in 2015 to EUR 4,5 million in 2019, whereas in 2018 alone, the cost of leased aircraft to solve disruptions was over EUR 15 million, (iii) high maintenance costs linked to legacy fleet needing heavy corrective maintenance in 2019 and high provisions required in 2019), (iv) extra costs with the execution of fleet replacement (late delivery of one A321 aircraft in 2019 led to the need for an extra lease, delays in crew training for new fleet leading to cancellations in the 2017 peak season), (v) sub-par revenue and performance given PSO requirements (schedule limitations for the four PSO routes limiting network, fleet and crew optimisation, PSO regulated fares limiting revenue potential, with the four PSO routes resulting in a negative EUR 13 million EBIT margin impact in 2019), (vi) increased pressure following, after 2015, the liberalisation of the Ponta Delgada – Lisbon route by low cost carriers, with entry by Ryanair, and TAP increasingly flying from SATA's Ponta Delgada hub, for instance to North American destinations.

2.2.3. *Effects of the COVID-19 pandemic on the beneficiary's operation and results*

- (34) The effects of the COVID-19 pandemic in the aviation and tourism sectors have aggravated the difficulties of SATA. The pandemic has triggered a sizeable and long-lasting demand shock mainly caused by travel and commerce restrictions put in place in Portugal, other Member States and in North America to curb its spread as from March 2020, and which have a visible effect on the real economy of the Azores (and also in the Autonomous Region of Madeira ⁽³⁸⁾).
- (35) Whereas SATA operated 44 000 flights in the two years preceding the COVID-19 outbreak between March 2018 and February 2020, SATA operated 34 821 flights in the period between March 2020 and February 2022, thus reducing its supply by 21 %. With reference to the same periods and the impact on SATA's operation, the number of passengers transported dropped by 43,5 % from 3,36 million to 1,9 million, the available seats per kilometre dropped by 43,2 % from 5 843 million to 3 326 million and the revenue per passenger kilometre dropped by 58 % from 4 582 million to 1 928 million. Likewise, the number of passengers departing and arriving in the airfields operated by SGA dropped by 33 % from 0,56 million to 0,38 million and the operational revenues decreased by 46 % ⁽³⁹⁾.
- (36) In terms of revenues lost since the outbreak of the COVID-19 pandemic, even assuming conservatively that SATA's revenues would have increased at a growth rate of 5 %, which is lower than the growth rate of 7,8 % for SATA Air Açores and 5,1 % for Azores Airlines in the period between 2015 and 2019, the comparison shows loss of revenues amounting to, respectively, EUR 35,3 million for SATA Air Açores and EUR 180,3 million for Azores Airlines. Despite measures taken to reduce non-fixed or semi-fixed costs, the impact on SATA's EBITDA can be estimated to be approximately EUR 80 million, with a loss of net income of EUR 54,5 million in March 2020-February 2022 compared to March 2018-February 2020.
- (37) On 30 April 2021, the Commission approved, pursuant to Article 107(2)(b) TFEU, a EUR 12 million compensation to SATA Air Açores and Azores Airlines for direct damages suffered due to the travel restrictions that the ARA, Portugal and the authorities of other destination countries imposed between 19 March 2020 and 30 June 2020 to limit the spread of the COVID-19 pandemic ⁽⁴⁰⁾. However, the sharp decline on demand caused by the COVID-19 pandemic has persisted after June 2020 and the impact on SATA's revenues and losses until now has been five to six times greater than the losses covered by damage compensation aid.

⁽³⁷⁾ Portugal's submission of 2 December 2021, Annex 1 – SATA Restructuring and Strategic Plan 2021-25, p. 9.

⁽³⁸⁾ Commission Decision of 30 April 2021 in case SA.62505 (2021/N) COVID-19: Amendment of SA.56873 Direct grant scheme and loan guarantee scheme (OJ C 195, 21.5.2021, p. 22).

⁽³⁹⁾ Portugal's reply to the Commission's request for information submitted on 6 April 2022, p. 8-10.

⁽⁴⁰⁾ Commission Decision of 30 April 2021 in case SA.61771 (2021/N) - COVID-19 - SATA - Compensation of damages resulting from extraordinary events (OJ C 285, 16.7.2021, p. 7).

2.3. Description of the restructuring plan and the restructuring measures

2.3.1. *The restructuring of operations*

- (38) The restructuring aid supports the implementation of a restructuring plan that has already been implemented since the end of 2020 ⁽⁴¹⁾ and comes to an end at the end of 2025. The restructuring plan provides for a relaunch of SATA's operations based on reorganisation of the corporate governance of SATA as a group and focus on air transport to ensure essential connectivity of the Region, with ensuing reduction of non-essential routes and introduction of efficiency measures in the air transport operations.
- (39) The following sections describe the restructuring measures separately, as each of them constitutes, according to Portugal, a distinct feature of the overall strategy to ensure the return to long-term viability of the beneficiary at the end of the plan. Furthermore, the description includes a section describing the proposed measures to limit distortion of competition caused by the restructuring aid and a section on the need for State intervention, as maintained by Portugal.

2.3.1.1. Reorganisation of the corporate structure

- (40) Portugal plans to simplify SATA's corporate structure, so as to make it more attractive to potential private investors in the future. The reorganisation started at the end of 2021 and will entail the creation of a new holding company ('SATA SGPS'), incorporated by the Region, to become the holding company of the SATA Group. Consequently, SATA Air Açores and its current subsidiaries, namely Azores Airlines and SGA, as well as the new entity resulting from the carve-out of the ground handling activities, will become subsidiaries that will be wholly owned by the Region via the newly created SATA SGPS ⁽⁴²⁾.
- (41) The corporate reorganisation entails the following steps: (i) incorporation of a new SATA SGPS by the Region; (ii) transfer of SATA and its subsidiaries to the SATA SGPS; (iii) sale of [...].
- (42) The corporate reorganisation would be necessary to streamline and optimise the SATA Group structure, in order to prepare it for the divestment of assets as envisaged in the plan (recitals 62 to 63), as well as to separate clearly the different missions of each subsidiary.

2.3.1.2. Improved efficiency and cost reduction

- (43) The restructuring plan is premised on SATA's market position at pre-COVID levels being recovered by 2023 (Western Europe, regional and international) in terms of traffic volumes, as well as revenues ⁽⁴³⁾, and the Azores being an increasingly attractive destination for tourism, with boosted demand from the Portuguese diaspora in North America. However, the Portuguese authorities also stress that SATA's capacity will focus on essential operations, in particular, PSOs and SGEs, which SATA has lower flexibility to reduce, given the type of service and the nature of traffic, whereas remaining non-essential routes will be reduced to the minimum indispensable to improve utilisation and optimise network. Nonetheless, according to the latest information provided by Portugal, SATA is already performing above the projections of the Business Plan and that the SATA airlines' performance, in terms of transported passengers, is well above European and global figures. More specifically, whilst IATA International passenger's demand in 2021 was 75,5 % below 2019 levels, for SATA Azores Airlines it was just 31 % below 2019 levels (25 % below including Air Açores inter-island traffic), whereas over the second half of 2021

⁽⁴¹⁾ Portugal's submission of 10 June 2021, p. 8, listing the contracts already negotiated with suppliers, trade unions, banks etc.

⁽⁴²⁾ Portugal's submission of 22 October 2021, p. 7.

⁽⁴³⁾ Portugal's submission of 2 December 2021, Annex 3, SATA Group Results and Performance YTD.2021, November 2021, p. 11, and submission of 6 April 2022, p. 12-13. Portugal explains that, for historical data, SATA's business plan uses market data from Sabre AirVision Market Intelligence Global Demand Data (DGG) and OAG; for market evolution and growth estimations, the restructuring plan is based on IATA/Oxford Economics 2019-25 Air Travel Demand Forecast (of November 2020 release); in addition, Portugal uses International Civil Aviation Organization (ICAO - Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis, Montréal, Canada 12 January 2022).

passenger volumes were only 10 % lower, compared to the same period 2019. Furthermore, Portugal shows that SATA's performance in terms of transported passengers in the past year is well above European and global figures, being just -25 % of passengers compared to 2019 (both airline companies together), much better than the ICAO estimate for Europe (-56 %) or for the World (-49 %).

- (44) As explained by Portugal, the restructuring plan rests on two main strategies: (i) improved operations and schedules and (ii) reduced operating costs.
- (45) The improvement in fleet capacity and use is based on phasing out older, end-of-lifecycle planes and reducing the number of aircraft from 15 to 13 and, upon completion of the restructuring plan and divestment of Azores Airlines, to six aircraft only. By 2025, Azores Airlines would be operating seven planes (A-320 and A-320/21 NEO), in addition to a possible extra aircraft under a 'Power by the Hour' (PBH) agreement ⁽⁴⁴⁾, to 17 destinations and SATA Air Açores would be operating six planes (Q400 and Q200) to nine destinations. Block-hours per plane and day would increase from [...] in 2019 and currently [...] to [...] by 2025, so that the smaller capacity in planes and seats would be used more intensely. Azores Airlines would increase capacity by [...] % until 2025, improving connectivity within the Region's network in response to a steady increase in demand.
- (46) As for the reduction of operating costs, the plan rests on four pillars: (i) fleet restructuring by incorporating new planes that have lower maintenance needs and lower fuel consumption, thus reducing costs; (ii) boosting operational efficiency through initiatives regarding fuel, catering, crew and distribution; (iii) renegotiation of main contracts with suppliers to obtain better conditions; (iv) productivity measures to adjust labour force to SATA's current needs. The combined effect of the restructuring measures would lower Azores Airlines' current costs per available seat per kilometre by around 36 % until 2025, from EUR cent [...] to EUR cent [...]. The aggregate cost reductions derived from such efficiency measures and cost savings are estimated as around EUR [...] million by 2025 (recital 49).

2.3.1.3. Restructuring costs and sources of finance

- (47) In its submission of 2 December 2021, Portugal estimated the restructuring costs as equal to EUR [...] million, revised on 6 April 2022 to EUR [...] million ⁽⁴⁵⁾. They include EUR [...] million of [...] and various other operating costs not expected to be covered with normal operating revenues, State aid or own contribution for EUR [...] million. In particular, according to Portugal, the total amount of restructuring costs had to be increased comparing to the initial estimates, on grounds of (i) the unexpected effects of the COVID-19 pandemic on the first half of 2021 (with subsequent revision of the financial projections), (ii) the inclusion of the amounts for the amortisation of the 'Legacy Debt' on the side of restructuring costs, and (iii) adjustments due to the extension of the use of vouchers, update of acquirer retention, provisions and pensions, as well as adjustments to working capital as a result of supplier debt agreements ⁽⁴⁶⁾.
- (48) In light of the form and amount of the restructuring measures set forth in the restructuring plan to bring the beneficiary back to viability, allowing SATA, *inter alia*, to achieve a Net Financial Debt / EBITDA ratio ⁽⁴⁷⁾ of at least [...] x by [...], the overall amount of the restructuring aid has also been revised by Portugal on 2 December 2021 from the initial EUR 330,09 million to EUR 453,25 million. In particular, the restructuring aid has been adjusted due to: (i) the liquidity needs of SATA pending approval of the restructuring plan and consequent prolongations of the loans associated with the liquidity support, as well as (ii) budgetary constraints of ARA, which determined changes in the State aid instruments set forth in the restructuring plan ⁽⁴⁸⁾. The restructuring aid, therefore, is currently composed of the following measures (jointly: the 'measures' or the 'restructuring aid'):
- (a) phased equity injection of EUR 144,5 million, to be granted in two instalments: (i) EUR 82,5 million, corresponding to the conversion into capital of a direct loan by SATA's sole shareholder (ARA) ⁽⁴⁹⁾ of up to EUR 82,5 million, as soon as the restructuring aid is authorised, and (ii) EUR 62 million in the year 2022;

⁽⁴⁴⁾ Portugal's submission of 2 December 2021, p. 1.

⁽⁴⁵⁾ Portugal's submission of 6 April 2022, p. 18.

⁽⁴⁶⁾ Portugal's submission of 18 February 2022, p. 5.

⁽⁴⁷⁾ The net financial debt-to-EBITDA ratio measures a company's ability to pay off its (short-term and long term) liabilities, by showing how many years the company needs to pay all of its debt, if it operates at the current debt and EBITDA levels.

⁽⁴⁸⁾ Portugal's submission of 18 February 2022, p. 5.

⁽⁴⁹⁾ That loan was granted to replace a loan previously guaranteed by ARA, in accordance with recitals 13 and 18 of the Commission Decision of 5 November 2021 referred to in recital 11.

- (b) debt assumption by the ARA and subsequent conversion of this debt into capital for a total amount of EUR 173,75 million, of which EUR [...] million refers to [...], and EUR [...] million refers to [...];
- (c) public guarantee awarded by the ARA on loans from banks and/or other financial entities, for an amount of EUR 135 million. The loan conditions include a [...].
- (49) According to Portugal, SATA would contribute to the restructuring plan with cost reductions derived from efficiency and cost-cutting measures that are estimated at around EUR [...] million by 2025 ⁽⁵⁰⁾, as follows:
- (a) increased operating efficiency of EUR [...] million, consisting of fuel usage savings (around EUR [...] million), distribution cost reduction (around EUR [...] million) and [...] (EUR [...] million) ⁽⁵¹⁾;
- (b) reduction of operating costs (EUR [...] million) through:
- (1) fleet restructuring in 2021 ([...]), for EUR [...] million;
- (2) suppliers' negotiations for EUR [...] million, including: (i) optimised procurement savings, such as accommodation cost cuts and renegotiation of handling contracts (EUR [...] million), (ii) reduction of maintenance costs [...], (EUR [...] million), (iii) leasing renegotiation, through 'power-by-the-hour' agreements for engines and lower fees (EUR [...] million), (iv) other negotiations with suppliers (EUR [...] million of which EUR [...] million [...], and (v) negotiations of passengers' claims (EUR [...] million);
- (3) labour streamlining for around EUR [...] million, including:
- economic measures, such as staff salary reductions of around [...] % during 2021 and 2022 (EUR [...] million), renegotiation of labour agreements with trade unions to improve crew productivity (EUR [...] million), as well as
- staff reduction measures (EUR [...] million), consisting of [...] ⁽⁵²⁾, as well as [...] ⁽⁵³⁾; and
- (4) other cost-cutting measures (totalling EUR [...] million), including [...] (EUR [...] million).
- (50) Furthermore, the restructuring plan would be supported by the following own resources provided by SATA, as submitted by Portugal on 2 December 2021:
- (1) the amortisation of [...] already executed with own revenues generated from SATA's operations (EUR [...] million);
- (2) revenues from operations already generated by Azores Airlines (EUR [...] million);
- (3) savings on the '[...]' with banking institutions, comprising debt renegotiations (reduction of spreads and longer loan duration) and cost cutting measures (EUR [...] million) as follows: [...] ⁽⁵⁴⁾; and
- (4) fresh capital funding, not guaranteed by the Region, to be provided from 2022 onwards [...] ⁽⁵⁵⁾; or [...] ⁽⁵⁶⁾.

⁽⁵⁰⁾ Portugal's submission of 2 December 2021 - Annex 3 – Presentation of SATA's Group Results and Performance YTD 2021 of November 2021, as updated by Portugal's reply to the Commission's request for information submitted on 6 April 2022, p. 18 and Annex 8.

⁽⁵¹⁾ Portugal's reply to the Commission's request for information submitted on 6 April 2022, p. 18 and Annex 8.

⁽⁵²⁾ Portugal's reply to the Commission's request for information submitted on 6 April 2022, p. 18, and Annex 8.

⁽⁵³⁾ Portugal's reply to the Commission's request for information submitted on 6 April 2022, p. 18 and Annexes 12-13.

⁽⁵⁴⁾ Portugal's submission of 28 October 2021, p. 6.

⁽⁵⁵⁾ Instrument rating [...] plus a margin of [...] subject to [...].

⁽⁵⁶⁾ Maturity in [...] and interest rate [...] plus a margin of [...] as per [...].

- (51) Finally, in addition to the above measures, Portugal plans divesting a controlling interest in Azores Airlines and carving-out and selling the entire ground handling business to contribute to the restructuring. The sale of such assets is to take place by the end of 2025 ⁽⁵⁷⁾ and, in relation to Azores Airlines, involves the Region's commitment to hand over managerial control to new investors through a shareholding stake of 51 %. Hence, including expected proceeds from the privatisation of Azores Airlines (around EUR [...] million) and the privatisation of the new ground handling business (around EUR [...] million), according to Portugal, SATA's estimated own contribution to the restructuring costs would be EUR [...] million, which would represent around [...] % of the restructuring costs (EUR [...] million).

2.3.1.4. Financial projections of the restructuring plan: baseline and adverse scenarios

- (52) Portugal provided updated the baseline scenario of the restructuring plan on 15 July 2021 and on 2 December 2021. In its submission of 15 July 2021, Portugal had revised its projections adjusting them to take into account the lower operation level of Azores Airlines in the first quarter of 2021, due to the severity of the impact of the COVID-19 pandemic. However, the latest updated figures presented in the report covering the first three quarters of year 2021 ⁽⁵⁸⁾ reflect improved results, above the conservative expectations in the submission of 15 July 2021. Notwithstanding the adjustments, also in the latest revision of the Business Plan projections, Portugal estimates that SATA's earnings before interest and tax (EBIT) would turn positive [...].
- (53) After the restructuring period in 2025, [...].
- (54) The new ground handling business unit is expected to achieve [...] and will be divested by the end of 2025. In any event, at the end of the restructuring period, revenues and costs of SATA Air Açores are projected to be [...], whereas SGA is expected to [...] (from EUR [...] million in 2020 to EUR [...] million in 2025).
- (55) For the baseline scenario, Portugal equally calculated the financial ratios of the return on capital employed (ROCE) ⁽⁵⁹⁾ (Table 1.A) and estimated the weighted average cost of capital (WACC) at [...] %. ROCE would reach [...] % at the end of the restructuring (year 2025).

Table 1.A

Financial projections of the restructuring plan (baseline scenario)

Financials	Restructuring period						
	2019	2020e	2021e	2022e	2023e	2024e	2025e
SATA Air Açores							
Revenues (EUR M)	83,6	66,2	74,2	[...]	[...]	[...]	[...]
EBITDA (EUR M)	15,2	10,8	22,2	[...]	[...]	[...]	[...]
EBITDA Margin (%)	18	16	30	[...]	[...]	[...]	[...]
EBIT (EUR M)	2,3	- 14,1	11,3	[...]	[...]	[...]	[...]
EBIT Margin (%)	3	- 21	15	[...]	[...]	[...]	[...]

⁽⁵⁷⁾ Portugal's submission of 18 February 2022, p. 3.

⁽⁵⁸⁾ Portugal's submission of 2 December 2021 - Annex 3 – Presentation of SATA's Group Results and Performance YTD 2021 of November 2021.

⁽⁵⁹⁾ ROCE in year t is defined as after-tax EBIT in year t divided by the average capital employed in year t and t-1.

Financials			Restructuring period				
Baseline scenario	2019	2020e	2021e	2022e	2023e	2024e	2025e
SGA							
Revenues (EUR M)	3,2	3,3	5,3	[...]	[...]	[...]	[...]
EBITDA (EUR M)	- 0,4	- 0,6	0,2	[...]	[...]	[...]	[...]
EBITDA Margin (%)	- 14	- 17	3	[...]	[...]	[...]	[...]
EBIT (EUR M)	- 0,4	- 1,3	0,1	[...]	[...]	[...]	[...]
EBIT Margin (%)	- 13	- 39	2	[...]	[...]	[...]	[...]
Azores Airlines							
Revenues (EUR M)	157,2	57,0	78,8	[...]	[...]	[...]	[...]
EBITDA (EUR M)	- 4,6	- 36,3	- 37,8	[...]	[...]	[...]	[...]
EBITDA Margin (%)	- 3	- 64	- 48	[...]	[...]	[...]	[...]
EBIT (EUR M)	- 44,1	- 63,3	- 50,2	[...]	[...]	[...]	[...]
EBIT Margin (%)	- 28	- 111	- 64	[...]	[...]	[...]	[...]
New ground-handling business unit							
Revenues (EUR M)	10,8	5,9	18,3	[...]	[...]	[...]	[...]
EBITDA (EUR M)	- 8,6	- 11,8	- 2,5	[...]	[...]	[...]	[...]
EBITDA Margin (%)	- 80	- 199	- 13	[...]	[...]	[...]	[...]
EBIT (EUR M)	- 9,0	- 12,1	- 2,8	[...]	[...]	[...]	[...]
EBIT Margin (%)	- 83	- 205	- 15	[...]	[...]	[...]	[...]
Consolidated SATA Air Açores and SGA	2019	2020e	2021e	2022e	2023e	2024e	2025e
Revenues (EUR M)	86,8	69,5	79,5	[...]	[...]	[...]	[...]
EBITDA (EUR M)	14,8	10,2	22,4	[...]	[...]	[...]	[...]
EBITDA Margin (%) (*)	17	15	28	[...]	[...]	[...]	[...]
EBIT (EUR M)	1,9	- 15,4	11,4	[...]	[...]	[...]	[...]
EBIT Margin (%) (*)	2,2	- 22	14	[...]	[...]	[...]	[...]

(*) Commission calculations.

Source: Portugal's submission of 2 December 2021, Annex 1-SATA business plan 2021-25.

Table 1.B

Financial projections of the restructuring plan (baseline scenario) group

SATA GROUP (*)		Restructuring period				
	2020	2021 (**)	2022	2023	2024	2025
Revenues (EUR M)	118	177	[...]	[...]	[...]	[...]
EBIT (EUR M)	- 78,7	- 39	[...]	[...]	[...]	[...]
EBIT margin (group) (%)	- 67	- 22	[...]	[...]	[...]	[...]
Net income (EUR M)	- 87,1	- 32,7	[...]	[...]	[...]	[...]

SATA GROUP (*)		Restructuring period				
Net Financial debt (NFD) (EUR M)	279	415,2	[...]	[...]	[...]	[...]
NFD/EBITDA Ratio	n/a	39,2	[...]	[...]	[...]	[...]
ROCE (%)	- 155,7	- 11,8	[...]	[...]	[...]	[...]

(*) assumes business divestitures of majority stake in Azores Airlines and ground handling unit.

(**) from 2021 onwards does not include handling or extraordinary COVID-19 subsidies, but recurrent operating subsidies such as regional PSO compensation.

Source: Portugal's submission of 2 December 2021, Annex 4: SATA funding requirements.

- (56) Portugal also provided the ROCE in 2019 of a group of airlines for comparison, showing average ROCE of 6,9 %, and median ROCE of 11,8 % (Table 2).

Table 2

ROCE peer group in 2019

Airlines (as of 31 December 2019)	ROCE
Lufthansa	8,9 %
Norwegian	2,3 %
Eurowings	14,6 %
Ryanair	11,0 %
IAG	12,6 %
Easyjet	13,6 %
Wizz	12,7 %
Brussels Airlines	- 20,3 %
Average	6,9 %
Median	11,8 %
Source: Submission by Portugal on 2 December 2021. Data source: Orbis Business Intelligence database.	

- (57) One of the main difficulties of SATA is the uncompensated part of activities regarding the PSOs performed by Azores Airlines, as described in section 2.2. In the period from 2009 to 2019, as reported by Portugal, the total operating deficit for the PSO routes operated by Azores Airlines – excluding the commercial routes – reached EUR [...] million ⁽⁶⁰⁾. However, according to Portugal, in the future Azores Airlines might be compensated for the PSO routes connecting Lisbon and Horta, Pico and Santa Maria ⁽⁶¹⁾, should it win an open tender for the operation of those PSO routes. The compensation needed to cover costs for the operation of PSOs on the above routes is estimated at EUR [...] million/year. Azores Airlines has the necessary fleet ([...]) and personnel required to operate those national PSOs ⁽⁶²⁾, although the relevant tender has not been launched yet. In any event, Azores Airlines would not bid for the PSOs below the expected costs incurred in discharging them ⁽⁶³⁾.

⁽⁶⁰⁾ Portugal's submission of 19 October 2020, points 150-151 and Annex 4.

⁽⁶¹⁾ Portugal's submission of 2 December 2021, Annex 1 - SATA Restructuring and strategic plan 2021-25, p. 39.

⁽⁶²⁾ Source: Route Profitability Analysis, Company Data, BCG analysis, in Portugal's submission of 2 December 2021, Annex 1 - SATA Restructuring and strategic plan 2021-25, p. 41.

⁽⁶³⁾ Portugal's submission of 10 June 2021, point 23, p. 6.

- (58) Portugal also provided projections in an adverse scenario of the restructuring, in which revenues of Azores Airlines would be 15 % lower than in the base case ⁽⁶⁴⁾. Portugal submits that, if the above PSOs were not entrusted to Azores Airlines, the available capacity may be profitably deployed in the following activities ⁽⁶⁵⁾:
- [...];
 - [...];
 - [...];
 - [...].
- (59) The Portuguese authorities indicate that, with regards to [...]. According to Portugal, at any rate, the above options may be alternative or combined, being pursued simultaneously, depending on the future market developments, as well as the final outcome of the public tender procedures for the award of the PSO routes at stake.
- (60) In the adverse scenario, SATA would still generate EUR [...] million a positive EBIT as of 2025, which would be systematically positive thereafter (Table 3). In the adverse scenario, the expected proceeds from sale of a stake in Azores Airlines would also still restore the equity position of SATA, financial debt would be stable and the net financial debt to EBITA would reach [...] in 2025. As from 2026, the SATA Group [...].

Table 3

Financial projections of the restructuring plan (adverse scenario)

(EUR million)

SATA GROUP	Restructuring period					
	2020	2021	2022	2023	2024	2025
Revenues	117,5	170,8	[...]	[...]	[...]	[...]
EBIT	- 78,7	- 42,6	[...]	[...]	[...]	[...]
Net income	- 87,1	- 58,4	[...]	[...]	[...]	[...]
Financial debt (excluding leasings)	279,4	274,5	[...]	[...]	[...]	[...]

- (61) 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 SATA.

2.3.1.5. Measures to limit distortion of competition

- (62) The Portuguese authorities commit to the following measures to limit distortions of competition for the duration of the restructuring period:
- (a) in terms of divestment, SATA will sell a majority and controlling shareholding (51 %) of the subsidiary Azores Airlines and will also carve out and divest the entire ground handling business, which comprises around [...] ⁽⁶⁶⁾; in addition, SATA has already liquidated Azores Vacations Canada and, by the end of 2022, should have completed the liquidation process of Azores Vacations America, which were focused on connections between North America and mainland Portugal and the Azorean islands throughout the year ⁽⁶⁷⁾;

⁽⁶⁴⁾ Portugal's submission of 15 July 2021, Annex 4 – SATA Funding Requirements (IMAP of July 2021), as subsequently revised on 2 December 2021.

⁽⁶⁵⁾ Portugal's letter of 22 October 2021 [...].

⁽⁶⁶⁾ Portugal's submission of 10 June 2021, p. 9, 11 and 16.

⁽⁶⁷⁾ Portugal's submission of 2 December 2021 - Annex 3 – Presentation of SATA's Group Results and Performance YTD 2021 of November 2021, slide 4.

- (b) as for the fleet, SATA commits to impose a cap on the aircraft fleet, respectively six aircraft for SATA Air Açores – with possibility of exceptional increase in view of complying with inter-island PSOs commitments – and eight aircraft for Azores Airlines ⁽⁶⁸⁾;
 - (c) SATA will refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability of SATA;
 - (d) SATA will refrain from publicising State support as a competitive advantage when marketing its products and services.
- (63) Portugal plans the divestment of assets by 31 December 2025, as it deems that the development of a positive operational and financial track record as a result of the restructuring would comfort potential investors in the majority shareholding of Azores Airlines. Similarly, with respect to the ground handling business to be carved out and divested, this timeframe would allow the beneficiary to achieve a normalised/recurrent earnings before interest, taxes, depreciation, and amortisation (EBITDA) of around EUR [...] million/year.

2.3.2. The situation in the absence of the restructuring aid

- (64) Portugal submits that, in the absence of restructuring aid, SATA would run out of liquidity, given, *inter alia*, the upcoming redemption dates of the main banks' funding - including on 6 March 2022 a loan of EUR 155 million by Deutsche Bank - for which SATA has an insufficient cash balance and has been experiencing difficulties in negotiating further extensions ⁽⁶⁹⁾. There would then follow the suspension and subsequent withdrawal of its operating licence, which would deprive it of its main source of income and would lead to SATA's liquidation. It would also lead to the disruption of the current PSO routes serviced by SATA among the islands of the archipelago and between the archipelago and mainland Portugal and Madeira at least until another carrier would be willing to sign the public service contract. Similarly, SATA would be unable to further provide the SGEI that it currently offers to the five small airports operated by SGA.
- (65) Furthermore, the default of SATA would imply the loss of over 1 000 jobs in an already assisted area ⁽⁷⁰⁾ and drawback effects on the overall economy of the Azores - in particular, on the tourism and fishing sectors – as this outermost Region of the Union is heavily dependent on flight connections, especially in the winter season. In particular, in 2019 tourism represented around 12 000-15 000 direct and indirect jobs, corresponding to around 13 % of the whole Azores' gross domestic product ('GDP'). Furthermore, this 13 % is estimated to grow in the future (by 70-80 %), thus promoting and driving sales of Azorean original products and services ⁽⁷¹⁾. Portugal also stresses that the income level in the Azores is still catching up, with a GDP per capita that is 68 % of the Union average, whilst the local economy is in transition to higher value added services and exports (which account for 10 % of the overall employment in the primary sector) ⁽⁷²⁾.
- (66) Portugal remarks that in recent years other air carriers have shown a lack of interest in developing connectivity with the Azores. In particular, TAP has not bid for the PSO routes to link Portugal mainland with the Azores since April 2015; EasyJet left the market in 2017, allegedly because it could not ensure a quality offering (i.e. frequency), prioritising other markets; Delta cancelled its route New York – Ponta Delgada one year after its launch in 2018, whereas Ryanair is reducing its capacity to the Region following the outbreak of the COVID-19 pandemic. The limited direct connectivity would be demonstrated also by the very low number of direct flights scheduled to the Azores (10 direct destinations in 2019) in comparison to other Regions similar to the Azores in terms of distance from national mainland (e.g. 116 direct flights scheduled to Canary islands or 130 to the Balearic islands) ⁽⁷³⁾.

⁽⁶⁸⁾ Portugal's submission of 28 October 2021, p. 9.

⁽⁶⁹⁾ Portugal's submission of 18 February 2022, p. 4.

⁽⁷⁰⁾ The outermost NUTS 2 region of PT20 Região Autónoma dos Açores was designated by Portugal as an assisted area under Article 107(3), point (a) TFEU, as approved by Commission decision of 8 February 2022 in case SA.100752 (2021/N), Regional aid map for Portugal (2022-2027) (OJ C 82, 18.2.2022, p. 1).

⁽⁷¹⁾ Source: SREA, Press search.

⁽⁷²⁾ Source: INE, SREA (data for 2018/2019).

⁽⁷³⁾ Source: OAG, *Schedule of operating flights for published carriers from January 1st, 2019 to December 31st, 2019*. The data include all operations with 50 or more flights a year from each region to other destination.

- (67) Hence, as Portugal underlines, without intervention by the Region of Azores, SATA would almost certainly go out of business in the short term, as no private investor seems ready to inject capital and no financial institution is willing to offer fresh finance, considering also the geographical location of Azores and its economic condition of assisted area. No alternative scenarios seem credible, not only to keep SATA afloat, but also to maintain air transport connection to and within the Region (recitals 122 to 124), taking into account the wider consequences of the COVID-19 pandemic on the aviation sector and on the economy of the Region of Azores, which is heavily dependent on tourism (recitals 128 to 133).

2.4. Compatibility conditions not contested in the opening and extension decisions

- (68) In the opening and the extension decisions ⁽⁷⁴⁾, the Commission preliminarily found that in the absence of State intervention, no other private undertaking was likely to take on SATA's activities, including the PSOs and SGEIs currently performed, so that there would be the risk of disruption of connectivity for one of the outermost regions of the Union. In addition, the exit of SATA would have potential negative consequences in light of its important systemic role in the Azores and would lead to severe social and economic hardship for the Region and significant negative spill-over effects on important segments of the economy concerning tourism-related activities.
- (69) Furthermore, the Commission did not contest the incentive effect of the aid, nor its appropriateness. In particular, the Commission considered that the restructuring measures address in parallel a situation of extreme deterioration of the equity of SATA, which is deeply negative, whilst servicing the existing debt and meeting cash flow needs for regular operations ⁽⁷⁵⁾.
- (70) Finally, the Commission considered the measures to limit distortions of competition to be adequate with respect to the size of the company, as the full divestment of the ground handling business and the sale of a control shareholding in Azores Airlines appear to allow alternative service providers to step in the relevant markets ⁽⁷⁶⁾. Also, the restructuring plan would significantly reduce the perimeter of ownership and control of SATA, focusing its activities on the public interest mission, namely the operation of five airports in the smallest and farthest islands of the archipelago and the provision of air transport services in the Azores ⁽⁷⁷⁾.

2.5. Grounds for initiating the procedure

- (71) In the opening decision, the Commission found that neither the past capital increases nor the guaranteed rescue loan appeared to meet the conditions of compatibility with the internal market ⁽⁷⁸⁾. In particular, with regard to the past capital increases, amounting to EUR 72,6 million, the Commission raised doubts as to their alleged market-conformity and, absent such market-conformity, on their alleged compatibility with the internal market, notably as rescue or restructuring aid. The Commission was not in a position to conclude whether an exception to the 'one time, last time' principle in exceptional and unforeseeable circumstances for which the beneficiary is not responsible was justified in relation to such capital increases (point 72 (c) of the R&R Guidelines) ⁽⁷⁹⁾.
- (72) The extension decision raised further doubts with respect to the proportionality of the restructuring aid, given: (i) the absence of burden sharing, (ii) the insufficient real and actual own contribution of SATA, required to be at least 50 % of the restructuring costs pursuant to point 64 of the R&R Guidelines, and (iii) the long timespan of the restructuring plan, including assets to be divested only by 2026, at conditions of governance that were not specified.

⁽⁷⁴⁾ Opening decision, recitals 68 to 77, and extension decision, recitals 55 to 61.

⁽⁷⁵⁾ Extension decision, recitals 64-65.

⁽⁷⁶⁾ Extension decision, recitals 86-87.

⁽⁷⁷⁾ Extension decision, recitals 83-86.

⁽⁷⁸⁾ Opening decision, recitals 58-60.

⁽⁷⁹⁾ Opening decision, recitals 97-98.

- (73) In particular, the absence of burden sharing by existing creditors results in a significant amount of State aid in relation to the cost of the restructuring plan. In this respect, Portugal failed to substantiate the purported impossibility of a partial reduction of debt borne by current creditors ⁽⁸⁰⁾, also in the light of the high level of indebtedness of SATA (EUR [...] million financial debt pre-existing the restructuring). Furthermore, the measures envisaged by Portugal did not involve fresh finance at market terms, only freeing resources by reducing the beneficiary's operating costs ⁽⁸¹⁾.
- (74) With regard to the own contribution of the beneficiary, the only sources that could be considered real and actual amounted to [...] % of the costs of the restructuring plan, which is significantly below the proportion of 50 % that the Commission normally considers as adequate ⁽⁸²⁾. At the same time, Portugal had not provided evidence of the fact that the envisaged own contribution measures are effective, lasting and not reversible. Likewise, in the uncertain outlook until 2026, Portugal had not committed to maintaining those measures and not withdrawing them if the operating results of the beneficiary improved faster or more than anticipated in the projections of the business plan. ⁽⁸³⁾
- (75) Finally, the Commission had doubts on the length of the process and the certainty of the corporate measures for the divestment of interest in Azores Airlines and in the ground handling business of SATA that was expected to only take place after the restructuring period, in 2026 ⁽⁸⁴⁾. In this sense, (i) irrespective of the adequacy of multiples used to assess their value ([...]), the estimated amounts (EUR [...] million) seemed premised on hypothetical individual company performance; (ii) Portugal had not produced any firm sale and purchase agreements or binding commitments from specific buyers ⁽⁸⁵⁾; and (iii) it was also doubtful that sufficiently clear governance conditions and agreements would be in place to accompany such divestiture by 2026 ⁽⁸⁶⁾.

3. COMMENTS FROM THIRD PARTIES

- (76) Overall, 19 third parties submitted comments on the opening decision, out of which 18 were submitted within the deadline provided for in the decision ⁽⁸⁷⁾, whereas 14 third parties submitted their comments on the extension decision, of which 12 of whom submitted them within that deadline ⁽⁸⁸⁾.
- (77) Those parties include one interested party, namely Ryanair, which is a competitor that falls within the definition laid down in Article 1(h) of Council Regulation (EU) 2015/1589 ⁽⁸⁹⁾.

⁽⁸⁰⁾ Extension decision, recital 69.

⁽⁸¹⁾ Extension decision, recital 71.

⁽⁸²⁾ Extension decision, recital 74.

⁽⁸³⁾ Extension decision, recitals 72-73.

⁽⁸⁴⁾ Extension decision, recital 89.

⁽⁸⁵⁾ Extension decision, recitals 73-74.

⁽⁸⁶⁾ Extension decision, recital 88.

⁽⁸⁷⁾ Observations on the opening decision were submitted from Partido Popular Monarquico (PPM), Ryanair, A.J.F. Accounting (AJFA), Casa dos Acores do Quebeque (CAQ), SDA Building Services (SDABS), Casa dos Acores do Ontario (CAO), Montreal TEM (MTEM), Associacao de Municipios da Regiao Autonoma dos Acores (AMRAA), Câmara do Comércio e Indústria de Ponta Delgada/Associação Empresarial das Ilhas de S. Miguel e Santa Maria (CCIPD), Hotelaria de Portugal (AHP), Casas dos Acores do Norte (CAN), Federação Agrícola dos Açores (FAA), California Portuguese-American Coalition (CPAC), Casas dos Acores de Winnipeg Canada (CAWC), Portuguese Associations of Travel and Tourism Agencies (APAVT), Visitazores Travel (ATA), the *Comissão da Festas do Senhor Santo Cristo dos Milagres and of the Amigos da Ribeira Quente*, Federacao das Pescas dos Acores (FPA), Brampton Travel Agency (BTA), and Conselho Económico e Social dos Açores (CESA).

⁽⁸⁸⁾ The following third parties submitted comments on the extension decision: Brampton Travel Agency (BTA), Casas dos Acores do Quebeque, J.F. Accounting & Services, SDA Building Services, Comissão da Festas do Senhor Santo Cristo dos Milagres and of the Amigos da Ribeira Quente, Federação Agrícola dos Açores (FAA), Ryanair, Associação Açoriana De Formação Turística e Hoteleira (AAFTH), Portuguese Association of Travel and Tourism Agencies (APAVT), Hotelaria de Portugal (AHP), Sindicato Nacional do Pessoal de Voo da Aviação Civil (SNPVAC), Sindicato dos Pilotos da Aviação Civil (SPAC), Comissão de Trabalhadores da Sata Internacional-Azores Airlines, Câmara do Comércio e Indústria de Ponta Delgada/Associação Empresarial das Ilhas de S. Miguel e Santa Maria (CCIPD) and Associação Turismo dos Açores (ATA).

⁽⁸⁹⁾ 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).

- (78) Third parties include traditional customers and beneficiaries of the services provided by SATA (overseas companies, tour operators, etc.), various associations, including Azorean diaspora organisations ⁽⁹⁰⁾, Azorean municipalities, as well as other stakeholders such as the Partido Popular Monárquico ('PPM') (a Portuguese political party) and the Economic and Social Council of the Azores (Conselho Económico e Social dos Açores) CESA.
- (79) Their comments on the opening, as well as on the extension of the procedure, are presented together below.

3.1. Comments from the interested party - Ryanair

- (80) Ryanair considers that the opening decision signals the Commission's intention to authorise the past capital increases as consideration for inadequate compensation for SATA's SGEIs. However, given the opening decision's failure to present any information on the level of compensation of SATA Air Açores for operating routes with PSOs and other services of general interest provided by SATA, Ryanair claims to have been deprived of the possibility to provide comments on that point. Likewise, Ryanair complains that it has been deprived from the possibility to comment in respect of the extension decision, alleging that it has been withheld access to confidential information contained therein and relating to the restructuring plan, the operational aspects (counting 115 instances of confidential treatment) and measures to limit distortions of competition.
- (81) On the other hand, Ryanair considers that the opening decision signals the Commission's intention to authorise the rescue aid to SATA as an exception to the 'one time, last time' principle, due to exceptional and unforeseen circumstances. In Ryanair's view, the COVID-19 crisis should not be considered as an exception to the 'one time, last time' principle, pursuant to point 72(c) of the R&R Guidelines, to the benefit of SATA. According to Ryanair, if SATA's PSOs were causing losses to the company, then the decrease in traffic due to the COVID-19 crisis should have reduced SATA's losses instead of aggravating its difficulties. Furthermore, Ryanair submits that the massive overcapacity caused by the COVID-19 crisis allows for competitors to step in and replicate the role of SATA Air Açores and Azores Airlines with superior efficiency.
- (82) Ryanair submits that its 27 aircraft that were grounded when Ryanair submitted its comments on 5 October 2020 represented more than twice the entire fleet of SATA Air Açores and Azores Airlines ⁽⁹¹⁾. In Portugal, a total of 60 aircraft were grounded at that time, while for the Eurocontrol zone this figure reached 3 242 aircraft ⁽⁹²⁾. Aircraft are highly movable assets, and the removal of SATA Air Açores and Azores Airlines' capacity from the market will most likely be followed by the positioning of currently idle aircraft of other airlines on the routes of SATA Air Açores and Azores Airlines.
- (83) Ryanair also considers that the Commission's claim in the opening decision ⁽⁹³⁾ that 'in the present circumstances triggered by the COVID-19 outbreak, it is not possible for any competitor, including those already active on the Portuguese market, to step in and fully or significantly replicate the role of SATA Air Açores' is unsubstantiated and that, on the contrary, SATA's exit from the market would allow more efficient competitors to step in and provide a broader range of services and better quality for a lower price to passengers.
- (84) To support its claims, Ryanair refers to the precedents of the bankruptcies of Malév and Spanair, which showed that such a positive outcome is foreseeable, *a fortiori* since 2020 was marked by incomparably higher available capacity than that of 2013, with positive growth of traffic from Budapest and Barcelona airports and refers to Eurostat data in this regard.

⁽⁹⁰⁾ Diaspora associations CAQ and CAO are also part of same umbrella organisation CAN. Other diaspora communities in Canada and the USA are CPAC and CAWC.

⁽⁹¹⁾ Ryanair states that SATA Air Açores operates two Bombardier Dash 8-Q200 aircraft (with a capacity of 37 passengers), four Bombardier Dash 8-Q400 (with a capacity 80 passengers) and Azores Airlines operates six Airbus A320 and A321 (source https://en.wikipedia.org/wiki/SATA_Air_A%C3%A7ores).

⁽⁹²⁾ EUROCONTROL's Aviation Intelligence Unit (AIU) data on grounded fleets Source: https://ansperformance.eu/covid/acft_ground/ (part of EUROCONTROL's Aviation Intelligence Unit (AIU), viewed on 2 October 2020).

⁽⁹³⁾ Opening decision, recital 70.

- (85) Further to this, Ryanair submits that it would be able to take over all of SATA Air Açores and Azores Airlines' routes to the mainland in a matter of days. Ryanair also notes that the opening decision ⁽⁹⁴⁾ mistakenly states that '*Ryanair connects the Azores with London, Manchester and Frankfurt*', omitting Ryanair's operation of routes between Ponta Delgada and Terceira Lajes (both in the Azores) and Lisbon and Porto on a year-round basis.
- (86) Ryanair maintains that, following its investigation in this case, the Commission should be in a position to conclude that the COVID-19 crisis should not be considered as a circumstance that justifies an exception to the 'one time, last time' principle. On the contrary, the overcapacity generated by this crisis makes it easier for competitors to step in and it makes it less justified to artificially maintain SATA which has proved its inefficiency. Ryanair recalls that SATA was already on the brink of collapse before the COVID-19 crisis and was saved through recurrent capital injections by Portugal. Ryanair also states that the COVID-19 crisis is not a valid reason to allow Portugal to keep injecting funds to SATA.
- (87) On the extension decision, in particular, Ryanair claims that due to the excessive confidentiality treatment of parts of that decision concerning the restructuring measures, own contribution and measures to limit distortions of competition, it was deprived of its right to make comments. Ryanair also reiterates that the opening and the extension decisions omit to mention, among the routes between the Azores and the Portuguese mainland operated by Ryanair, the following routes: (i) Ponta Delgada and Porto on a year-long basis, and (ii) Terceira and Lisbon and Porto on a year-long basis. In addition, Ryanair suggests that SATA should be stripped of operations outside the PSO/SGEI realm, given that such unclear delineation of the missions of SATA, as a public service provider and commercial air carrier, probably explains most of its difficulties. Ryanair adds that the growth of its operations between the Azores and the Portuguese mainland despite the COVID-19 crisis confirms that it would be able to take over all of SATA's commercial routes to the mainland at short notice.
- (88) Moreover, taking into account the overcapacity caused by the COVID-19 crisis in the aviation sector, Ryanair invites the Commission to refrain from assuming, in respect of the routes currently operated by SATA Air Açores and Azores Airlines, that the condition set out in paragraph 1 of Article 16 of Regulation (EC) No 1008/2008 is automatically satisfied (namely that PSOs should be imposed when carriers would not assume a certain level of services, if they were solely considering their commercial interest). Finally, Ryanair advocates to limit the amount of aid to what is necessary to pursue SATA's PSO/SGEIs tasks.

3.2. Comments from third parties

3.2.1. *Partido Popular Monarquico*

- (89) With respect of the measures subject to the proceedings, PPM has opposed the rescue aid and the restructuring plan. PPM considers that some information provided by Portugal is incorrect. Namely, it underlines that the activities of SATA Air Açores and Azores Airlines should not be mixed: while the former operates only inter-islands flights under PSOs with an important financial compensation (more than EUR 135 million for the period 2015-2020), the latter competes with other airlines companies (e.g. TAP, Ryanair, EasyJet, Euroatlantic, Cabo Verde Airlines, Binter). PPM also stresses that TAP, Ryanair and Azores Airlines compete on the same market for two liberalised routes ⁽⁹⁵⁾ and that routes under PSOs do not have a high level of demand. Lastly, PPM mentions that before the COVID-19 outbreak TAP was a competitor that also connected the USA and Canada. ⁽⁹⁶⁾
- (90) Further to this, PPM submits that Azores Airlines is voluntarily operating several PSO routes ⁽⁹⁷⁾ (previously operated by TAP) and that Portugal never submitted to public tender such routes. Therefore, Portugal is not entitled to justify aid granted to Azores Airlines for these PSO routes. Furthermore, PPM underlines that a statement made by the Commission regarding the cessation of activity of EasyJet ⁽⁹⁸⁾ on a PSO route ⁽⁹⁹⁾ in 2017 is incorrect, as the said route was not in fact a PSO route, but a liberalised one.

⁽⁹⁴⁾ Opening decision, recital 10.

⁽⁹⁵⁾ The routes from São Miguel (PDL) and Terceira (TER) to Lisbon (LIS) and Oporto (OPO).

⁽⁹⁶⁾ Routes from São Miguel (PDL) to and from Boston (BOS).

⁽⁹⁷⁾ Routes between Lisbon (LIS) and Pico (PIX); Faial (HOR) and Santa Maria (SMA) and also between Madeira (FNC) and São Miguel (PDL).

⁽⁹⁸⁾ Opening decision, recital 16.

⁽⁹⁹⁾ São Miguel (PDL) to Lisbon (LIS).

- (91) Concerning the inter-islands PSO routes operated by SATA Air Açores, PPM submits that the reason why the public tender was not attractive is due to: (1) the complexity the Government placed on the PSO and tender rules and (2) the fact that the tender for the inter-island routes is for all the routes as a group. In that regard, fair, reasonable and more transparent conditions would allow for the reduction of the amount of the financial compensation to be paid. Finally, PPM considers that financial compensation paid to SATA Air Açores for the PSOs also constitute an unlawful subsidisation of Azores Airlines and that the latter company should be managed separate from the former.
- (92) PPM also alleges that territorial continuity between Portugal mainland and the Azores would not be disrupted in the case of SATA's failure: indeed, TAP and Ryanair are operating the routes from São Miguel (PDL) and Terceira (TER) to Lisbon (LIS).

3.2.2. *Customers and other organisations*

- (93) Other third parties have submitted comments supporting the rescue and restructuring plan of SATA because of the importance of SATA and the potential impact of its market exit to the economy and connectivity of the Azores Region and the communities of the Azorean diaspora.
- (94) The vast majority of the third parties that submitted comments, both on the opening decision and the extension decision, are concerned with the need to ensure the principle of territorial continuity. Thus, they support the continuation of the flight services provided by SATA for the Azores diaspora, regional economy, health and education of the region, considering the characteristics of the ARA as an outermost region of the Union, as recognised in Article 349 TFEU. In the absence of SATA those routes would not be replicated by any other airline in the same level in their view, given the seasonality of the other carriers' connections, and the fact that the other carriers have not demonstrated a continued interest in ensuring these connections.
- (95) Without exception, the diaspora associations underline the importance of SATA for the maintenance of the roots and connectivity of the Azorean community in North America, the Azorean community in Toronto, Montreal, Ontario, Winnipeg, California and the east coast of the USA ⁽¹⁰⁰⁾.
- (96) In this context, a vast number of third parties stress the relevance of SATA to the tourism sector, considered as an essential sector for the development of the Azores and a key source of employment and wealth for the region. SATA played, and still plays, a leading role in the growth of the Azores as a tourism destination and, consequently, in the employment and wealth of the region, as it secures internal mobility within the Azores archipelago and its connectivity with the mainland, Europe and North America. In addition, SATA secures the access to essential and non-essential goods from outside the Azores, necessary for the development of all tourism-related activities.
- (97) The Portuguese Association of Travel Agencies and Tourism ('APAVT'), as well as the Azorean Tourism Association ('ATA') consider that the economic impact of SATA on the whole of the tourism value chain is unique. In their view, the passenger flows stemming from SATA's flight operations result not only in the direct creation of numerous jobs, but also in the creation of multiple businesses downstream, namely hotels and short-term rentals, restaurants, rent-a-car, travel agencies and tourist entertainment companies.
- (98) Furthermore, associations such as the Azorean Agricultural Federation ('FAA') and the Azorean Fishing Federation ('FPA') highlight the specificity of the Azores region and the instrumental role that SATA plays in accessing other regions and secure the distribution and export of products from the Azores archipelago to other lands, continental Portugal and other territories within (and outside the Union), thus enhancing the access to fair opportunities for producers of the Azores, in particular for the transport in terms of the fish distribution. FAA and FPA submit that SATA ensures the socio-economic development of the fishing and agricultural sectors by transporting these products within the Azores archipelago and from the latter to other regions.

⁽¹⁰⁰⁾ Submission by California Portuguese-American Coalition (CPAC) of 2 October 2020, and Casas dos Acores de Winnipeg Canada of 3 October 2020.

- (99) Other parties, such as the direct customers and travel agencies (A.J.F. Accounting ('AJFA') and SDA Building Services ('SDABS'), which have investments in the Azores, , as well as the tourism agency 'BTA') are in favour of supporting SATA, whereas Associação de Municípios da Região Autónoma dos Açores ('AMRAA') recalls the fact that SATA was a guarantor of the non-isolation of the Azorean population from the outside and an instrument for the implementation of territorial, economic and social cohesion; in addition, they point out that SATA has an essential role in times of crisis, such as natural catastrophes and during the COVID-19 pandemic, and underline the key role of SATA's services for the transport of medical equipment, medication and personal protective equipment.
- (100) A trade association Câmara do Comércio e Indústria de Ponta Delgada/Associação Empresarial das Ilhas de S. Miguel e Santa Maria ('CCIPD') acknowledges that SATA has been a key instrument for ensuring internal mobility and connectivity to the outside, while nevertheless expressing concern over the management of SATA during the support period and suggests improving performance through an action plan. CCIPD recognises the state of emergency and suggests an amendment of PSO for inter-island flights and connections for non-liberalised gateways.
- (101) In general, all other third parties acknowledge that SATA plays a key role in the process of safeguarding the connectivity of the Region of Azores by implementing the economic, social and territorial principles embodied in the Articles 174 to 178 TFEU. Such third parties do not see potential negative effects on competition of the past capital increases and/or other support measures in favour of SATA ⁽¹⁰¹⁾, or consider that the possible negative effect would be counterbalanced by the positive impact of maintaining the operation of SATA, in view of the small size of the Region of Azores and its limited population (243 000 inhabitants).

4. COMMENTS FROM PORTUGAL

4.1. Comments on the opening and extension of formal proceedings

- (102) Portugal considers that SATA's past capital increases (in 2017 ⁽¹⁰²⁾, 2018 ⁽¹⁰³⁾ and 2020 ⁽¹⁰⁴⁾) amounted to compensations of PSOs relating to air transport within the islands and to/from Azores with a view, more specifically, to compensate the operational deficits stemming from the imposition of the said PSOs and SGEIs, considered essential for the public interest of the ARA ⁽¹⁰⁵⁾. In order to show that such PSOs and SGEIs have not been adequately and entirely compensated, Portugal submits *inter alia* that SATA's audited deficit of compensation for PSOs in the period 2009-2019 amounted to at least EUR 65,5 million ⁽¹⁰⁶⁾, including: (i) EUR 19,2 million of additional costs incurred by SATA Air Açores, which were not compensated under the public service contracts ('PSCs'), neither via the compensatory allowances, nor via the financial re-establishment mechanisms, and (ii) EUR 46,3 million of costs reported by Azores Airlines in the four PSO routes (i.e. excluding the commercial, liberalised routes) ⁽¹⁰⁷⁾.
- (103) According to Portugal, the audited amounts do not reflect the real operational deficit in discharging SATA's PSO routes (i.e. 14 PSOs routes operated by SATA Air Açores and four routes by Azores Airlines), which would be equal to around EUR 98 million, as such deficit would, apart from the abovementioned EUR 65,5 million, also include an extra amount of EUR 33 million, consisting in the difference between SATA's requests to re-establish its financial balance and the amount effectively paid by ARA in the period 2009-2019. Portugal thus explains that this situation

⁽¹⁰¹⁾ Judgment of the General Court of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis v Commission*, Joined Cases T-267/08 and T-279/08, ECLI:EU:T:2011:209, paragraph 110.

⁽¹⁰²⁾ Authorised by Resolution of the Council of Government of Azores no 13/2017.

⁽¹⁰³⁾ Authorised by Resolution of the Council of Government of Azores no 85/2018, amended by Resolution of the Council of Government no 112/2018.

⁽¹⁰⁴⁾ Authorised by Resolution of the Council of Government of Azores no 66/2020.

⁽¹⁰⁵⁾ Portugal's submission of 19 October 2020, points 142-155 and 167-189.

⁽¹⁰⁶⁾ This amount considers only the difference between the amounts due by ARA, as certified by the relevant public audits, and the amounts actually paid by ARA, see Portugal's submission of 19 October 2020, points 143-155 and Annexes 2-4 and Annex 7.

⁽¹⁰⁷⁾ Portugal's submission of 19 October 2020, point 151.

of financial distress determined the need for the Council of the Region's Government to comply with a recommendation of the Court of Auditors ⁽¹⁰⁸⁾, as well as with national company law rules relating to the loss of half of paid-in share capital due to accumulated losses ⁽¹⁰⁹⁾.

(104) In particular, as regards inter-island transport, Portugal explains that the 14 routes served by SATA that are organised in three clusters (Ponta Delgada, Terceira and Horta) have been tendered out since 2002 pursuant to, first, Council Regulation (EEC) No 2408/92 ⁽¹¹⁰⁾ and, subsequently, Regulation (EC) No 1008/2008. The current public service contract ('PSC'), entrusted to SATA following a public tender was awarded for five years, from 1 November 2021 to 31 October 2026 (recital 19).

(105) All PSCs included an *ex ante* method for compensation calculation, yearly allowance and a mechanism for compensation adjustments in order to ensure that SATA was not overcompensated for the provision of the public service. However, as mentioned (recitals 32 and 102), Portugal claims that SATA Air Açores incurred additional costs in providing PSO services that were not compensated either via annual allowance or *ex post* correction mechanism and the audited amount of losses was EUR 19,2 million (although SATA had requested EUR 50,9 million to cover the real deficit).

(106) As regards the routes served by Azores Airlines under non compensated PSOs (recital 20), Portugal explains that the three connections with mainland Portugal (routes Lisbon-Santa Maria-Lisbon, Lisbon-Pico-Lisbon and Lisbon-Horta-Lisbon) and the route Ponta Delgada-Funchal, in which Azores Airlines is the only air carrier, are under re-examination to ensure that these routes have an adequate compensation that is established on an ex-ante basis. This would entail the closure of the PSO routes (which are now open to all airlines wishing to operate them under PSOs without compensation) and the award of a PSC with compensation via a tender in accordance with Regulation (EC) No 1008/2008. Portugal states that:

(a) in the context of the restructuring, SATA cannot continue operating those routes if they constitute loss-making activities and, hence, such operation will only be provided by Azores Airlines with compensation should Azores Airlines win an open tender for the operation of those PSO routes ⁽¹¹¹⁾;

(b) it is necessary to launch as soon as possible an international tender procedure, which will provide adequate compensation not exceeding the amount required to cover the net costs incurred in discharging the PSO, taking into account the revenue relating thereto kept by the air carrier and a reasonable profit.

(107) Portugal confirms that Azores Airlines submitted on a regular basis (every two seasons) an operations plan to the Civil Aviation Authority ('ANAC') expressing its interest to operate those routes according to the PSO conditions and without compensation. Nevertheless, Portugal claims that SATA should be compensated for those PSO services, which generated, as described (recitals 57 and 102), an operational deficit of EUR 46,3 million between 2009 and 2019. As illustrated (recital 102), Portugal states that the past capital increases to SATA (recital 2) represented *ex post* compensation for the PSOs' deficits, which overall was certified as equal at least to EUR 65,5 million until 2019. However, SATA has reimbursed the corresponding amount (recital 116).

(108) Portugal explains that Azores Airlines also suffered losses on the Azores-North America routes it served and that such losses should also be compensated. In particular, the operational deficit for Azores-North America routes between 2009 and 2019 is estimated at EUR 47,2 million. Portugal claims that those routes are *de facto* SGEI, as operated in the public interest, and that consequently the compensation of this deficit should be considered compatible under Commission Decision 2012/21/EU ⁽¹¹²⁾, as annual traffic does not exceed 300 000 passengers.

⁽¹⁰⁸⁾ Report of the Court of Auditors n. 01/2016 of January 2016, p. 14.

⁽¹⁰⁹⁾ Article 35 of the Portuguese Companies Code states that, in case of situations of loss of more than half paid-in share capital due to accumulated losses, shareholders should deliberate on options to correct the situation, which include the option of capital injection.

⁽¹¹⁰⁾ Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8).

⁽¹¹¹⁾ Portugal's submission of 2 December 2021, Annex 1 – SATA Restructuring and Strategic Plan 2021-25, p. 40.

⁽¹¹²⁾ Commission Decision of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

- (109) On 10 June 2021, Portugal submitted further comments on: (i) the entrustment of the PSOs to SATA and Azores Airlines, as well as the SGEI to SGA; (ii) the proportionality of the aid and its limitation to the minimum; (iii) measures to limit distortions of competition, and (iv) compliance with the 'one time, last time' principle.
- (110) The arguments relating to the necessity of the PSOs and SGEIs entrusted to SATA in view of the specific socio-economical needs of the outermost region of Azores largely correspond to what was already stated in the previous communications from Portugal (recitals 64 to 66). With regards to the proportionality of the aid, Portugal reiterates that any burden sharing by subordinate creditors, such as bond holders, would harm market confidence and hinder the future funding prospects of SATA. In addition, according to Portugal, this would entail potential spill over effects to the regional administration and other companies of the regional public sector, given that the majority of SATA financial debt is guaranteed by the ARA.
- (111) Notwithstanding the above, Portugal has phased out the repayment of the [...] of EUR [...] million ([...]), during the restructuring period, while committing itself to the highest possible level of debt write-off (recitals 49 to 50). Portugal also reiterates its arguments pertaining to the negative consequences of any burden sharing imposed on subordinate creditors, such as bond holders, as this would harm market confidence and hinder the future funding prospects of SATA and alleges potential spill over effects to the regional administration and other companies of the regional public sector, given that the majority of SATA financial debt is guaranteed by the Region.
- (112) As SATA is a wholly owned regional public undertaking, Portugal insists that the only resources that it is able to provide as own contribution are cost or debt reductions and sale of assets. In order to demonstrate that SATA's contributions are real and accurate, in its communication of 2 December 2021 Portugal submits evidence of agreements and negotiations relating to the cost reductions of the restructuring plan for around EUR [...] million (recital 49).
- (113) With regard to the planned sale of 51 % of Azores Airlines and the ground-handling business, Portugal commits itself to implementing the divestiture by the end of 2025 ⁽¹¹³⁾, and to presenting a comprehensive step plan for the privatisation, detailing the commitment of the ARA.
- (114) According to Portugal (recital 51), [...], the overall own contribution would be around [...] %, which would represent a significant rate, considering the size and characteristics of SATA and the socio-economic conditions of Azores as an outermost region of the Union, as well as an assisted area under Article 107(3), point (a), TFEU ⁽¹¹⁴⁾.
- (115) In terms of measures to limit distortions of competition, in its submission of 10 June 2021 Portugal clarifies that the sale of a stake equal to at least 51 % of the shareholding in Azores Airlines will result in a loss of control of the subsidiary by SATA Air Açores and, ultimately, the Region of Azores. In addition, the Portuguese authorities agree to implement the necessary terms and conditions of corporate governance which ensure that [...] ⁽¹¹⁵⁾.
- (116) As for the compliance with the 'one time, last time' principle, on 1 June 2021 Portugal submitted evidence that SATA had reimbursed the capital increases subscribed by the ARA since 2017, in three instalments totalling EUR 72,6 million: EUR 24 000 000 on 16 March 2021, EUR 27 000 000, on 17 March 2021 and EUR 21 580 735, on 26 May 2021. SATA has also proceeded with the corresponding reduction of its share capital, executed and registered in the Portuguese Commercial Registry. On 30 November 2021, Portugal confirmed it had recovered interest amounting to EUR 815 233,24 in conformity with Chapter V of Regulation (EC) No 794/2004.

⁽¹¹³⁾ Portugal's submission of 18 February 2022, p. 3.

⁽¹¹⁴⁾ See footnote 69.

⁽¹¹⁵⁾ Portugal's submission of 10 June 2021, point 76.

4.2. Comments on third party observations

4.2.1. Portugal's comments on Ryanair's observations

- (117) As a preliminary point, the Portuguese authorities stress the importance of preserving the confidentiality of information regarding public regional companies and set aside Ryanair's complaints concerning the lack of transparency. Portugal submits that the information that is required to be publicly available (financial statements and annual reports) concerning SATA is easily accessible. It also refers to documentation and reports, such as the one of the Portuguese Court of Auditors ⁽¹¹⁶⁾ or the one prepared by the Regional Parliament of Azores ⁽¹¹⁷⁾, that are public and can be found easily. By contrast, the information to which Ryanair claims to have no access is precisely the information that the Commission has requested Portugal to provide under the investigation procedure opened to assess the past capital increases.
- (118) Concerning the alleged unavailability of information in the decision regarding compensation of PSOs, Portugal explains that, as the Commission opened an investigation procedure concerning the past capital increases, it was not for the Commission to provide information supporting the possibility of those increases having been directed at remedying insufficient compensation for the provision of PSOs. On the contrary, Portugal underlines that it is for the Portuguese authorities to invoke possible grounds of compatibility of the past capital increases and to demonstrate that the conditions for such compatibility are met, as confirmed by the case-law of the Court of Justice of the European Union ⁽¹¹⁸⁾.
- (119) Likewise, concerning the alleged excessive confidentiality of the extension decision, Portugal replies that the right not to have business secrets and confidential information made public and the duty of the Commission under the terms of Article 287 TFEU should not be endangered by the procedural rights of interested parties, such as Ryanair, to submit comments on procedures under Article 108(2) TFEU. At any rate, Portugal points to the clarity of the extension decision in detailing the sources of SATA's own contribution - which are explained, in addition to recital 23, mentioned by Ryanair, in recital 21 and are then assessed in recitals 71 and 74 - whereas the measures to limit distortions of competition are analysed in recitals 83 to 89 of the said decision ⁽¹¹⁹⁾.
- (120) As regards the past capital increases, in response to Ryanair's complaint that those increases did not comply with the 'market economy investor' test, the Portuguese authorities submit that Ryanair does not explain why such test should be applicable to the case at hand, or why its application would result in a finding of existence of State aid. Portugal submits that, as established by a settled case-law, the 'market economy investor' test should not be applicable and adequate for the assessment of the existence of State aid in light of the activities of SATA. Indeed, SATA does not operate under normal market conditions given that it is entrusted with the provision of SGEIs and PSOs that pursue the Region's policy of ensuring appropriate territorial continuity of Azores with mainland Portugal and with the Azorean diaspora in North America.
- (121) Portugal also rejects Ryanair's claim concerning the possibility of invoking the COVID-19 pandemic as a circumstance justifying a departure from the 'one time, last time' principle. Portugal submits that SATA's activities never fully stopped during the travel restrictions, as SATA carried out an essential role. After those activities were resumed, SATA continued to be affected by the COVID-19 pandemic in a manner different from a normal airline, given that SATA serves PSO routes to ensure territorial connectivity, which it cannot cease or reduce without putting those PSOs at risk, whether they are profitable or not.

⁽¹¹⁶⁾ Portuguese Court of Auditors' Report and Opinion on the 2020 ARA accounts <https://www.tcontas.pt/pt-pt/ProdutosTC/PareceresTribunalContas/pareceres-craa/Documents/2020/sratc-cra-2020.pdf>.

⁽¹¹⁷⁾ SATA Management Report for 2020, <https://portal.azores.gov.pt/documents/36626/729805/SATA+GA+RC+2020.pdf/98844e5b-93c0-709c-3a13-e9cadaf5e6d4?t=1627401511597>.

⁽¹¹⁸⁾ Judgment of the Court of Justice of 28 April 1993, *Italy v Commission*, C-364/90, ECLI:EU:C:1993:157, paragraph 20.

⁽¹¹⁹⁾ Portugal's observations to the comments of interested parties of 12.8.2021, pts. 14-19.

- (122) Portugal highlights that the entry of a new competitor would not guarantee the frequency or the continuity of routes and would not be in line with the relevant PSO requirements and connectivity needs of the Azores Region. In particular, calculating the market share of each company for each international direct route to / from the Azores in 2019, Ryanair has a total of 9,8 %, whilst Azores Airlines has 75 %: given the relevant difference in their respective presence, it would be unlikely even for Ryanair to replace it in the Azorean routes in the short-medium term. In that regard, the exit of SATA from the market would be highly detrimental to this outermost region. As for the connections within the archipelago, the fact that SATA Air Açores has always been the only airline to participate in the public tenders launched since 2002, including the most recent one launched on 4 June 2021 for the awards of inter-island PSO routes, demonstrates, in Portugal's view, the lack of interest of other airlines to operate on this market. Likewise, SATA is the only air carrier that has submitted operations plans to ANAC to operate PSO routes connecting the Azores with mainland Portugal and with the Madeira, even if, regarding such PSO routes, Portugal clarifies that they are not subject to a public tender, but to a less stringent procedure. Portugal stresses that this lack of interest in PSO routes has continued despite the overcapacity that, as Ryanair claims, the pandemic has created. Moreover, Portugal remarks that airlines that entered the liberalised routes where SATA operated exited very shortly thereafter, especially because of the particular and atypical operational conditions ⁽¹²⁰⁾.
- (123) To characterise the specificity of the Azores market, Portugal submits that the situation of SATA cannot be compared to the one of Spanair or Malév, unlike Ryanair argues. Indeed, those bankrupted companies operated on attractive commercial markets different from the Azores routes from a geographical, social and economic perspective. The exit from the market of SATA would not incentivise competition, in Portugal's view, for the following two reasons: (i) the decrease in the level of demand due to the COVID-19 pandemic and the necessary territorial continuity in the Region, which involves the impossibility to stop flying; and (ii), in the cases of Spanair and Malév, the increase in the demand, following the exit from the market of the two mentioned airlines, was the result of external factors and not of more efficient airlines.
- (124) In respect of the proposed discontinuance of non PSO/SGEI routes, Portugal alleges that, contrary to Ryanair's claim that it would be able to substitute Azores Airlines on its commercial routes to the mainland, Ryanair has kept a limited number of frequencies on its routes since the liberalisation of the connections between São Miguel and Terceira to Lisbon and Oporto, in 2015, and has not increased such frequencies when those of SATA were reduced, e.g. in February and March 2021 ⁽¹²¹⁾. Furthermore, Ryanair does not provide air transport services to North America to ensure connectivity with the Azorean diaspora, nor air cargo services to export and supply goods to ARA. Both services are fundamental for the Azores, the first activity to bring foreign investment and tourism, the second to support the local economy: in 2019, nearly [55-65] % of the air cargo to/from Azores (approximately [...] thousand tonnes) was ensured by Azores Airlines, including fresh fish (approximately [55-65] % of the total Azores Airlines cargo), mail (approximately [5-15] %) and medical supplies (approximately [0-5] %).
- (125) Similarly, Portugal rejects Ryanair's interpretation that the COVID-19 pandemic cannot qualify as an exceptional and unforeseen circumstance by referring to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ⁽¹²²⁾ adopted by the Commission.
- (126) Finally, Portugal argues that the allocation of PSO routes to SATA has been done in compliance with the rules and procedures laid down in Regulation (EC) No 1008/2008 and confirms the Commission decision with regard to the description of Ryanair's routes between the Azores and the rest of the Union, as well as direct routes to and from the Azores operated by TAP.

⁽¹²⁰⁾ Portugal's submission of 13 August 2020, Annex 6 - Competitive landscape in aviation in the Azorean market, indicating that Air Berlin, Air Europa*, Delta, Easy Jet, Flyl*, Germania*, JetTime*, Niki*, Norwegian*, Primera*, Travel Service* and TUI NL* (all carriers marked with * provided charter flights) have interrupted routes to the Azores since 2016.

⁽¹²¹⁾ Annex 1 to Portugal's submission of 12 August 2021.

⁽¹²²⁾ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 122I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1) (the 'Temporary Framework').

4.2.2. Portugal's comments on PPM's observations

- (127) On PPM's allegation concerning the inaccuracy of some information provided by the Portuguese authorities that would result in an attempt to mix the activities of SATA Air Açores and Azores Airlines, Portugal considers that, in view of the opening decision, as well as the further explanations submitted to the Commission, there is no possible confusion between those companies.
- (128) Portugal claims that PPM's comments contain several unsubstantiated and/or untrue allegations. First, the list of competitors of Azores Airlines provided by PPM is inaccurate, because only TAP and Ryanair compete with SATA in the same markets, whereas the regular routes operated by Azores Airlines are different from those operated by White, Euroatlantic, Cabo Verde Airlines and Binter. Those airlines, indeed, do not operate regular routes from the Azores. As for Binter, the airline operates a route within the Madeira archipelago which was previously operated by SATA Air Azores under a public contract for the period from 2011 to 2013. As for EasyJet, it only competed with Azores Airlines on the liberalised routes between the Azores and the mainland of Portugal until it exited those routes in 2017. In total, 12 air carriers have tried to operate in the Azorean market, but had to abandon it since 2016 due to the lack of profitability ⁽¹²³⁾. Also the connections with the USA and Canada that are of crucial importance for the Region have generally been assured by Azores Airlines. In particular, according to Portugal's submission, only Delta operated the route from Ponta Delgada to New-York, from May 2018 to September 2019, and TAP's direct route between Ponta Delgada to Boston, launched in July 2020, has been discontinued.
- (129) Contrary to the PPM's allegations that the PSO routes have only been explored – on a voluntary basis - by Azores Airlines and that the losses would be explained by Portugal's non-compliance with Regulation (EC) No 1008/2008, Portugal replies that the routes between the Azores and mainland Portugal have been considered as PSO routes since 1998 and that information notices and further amendments have always been published in the *Official Journal of the European Union* from 1998 until 2015. In the period between 2005 and 2015, however, a public tender was not needed, as the routes were operated without a concession contract or corresponding compensation: in particular, TAP and Azores Airlines were operating Lisbon-Horta, TAP was the only carrier operating Lisbon-Pico, whereas Azores Airlines was the only one operating Lisbon-Santa Maria. As of March 2015, those routes had evolved due to the liberalisation of some of them, whilst the main conditions attached to service provisions were also modified. Portugal concludes that the establishment of the PSO routes and their attribution have always been in compliance with the procedure laid down in Regulation (EC) No 1008/2008 and, as described in its submissions, from March 2015 onwards Azores Airlines was the only air carrier that demonstrated interest in operating the (open) PSO routes and that submitted operations plans to ANAC. Portugal, thus, underlines that the operation of those routes has not been done on the basis of their profitability. Portugal also states that the allegations of overload and complexity of the PSO and tender rules have no basis, as (i) they followed the general pattern for this type of tenders, (ii) were communicated to the Commission and approved as per the procedure laid down in Regulation (EC) No 1008/2008. Likewise, Portugal rebuts the allegation by PPM that the tender for the inter-island routes is for all the routes as a group by recalling that such a possibility is expressly provided for by Regulation (EC) No 1008/2008, as the wording of Article 16(10) of that Regulation clearly applies to the Azores's specific situation in Portugal's view. Finally, in what concerns PPM's argument that the financial compensation paid to SATA Air Açores for the PSOs also constitute an unlawful subsidisation of Azores Airlines, Portugal explains that the paid amounts not only do not allow for any transfer to Azores Airlines, but actually do not cover the deficits generated by the operations of such routes ⁽¹²⁴⁾.

4.2.3. Portugal's comments on other parties' observations

- (130) On the one hand, Portugal highlights the positive remarks made in relation to the essential role played by SATA for the socio-economic development of the Azores and in ensuring national and international territorial continuity of the Azores with the Union. Portugal also remarks that those comments emphasise the compatibility of the past capital increases with Union rules, those increases having a negligible impact on competition and in the internal market, given the necessity to ensure the connectivity of the Azores diaspora. Furthermore, some comments also outline the specificity of SATA on the routes that SATA Air Açores and Azores Airlines operate, given that SATA's model would not be replicated by its competitors, which could ultimately be highly detrimental to the Azorean immigrant community.

⁽¹²³⁾ See footnote 117.

⁽¹²⁴⁾ Portugal's submission of 13 November 2020, p. 9.

- (131) On the other hand, to further underline SATA's essential role Portugal observes that some comments insist on the remoteness of the Region of Azores and its lack of connection to the internal market, which might discourage trade and be an impediment to the free movement of goods. Portugal also submits that third parties such as AJFA, SDABS, and Brampton Travel AG (BTA) highlight the relevance of the North American routes for business and investment purposes. From an economic perspective, Portugal emphasises that third parties stress the relevance of SATA to the tourism sector, which is key for the development of the Region. SATA secures the access to essential and non-essential goods from the outside that are necessary for the development of the tourism sector. SATA's 'unmeasurable' role in the whole tourism value chain is outlined by the APAVT (and by the ATA).
- (132) The Portuguese authorities also submit that comments, in particular those made by the Azorean Agricultural Federation and the Azorean Fishing Federation for the fishing and agricultural sectors, have emphasised the distinctive role played by SATA for the producers of the Region to ensure access to equal opportunities (by securing the distribution and export of products between islands, the mainland of Portugal, and other territories).
- (133) Finally, Portugal highlights that, beyond the support provided by SATA's air services to the social and economic development of the local community, without which recovery of the Region from the current pandemic would be virtually impossible, certain third parties that submitted observations in the context of the Commission's investigation procedure, such as the Association of Municipalities of the Azores Region, have underlined that SATA has an essential role in the specific and exceptional circumstances provoked by the COVID-19 pandemic, *inter alia*, for the transport of medical equipment to the Region.

5. ASSESSMENT OF THE MEASURES

- (134) The Commission will first assess whether the restructuring aid, namely the Regional Government's direct loan of EUR 144,5 million and the debt assumption of EUR 173,75 million, totalling EUR 318,25 million to be converted into equity, as well as the State guarantee of EUR 135 million to be granted until 2028 on loans from banks and/or other financial institutions, entail State aid within the meaning of Article 107(1) TFEU, and, if so, whether such aid is lawful and compatible with the internal market.
- (135) The same assessment will also be carried out with respect to the past capital increases, as the formal investigation procedure initiated in the opening decision also concerns those measures ⁽¹²⁵⁾. That assessment is carried out in recitals 242 to 248.
- (136) By contrast, such assessment will not be carried out with respect to the rescue aid to SATA notified on 13 August 2020 (recital 1), given that the notification in question was later withdrawn on 6 April 2022 and that the rescue aid had not been put into effect (recital 12). While the rescue aid as such has not been granted to SATA, the Commission notes that, in reaction to Portugal's notification of rescue aid, the opening decision approved liquidity support to SATA under point 103 of the R&R Guidelines to ensure the continuity of the SGEI in the air transport services and airport management services provided by SATA during the formal investigation into the rescue aid. That support was subsequently extended to EUR 255,5 million and prolonged, as approved in the extension decision (recital 7) and in the Commission decision of 5 November 2021 (recital 11). While the support was initially granted in the form of guarantees on loans, in the latter decision the Commission approved a replacement, by Portugal, of the public guarantees by shareholder's direct loans to SATA, in particular with regards to an amount of EUR 82,5 million that ARA could not roll over to the 2022 budget. Nonetheless, the compatibility of that support has already been assessed in the decisions referred to in recitals 2, 7 and 11 in accordance with point 103 of the R&R Guidelines and is independent from the compatibility of the rescue aid as such. Therefore, the rescue aid as such has not been put into effect and, as a result of the withdrawal of the notification concerning that aid, the Commission is no longer called upon to examine the compatibility of such rescue aid.

⁽¹²⁵⁾ Opening decision, recitals 52, 55, 58-59, 91 and 112.

5.1. Existence of State aid

- (137) 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'.
- (138) The qualification of a measure as State aid within the meaning of that provision therefore 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 confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States. It is therefore appropriate to examine separately whether the measures qualify as State aid.

5.1.1. State resources and imputability to the State

- (139) The measures involve administrative acts and public decisions.
- (140) The restructuring aid is funded through public resources coming from the budget of the Region of Azores. In particular, the Region of Azores, as sole shareholder of SATA, will provide from resources of its budget: (i) the necessary capital injections of EUR 144,5 million to increase SATA's depleted equity; (ii) the funds to finance the debt assumption in the amount of EUR 173,75 million, also to be converted into capital; and (iii) the guarantee until 2028 in the amount of EUR 135 million on loans from banks and/or other financial entities. As regards the past capital increases, as the Commission found in recital 39 of the opening decision, the Region of Azores subscribed to those increases (now reimbursed with interest) using resources from its budget and based on decisions taken by the Council of the Region's Government (recitals 102-103).
- (141) Under Article 107(1) TFEU resources of local authorities, such as a region, are State resources and decisions adopted by such authorities are regarded as imputable to the State. Hence, the above measures are imputable to the State and financed through State resources.
- (142) The Commission, therefore, concludes that the above described measures involve State resources and the decisions to grant them are imputable to the State.

5.1.2. Advantage

- (143) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention ⁽¹²⁶⁾.
- (144) As regards the restructuring aid to SATA, both the shareholder's loans and debt assumption to be converted into capital and the guarantee on loans provided by the Region of Azores confer an economic advantage on the beneficiary, given that, in the specific situation and in current circumstances, SATA cannot obtain capital or raise debt finance at market conditions without a public guarantee (as acknowledged by Portugal, recital 67). Indeed, without intervention by the State, SATA will almost certainly go out of business in the short term, as no private investor seems ready to inject capital nor is any financial institution willing to offer fresh finance. The restructuring aid is not necessary to preserve or increase the value of the shareholding of the ARA. On the contrary, the funding does not appear capable of providing a shareholder return commensurate with the risk taken. Portugal does not claim that such return would actually be achieved. Indeed, the available evidence shows that, whilst being capable of providing an adequate return and remunerating the State at the end of the restructuring plan (Table 1.A and recitals 206 et seq.), the losses of the first four years of the restructuring period are much higher than positive earnings at the end of the restructuring. Therefore, during the five-year restructuring period, the cumulated revenues expected remain well below the opportunity cost of equity (16 % as per recital 206).

⁽¹²⁶⁾ Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

- (145) With regard to the past capital increases, the Commission upholds the position expressed in the opening decision ⁽¹²⁷⁾. Portugal explains that those measures were in part taken to ensure compliance with the provision of national law that requires shareholders to deliberate on a capital injection in case of a loss of paid-in share capital as a result of accumulated losses (recital 102), but that does not explain why the Region chose to provide further capital to SATA rather than, for instance, placing it in liquidation or in insolvency. Portugal does not purport that those measures were underpinned with any forecasts that would convince a market economy shareholder to increase its investment in a company with a view to achieving a market-conform return on the investment. Nor is there allegations or evidence adduced in the proceedings by Portugal or by parties showing that the recapitalisation of SATA as from 2017 was premised on or supporting an operational and financial business plan aimed at improving the efficiency of operation and eventually the profitability of the Region's shareholding in SATA. On the contrary, Portugal claims that those capital increases amounted to compensation of the operational deficits stemming from the operation of PSOs and of a *de facto* SGEI concerning SATA's flights to North America (recitals 102 to 108). The Commission therefore maintains that in putting those measures into effect, the Region did not act in its capacity of a shareholder (or investor), but as a public authority.
- (146) In any event, the Commission notes that Portugal has not mentioned that the above decisions were taken on the basis of economic evaluations comparable to those which, in similar circumstances, a rational market economy operator with characteristics similar to those of the Portuguese authorities would have had carried out to determine the profitability or economic advantages of the measures, before deciding on the purported investment.
- (147) The Commission therefore concludes that the measures provide SATA with funding that the beneficiary cannot and could not obtain on the market, thereby conferring an economic advantage to SATA within the meaning of Article 107(1) TFEU.

5.1.3. Selectivity

- (148) The measures benefit SATA only, through the exercise of discretion for an *ad hoc* amount determined by reference to the specific needs of the beneficiary (recitals 43 to 51). As the Court has stated ⁽¹²⁸⁾, 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. This is so regardless of whether there are operators on the relevant markets that are in a comparable factual or legal situation.
- (149) Whilst Portugal has provided or may still provide State aid to other airlines competing with SATA, in any event, the capital injection and guarantees on loans are not part of a broader measure of general economic policy to provide the same type of *ad hoc* support to undertakings, which are in a comparable legal and factual situation in light of the objective of the measures, active in the aviation sector or other economic sectors, but are made available only to SATA.
- (150) Therefore, the Commission concludes that the measures are selective within the meaning of Article 107(1) TFEU.

5.1.4. Distortion of competition and effect on trade

- (151) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, such undertaking must be regarded as affected by that aid. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition. In that regard, the fact that an economic sector has been liberalised at Union level is an element that may serve to determine that the aid has a real or potential effect on competition and on trade between Member States.

⁽¹²⁷⁾ Opening decision, recitals 44 to 48.

⁽¹²⁸⁾ Judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.

- (152) SATA is a regional airline that provides air transport services on routes connecting the islands of the Azores archipelago, as well as connecting those islands to the mainland, Madeira and a number of North American destinations (Boston, Oakland, Toronto and Montreal), where the local Portuguese diaspora is settled. Even if the aid recipient is not directly involved in cross-border trade within the Union, given that the aviation sector is open to competition in the Union and other carriers could provide those routes in competition with SATA, the notified measures are liable to improve the position of the beneficiary in relation to actual competing undertakings or potential ones that do not have access to similar State support from Portugal or that have to finance operations at market conditions.
- (153) The measures are consequently liable to distort or threaten to distort competition and to affect trade between Member States.

5.2. Conclusion on the existence of State aid

- (154) In view of the above, the Commission concludes that the restructuring aid and the past capital increases in favour of SATA constitute State aid within the meaning of Article 107(1) TFEU.

5.3. Lawfulness of the measures

- (155) The Commission considers that by notifying and refraining from implementing the restructuring aid prior to its approval by the Commission, Portugal has complied with its obligations under Article 108(3) TFEU.
- (156) The rescue aid notified on 13 August 2020 was not put into effect prior to the withdrawal of that notification (recital 12). By contrast, the past capital increases were granted without prior notification and were only reimbursed with interest upon the initiation of the formal investigation procedure.

5.4. Compatibility with the internal market

- (157) Article 107(3), point (c) TFEU provides that aid to facilitate the development of certain economic activities or certain areas may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (158) Hence, in order for the aid to be declared compatible, on the one hand, it must be aimed at facilitating the development of certain economic activities or of certain economic areas and, on the other hand, it must not adversely affect trading conditions to an extent contrary to the common interest. Under the second condition, in particular, the Commission balances the positive effects of the proposed aid for the development of the activities, which the aid is intended to support, against the negative effects that the aid may have on the internal market ⁽¹²⁹⁾.
- (159) Portugal considers that the restructuring aid can be declared compatible with the internal market pursuant to the R&R Guidelines.
- (160) 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 restructuring aid complies with the relevant provisions laid down in the R&R Guidelines. In the R&R Guidelines, the Commission set out the criteria which it examines when assessing the compatibility of a company's restructuring aid with the internal market pursuant to Article 107(3), point (c) TFEU ⁽¹³⁰⁾.
- (161) In examining whether restructuring aid has an adverse effect on trading conditions to an extent that is contrary to the common interest, the Commission carries out a balancing test according to Article 107(3), point (c) TFEU and the R&R Guidelines. In that test, provided that the beneficiary is eligible to receive restructuring aid, the Commission weighs the positive effects of the aid for the development of the activities that the aid is intended to support against the negative effects created by the impact of the State aid on competition and trade between Member States, assessing in particular how the aid measure minimises the distortions on competition and trade (need for State intervention, appropriateness, proportionality, transparency of the aid, 'one time, last time' principle and measures to limit distortions of competition).

⁽¹²⁹⁾ Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 19.

⁽¹³⁰⁾ R&R Guidelines, point 38.

- (162) The above is without prejudice to the fact that decisions adopted by the Commission on that basis must ensure compliance with Union law ⁽¹³¹⁾.
- (163) In the light of the notification and the information collected in the course of the formal investigation into the restructuring aid, it does not result that the restructuring aid nor 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, as evidenced by Portugal, the 14 routes connecting the nine islands of the Region through inter-island air transport of the Azores archipelago were entrusted exclusively to SATA Air Açores to be operated under PSOs in accordance with Regulation (EC) No 1008/2008 (Section 2.1.1, recitals 18 and 19). Likewise, the four routes between the Azores and mainland Portugal and Madeira, considered as PSO routes since 1998, have been operated as open PSOs by Azores Airlines following information notices published in the *Official Journal of the European Union* from 1998 until 2015 in compliance with the same relevant Union rules (recital 20). As from March 2015, the routes under PSOs have changed due to the liberalisation of some of them, whilst Azores Airlines was again the only air carrier that demonstrated interest in operating those PSO routes, without exclusivity and without compensation, and that submitted operations plans to ANAC (recital 107). Moreover, 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, nor has it received any complaints 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.
- (164) In respect of the PSO and SGEI operations, the Commission also notes that doubts raised as to whether they would be defined, imposed and entrusted in compliance with the relevant Union law for the duration of implementation of the restructuring plan ⁽¹³²⁾ have been allayed by the information provided by Portugal on the renewal of the five years PSC for the intra-islands routes, as well as on a future tender for the routes to mainland and Madeira that should be organised within the time-line of the restructuring plan, while the SGEIs are entrusted by way of a concession awarded to SGA until the end of the restructuring period in 2025 (recitals 19 to 23).

5.4.1. Eligibility: undertaking in difficulty

- (165) In order to be eligible for restructuring aid, a beneficiary must qualify as an undertaking in difficulty within the meaning 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.
- (166) As described in recitals 14, 30 and 31, SATA is a limited liability company that presented a negative total equity amount of EUR -369,3 million at the end of 2020, which shows that all of its subscribed share capital had disappeared. The latest available audited reports and projections [...], so that [...] it continues to be an undertaking in difficulty as defined in point 20(a) of the R&R Guidelines.
- (167) According to point 21 of the R&R Guidelines, a newly created undertaking in operation for less than three years is not eligible for rescue or restructuring aid. The beneficiary is not a newly created undertaking, since it was established in 1941, so more than three years ago (recital 14).
- (168) 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. The beneficiary is fully and individually owned by the ARA and is, therefore, not part of a larger business group (recital 14).
- (169) On the basis of the above, the Commission concludes that SATA is an undertaking in difficulty and is eligible for restructuring aid.

⁽¹³¹⁾ Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 18 to 20.

⁽¹³²⁾ Extension decision, recital 59.

5.4.2. The aid facilitates the development of an economic activity or a geographic area

- (170) Under Article 107(3), point (c), TFEU, State aid, to be considered compatible with the internal market, must facilitate the development of certain economic activities or certain economic areas.
- (171) In that regard, to show that restructuring aid is intended to facilitate the development of such activities or areas, the Member State granting such aid must demonstrate that the aid aims to prevent social hardship or address a market failure. In the specific context of restructuring aid, the Commission notes that, as acknowledged at point 43 of the R&R Guidelines, in fact, market exit is important to the wider process of productivity growth, thus merely preventing an undertaking from exiting the market does not sufficiently justify State aid. On the contrary, rescue and restructuring aid are among the most distortive types of State aid, as they interfere with the process of market exit. However, in certain situations, restructuring an undertaking in difficulty may contribute to the development of economic activities or areas, also beyond the very activities carried out by the beneficiary. This is the case where, in the absence of such aid, the beneficiary's failure would lead to situations of market failure or social hardship, inhibiting the development of the economic activities and/or areas that would be affected by such situations. A non-exhaustive list of such situations is laid down at point 44 of the R&R Guidelines.
- (172) Such situations occur, *inter alia*, where the aid avoids the risk of interruption to the continuity of provision of an SGEI, or of an important service, hard to replicate and where it would be difficult for any competitor simply to step in, or where the beneficiary plays an important systemic role in a region or sector from which its exit would have potential negative consequences ⁽¹³³⁾. By enabling the beneficiary to continue its operations, the aid thus prevents such market failure or social hardship. In the case of restructuring aid, however, this is only true where the aid enables the beneficiary to compete in the marketplace on its own merits, which can only be ensured if the aid is premised on the implementation of a restructuring plan that restores the beneficiary's long-term viability.
- (173) The Commission, hence, will first assess whether the aid is intended to prevent a situation of market failure or social hardship (section 5.4.2.1) and whether it is accompanied by a restructuring plan restoring the beneficiary's long-term viability (section 5.4.2.2).

5.4.2.1. Contributing to the development of economic activity by prevention of social hardship or market failure

- (174) Among the situations where rescuing or restructuring an undertaking in difficulty may contribute to the development of economic activities or areas, point 44(b), (c) and (d) of the R&R Guidelines mention cases where aid is intended to avert the risk of economic growth being hampered by the disruption of an important service as a consequence of the exit of the beneficiary from the market (point 44(b) of the R&R Guidelines), or through the failure of an undertaking with an important systemic role in the sector or region concerned (point 44(c) of the R&R Guidelines), or the risk of interrupting the continuity of an SGEI (point 44(d) of the R&R Guidelines).

The aid avoids the disruption of an important service

- (175) In the extension decision ⁽¹³⁴⁾, the Commission considered that the restructuring aid to SATA averted the disruption of an important service which was hard to replicate and where it would be difficult for competitors to simply step in (in accordance with point 44(b) of the R&R Guidelines).
- (176) In particular, the Commission noted that the liquidity and restructuring measures aim at preventing a situation in which SATA goes out of business due to the difficulties that it has been experiencing in the last years, which were acutely aggravated by the COVID-19 pandemic, and that, based on the information available, no other carrier has demonstrated commercial interest in alternative or complementary routes, so that the aid is essential to avert a serious and imminent risk of disruption to the services provided by SATA ⁽¹³⁵⁾. Since an airline needs to possess sufficient liquidity to maintain its operating licence, in light of the available evidence and the recent and expected operating losses for each of the SATA airlines (Table 1.A) it is clear that in the absence of the restructuring aid,

⁽¹³³⁾ Point 44 (b), (c) and (d) of the R&R Guidelines.

⁽¹³⁴⁾ Extension decision, recitals 57-58, referring to the assessment expressed in recitals 69-71 of the opening decision.

⁽¹³⁵⁾ Extension decision, recital 58.

SATA would be unable to meet its payment obligations and liabilities and, thus, would need to file for insolvency and discontinue its activity (recital 64). As the beneficiary provides passenger and cargo air transport services and manages small airports (recitals from 17 to 23), without State intervention there is a serious risk of disruption to essential services, without which the connectivity and territorial continuity of the Azores archipelago and the Union would be curtailed. Such connectivity is even more important in view of the fact that the Region of the Azores is an outermost region of the Union and, as such, has permanent weaknesses, including the above-mentioned distance from the European continent, as recognised by Article 349 TFEU, which harms its economic and social development.

- (177) The preliminary findings of the Commission in the opening and extension decisions are contested by Ryanair. Furthermore, Ryanair argues that the overcapacity caused by the COVID-19 pandemic allows more efficient competitors to step in and replicate the role of SATA Air Açores and Azores Airlines. Specifically, Ryanair claims that it would be able to take over all of SATA Air Açores and Azores Airlines' routes to the mainland in a matter of days.
- (178) The Commission considers that Ryanair's allegations are unfounded in light of the submissions of third parties and of the information submitted and the commitments undertaken by Portugal. Contrary to what Ryanair states in its observations, there is no evidence – either as supporting information or by way of a market study – of a potential replacement of the role of SATA in the Azores archipelago by the continuing overcapacity generated by the COVID-19 pandemic. In particular, Ryanair did not increase its connections with Azores when SATA reduced its flights, nor participated in the public tender for the PSO routes launched on 4 June 2021. More generally, Ryanair has kept a limited regularity in its routes since the liberalisation of the connections between São Miguel and Terceira to Lisbon and Oporto, in 2015, and has not increased such frequencies since those of SATA have been reduced (recital 124).
- (179) On the basis of the information in its possession, the Commission also notes that, while some of SATA's routes might be attractive for a competitor on a stand-alone and/or seasonal basis, there are no indications that any competitor could take over the totality of SATA's routes, including the PSO/SGEI and the cargo activities, which are of specific relevance not only for the fishing industry, but also for the delivery of mail and medical supplies to the Azores archipelago, thus representing a very important service for the local community (recitals 17 to 28). In this sense, contrary to the claimed possibility of SATA's replacement, none of the direct competitors, including Ryanair, has shown interest in developing direct connectivity with the Azores archipelago in recent years and none of them would provide air cargo services (recitals 25 and 124). In particular, in light of the results of the recent tendering procedure for the award of the PSO routes to connect the Azores archipelago, where SATA was again the single carrier to present an offer (recitals 19 and 122), it would be not only difficult, but also unrealistic to expect any competitor to substitute it fully in the short term.
- (180) As Portugal submitted, SATA provides unique connections by offering regular travel schedules within the Azores archipelago and from those islands to mainland Portugal and the Portuguese diaspora community's main areas of residence (recitals 17 to 26). That network of connections is particularly important given that the residents of the Azores cannot rely on alternative modes of transport, both for inter-island mobility and for travelling outside the archipelago (recital 29). In addition to such essential air transport service, and beyond the PSO routes, SATA significantly and decisively supports one of the most relevant elements of growth of the economy of the Azores, namely tourism. Specifically, without support from the operations of SATA to bring travellers to the Azores archipelago, an important segment of the local companies – namely hotels, restaurants, social and cultural events organising companies, retail shops and other tourism-related activities companies – would have further difficulties surviving the COVID-19 pandemic (section 3.2.2).
- (181) Third parties emphasise that they depend on SATA's services for a large part of their business and activities, which would suffer considerable losses in turnover without SATA's operations. As Portugal also points out, most of the local business, which is already heavily affected by the COVID-19 pandemic, could not survive this crisis without tourism. In this sense, the great majority of third parties that have submitted comments – in particular, business partners, such as travel agencies, tour operators, hotel associations, ticketing agencies and suppliers, in addition to bodies representing the diaspora and business community of North America – have effectively confirmed the Commission's findings (recitals 68 and 175) as regards the unique role played by SATA for the development of the economy of the Azores and, as shown by Portugal, the small likelihood that other long-haul or low-cost air carriers would replicate its presence and activities in the Azores in the short-medium term (recitals 122 to 124).

- (182) Hence, the Commission considers that the bankruptcy of the beneficiary would risk disrupting an important transport service providing region-wide and, to a lesser extent, international connectivity and network - connecting the outermost Region of Azores internally and with the mainland and Madeira, as well as with the Portuguese-speaking community in North America - which is hard to fully replicate for other suppliers, as set out in point 44(b) of the R&R Guidelines.

The aid supports an undertaking with a systemic role in the Region

- (183) As explained in the extension decision ⁽¹³⁶⁾, the restructuring aid also seeks to avert the risk of exit of an undertaking with an important systemic role in the Region, within the meaning of point 44(c) of the R&R Guidelines.
- (184) In particular, the Commission notes that SATA plays a key role in the economy of the Azores not only in terms of connectivity and tourism, but also in terms of level of employment (recitals 14 to 27). In this respect, SATA's market exit would be likely to trigger severe social hardship: (i) directly, as one of the main employer of this outermost territory of the Union, with 1 150 jobs that would be lost at local level; (ii) indirectly, as an essential support to the regional economy and, thus, the local employers, through its passenger and cargo air transport services. In particular, SATA carries almost half of passengers from the outside to the Azores and 100 % of the passengers among the Azores archipelago, thereby significantly supporting the local tourism industry, which represents around 13 % of the GDP of the ARA (recitals 21, 26 and 65).
- (185) SATA's failure would also trigger negative spill-over effects on its customers and direct and indirect suppliers, taking into account that 100 % of the air cargo within the nine islands of the Archipelago is managed by SATA Air Açores and, through Azores Airlines, over [60-70] % of the air cargo (including fish, mail and medical supplies) from and to outside the Azores (recital 25). Given such pivotal role for the territorial development of the Azores, the exit of SATA would thus lead to severe social and economic hardship for this outermost Region, which already faces important challenges due to the geographic distance and the socio-economic gap with mainland Portugal and the rest of the Union (recitals 65 to 67).
- (186) The unprecedented impact of the COVID-19 pandemic has further aggravated such socio-economic conditions, taking also into account the negative effects on tourism, which represents, as remarked, one of the main sources of wealth of the Region of Azores, equal to around 13 % of the Azores' GDP in 2019. Hence, as submitted by Portugal, the failure of SATA would hinder significantly the economic recovery of this already disadvantaged area (recital 65).
- (187) Furthermore, as demonstrated by the observations of many third parties, SATA performs an essential activity in strengthening the territorial and social cohesion of the Azores, *inter alia*, by ensuring the permanent connection between the dispersed nine islands of the archipelago, as well as by increasing the accessibility of people and assets from the Azores to mainland Portugal and the Union, as well as the USA and Canada, where a major part of the Azorean diaspora resides (recitals from (93) to (101)). In this sense, the failure of SATA would have negative consequences also for the diaspora Portuguese community, which would be only indirectly and after a long journey able to reach this outermost Region of the Union, given the absence of alternative air carriers.
- (188) Therefore, the Commission considers that, both as employer and as central element in the economic chain for many other undertakings in the Azores, as well as means to ensure the territorial and social cohesion of such Region, the beneficiary can be considered as an undertaking with an important systemic role in the Region, pursuant to point 44(c) of the R&R Guidelines.

⁽¹³⁶⁾ Extension decision, recital 60, referring to the assessment expressed in recitals 75-76 of the opening decision.

Risk of interruption of SGEI

- (189) As explained in the extension decision, the exit of SATA would risk interrupting the SGEIs provided to the Region of Azores and Portugal, to which point 44(d) of the R&R Guidelines refers. In this respect, the Commission also recognised in the opening decision that the PSO flights provided by SATA Air Açores and Azores Airlines are SGEIs provided to the Region and Portugal ⁽¹³⁷⁾. This is an important and predominant part of SATA activities. Therefore, it is established that the potential failure of SATA would lead to an interruption of the continuity of provision of the SGEI to the Region and Portugal.
- (190) With regard to Ryanair's contention regarding the possibility of replacing SATA even at short notice, the Commission's preliminary findings in the opening and extension decisions regarding the importance of SATA in ensuring the territorial continuity of the outermost Region of Azores with the Union have been strongly supported by 17 out of 19 third parties that have submitted comments. In this respect, the Commission also notes that the tender procedure launched in 2021 for the intra-islands routes allowed Ryanair to substitute SATA in such PSO routes, had it been interested in expanding its operations to that activity, whereas the tender procedure that will be organised for the connection of Azores with mainland Portugal and Madeira will give further opportunities to all SATA's competitors to substitute it in the PSO routes to/from Azores. Finally, the commitments undertaken by Portugal to divest Azores Airlines (recitals 62 to 63), offer to Ryanair, as well as other competitors the opportunity to take over all of SATA's commercial routes and, thus, fully or partly replace SATA in such activity as well.
- (191) Furthermore, certain airports have an important role in terms of regional connectivity of isolated, remote or peripheral regions, in particular, in outermost regions of the Union, so that the management of such an airport may be considered a SGEI if part of the area potentially served by the airport would, without the airport, be isolated from the rest of the Union to an extent that would prejudice its social and economic development. In the light of the information provided by Portugal, therefore, the Commission confirms the conclusion of the opening decision ⁽¹³⁸⁾ that the airports operated by SGA provide a SGEI for the Region, without which the connectivity and territorial continuity of Portugal and the Union would be curtailed.
- (192) Hence, it follows from the information gathered in the course of the investigation that, in the short to medium term, in the uncertain situation and outlook created by the COVID-19 pandemic, the restructuring aid is also essential to avert a serious and imminent risk of interruption to the continuity of PSOs and SGEIs provided by SATA, as referred to in point 44(d) of the R&R Guidelines.
- (193) In light of the above, the Commission therefore concludes that the aid contributes to the development of the economic activity of provision of air transport services connecting the ARA in that it allows to maintain important services, including PSO/SGEI, that could be at risk of not being replicated, in their entirety or to a broadly similar extent and without social hardship, by competitors in the short to medium term, with potential negative consequences on the wider economy of the Region, given the persisting effects of the crisis caused by the COVID-19 pandemic (point 44 (b), (c) and (d) of the R&R Guidelines).

5.4.2.2. Restructuring plan and return to long-term viability

- (194) In addition, under point 46 of the R&R Guidelines, the granting of a restructuring aid must be conditional on the implementation of a restructuring plan that would restore the viability of the beneficiary. The remediation of the causes that led to the difficulty of the beneficiary, by facilitating its return to long-term viability, is a necessary condition for the restructuring aid to serve the development of the economic activities and areas where the beneficiary operates. The restructuring aid supports a wide-ranging restructuring plan encompassing the entire range of activities of SATA.

⁽¹³⁷⁾ Extension decision, recitals 57-59 referring to the assessment expressed in recitals 71 to 74 of the opening decision.

⁽¹³⁸⁾ Opening decision, recital 73.

- (195) Restructuring aid should only be granted to support a realistic, coherent and far-reaching restructuring plan, the measures of which must be designed to restore long-term viability in a reasonable timescale, excluding any further aid beyond the one supporting SATA's restructuring plan. The restructuring plan must identify the causes of the beneficiary's difficulties and the beneficiary's own weaknesses, and outline how the proposed restructuring measures will remedy the beneficiary's underlying problems. ⁽¹³⁹⁾
- (196) The results of the restructuring must be demonstrated in a variety of scenarios, in particular by identifying performance parameters and the main foreseeable risk factors. The return to viability of the beneficiary must result in an appropriate return on capital invested after covering costs, without depending on optimistic assumptions about factors such as variations of price or demand. Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges and is also able to compete in the marketplace on its own merits ⁽¹⁴⁰⁾.

Assessment of the assumptions underlying financial projections

- (197) The Commission notes that the beneficiary's air traffic recovery projections are based on reliable industry sources (recital 43), and that the recovery of SATA airlines' performance back to 2019 level is supported by the latest developments. The Commission has cross-checked the assumptions underlying the restructuring plan. In that respect, the latest outlook by IATA of March 2022 ⁽¹⁴¹⁾ in terms of overall traveller numbers, the airline industry would be back to 2019 levels between 2023 and 2024, with improvements in the major North Atlantic and intra-European markets (and more optimistic when compared to the November 2021 IATA outlook). Based on the data provided by Portugal, [...] ⁽¹⁴²⁾. This is supported by the 2021 solid closing with revenues up by [...] % and EBITDA up [...] % (non-audited yet) vs. the restructuring plan, whereas 2022 has been marked by a strong start, with passenger bookings in the first half projected to reach a [...] % growth compared to same period in 2019. The Commission also notes that based on the IATA outlook, an even faster recovery could be expected for domestic flights (expected to reach 2019 levels by 2023) and touristic flights, and hence the Commission finds that the growth in revenue forecasted by SATA is plausible. The beneficiary's revenue projections reasonably portray an improved use of fleet capacity and flight optimisation in line with industry averages, as well as the margin for progress in connections of the Azores compared with other islands in the Union (recitals 65 and 66). With regard to the cost projections, the beneficiary's return to profitability hinges on fleet renewal reducing operating costs, including fuel, reduction of labour costs as well as renegotiation of supply contracts, as described in recitals 44 to 46. Those measures also assume an adequate remuneration of the PSOs (for which compensation is no longer calculated based on operating costs as before the restructuring) or alternatively a withdrawal from the PSOs discharged at present when connecting the Azores with mainland Portugal and/or Madeira.
- (198) With regard to labour cost projections, the Commission notes that the beneficiary has already signed agreements with its trade unions (recitals 47 to 50). These agreements provide for [...]. Furthermore, the beneficiary has already obtained a reduction of [...] employees [...] (recital 49(b)(3)). Overall, considering the beneficiary has already achieved negotiations on most of the assumptions underlying the labour cost projections, the Commission finds those projections credible ⁽¹⁴³⁾.
- (199) The Commission considers that the following elements also contribute to the credibility of the financial projections: (i) the beneficiary already identified and started implementing multiple measures aiming to reduce costs other than labour and fuel (recitals 45 and 46); (ii) the restructuring plan focuses on the aviation business and envisages the sale of a majority stake in Azores Airlines (recital 51), which contributed to the difficulties of the beneficiary (section 2.2) and of the ground handling business (recital 54); and (iii), the alternative sensitivity option included in the adverse case scenario, and referring to the possible alternative use of aircraft in the event that Azores Airlines would not be operating PSOs in the future (recitals 58 to 60), is also credible, as it is supported with requests for quotations of charter flights and valid alternative uses of the aircraft and resources now involved in the operation of the PSO routes.

⁽¹³⁹⁾ Points 45, 47 and 48 of the R&R Guidelines.

⁽¹⁴⁰⁾ Points 50 to 52 of the R&R Guidelines.

⁽¹⁴¹⁾ See IATA press release of 1 March 2022 at <https://www.iata.org/en/pressroom/2022-releases/2022-03-01-01/>

⁽¹⁴²⁾ Portugal submission of 18 February 2022, page 1.

⁽¹⁴³⁾ Portugal's submission of April 2021, *Summary of potential savings in Sata's restructuring plan*.

- (200) To assess the financial projections, the Commission has compared the beneficiary's expected EBIT margin (i.e. EBIT divided by revenues) in 2025 to that of a sample of airlines for which stock market analyst forecasts for the same year were provided in the formal investigation ⁽¹⁴⁴⁾. The average EBIT margin in a wider sample is 8-12 %, while the beneficiary's one is expected to be [...] %-[...] % for SATA airline business and [...] % in the case of the airport management activity of SGA including the expected cash inflow of compensations. Also in light of the fact that the beneficiary's activity predominantly involves the supply of PSOs and SGEIs whilst the beneficiary's cost and revenue targets are sufficiently close to those of other airlines, the Commission finds the assumptions underpinning the restructuring plan credible.

Assessment of the beneficiary's return to viability

- (201) The Commission did not raise doubts as to the beneficiary's return to viability in the extension decision either. The Commission will nevertheless assess, in the light of the updated figures submitted by Portugal whether, at the end for the restructuring period in 2025, the beneficiary expects to generate a sufficient rate of return from its operation and be able to compete on its own merits.

Viability of SATA's controlled entities post restructuring

- (202) Following the planned divestiture of the new ground handling unit and of the 51 % controlling stake in Azores Airlines by 2026, the remaining entities under the control of SATA will be only SATA Air Açores and SGA, which are both discharging PSOs and SGEIs. Therefore, the Commission considers that the assessment of the return to viability should take into account this aspect and therefore, it should be confined to the projections concerning these two entities.
- (203) SATA Air Açores will operate pursuant to the PSO contract awarded to it by the Azorean Region for a duration of five years, and will receive for its services the contractual PSO compensation. In the same vein, SGA will continue to provide SGEI services to the five small airports operated by SGA. In other words, the remaining business perimeter under control of SATA will be limited to discharging PSOs as exclusive service provider in intra-island routes and managing the related SGEI business of local airports. By way of illustration, it is appropriate to refer to the guidance set out in the Framework for State aid in the form of public service compensation ('SGEI Framework') ⁽¹⁴⁵⁾ for the assessment as to whether SATA Air Açores and SGA would be able to provide an appropriate return on capital after covering all of their costs. The SGEI Framework sets out in point 36 that a rate of return on capital that does not exceed the relevant swap rate corresponding to the duration of the entrustment plus a premium of 100 basis points is regarded as reasonable in any event.
- (204) According to the relevant entrustment acts, the duration for the PSOs awarded to SATA Air Açores is five years (see recital 19), as well as that for the SGEI services to the five airports is renewable every five years (see recital 22), and the currency of the contracts is the euro. Therefore, the Commission considers that the relevant swap rate for comparison is the six-month EURIBOR (euro interbank offered rate) swap for a five-year maturity, equal to 0,527 % ⁽¹⁴⁶⁾. Hence, the reference for comparison would be 1,527 %. As from 2023 and until the end of the restructuring period, the EUR [...] million EBIT of the reduced perimeter of the company (Table 1.A) would provide a [...], taken as a minimal floor for an SGEI/PSO provider. In addition, the EBIT margin for the SATA Air Açores and SGA combined at the end of the restructuring period will be [...] %, also in line with the 8-12 % margin industry benchmark used by SATA for the comparison of Azores Airlines with industry benchmark (see Annex 1, SATA Business Plan 2021-25, slide 69) ⁽¹⁴⁷⁾. On that basis, the expected return at the end of the restructuring period appears to be adequate.

⁽¹⁴⁴⁾ The sample includes: Lufthansa, Norwegian, Eurowings, Ryanair, IAG, Easyjet, Wizz Air and Brussels Airlines (see recital 55).

⁽¹⁴⁵⁾ Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15).

⁽¹⁴⁶⁾ <https://www.chathamfinancial.com/technology/european-market-rates>

⁽¹⁴⁷⁾ Benchmark used by SATA for the comparison of Azores Airlines with industry benchmark (see Annex 1, SATA Business Plan 2021-25, slide 69).

Viability of the whole perimeter of the SATA Group after the divestiture

- (205) The Commission will also assess the overall returns for the SATA Group at the end of the restructuring period, i.e. taking into account also the 49 % remaining shareholding in Azores Airlines. With respect to the beneficiary's overall ability to generate a sufficient return from its operations in 2025, a customary approach is to compare the ROCE in 2025 to the WACC. If the former is greater than the latter, the operations of a company are able to generate sufficient profits to cover its cost of capital, which is an indication of that company's viability.
- (206) The beneficiary's ROCE, whose calculation hinges on the financial projections that the Commission has assessed as credible in recitals 197 to 200, is expected to be [...] % in 2025 (Table 1.A). The ROCE value of [...] % expected for SATA is higher than a WACC of [...] % (recital 55). The components of the WACC are appropriately justified, based on market data and financial information on the beneficiary's peers retrieved from Orbis and Bloomberg ⁽¹⁴⁸⁾. Therefore, the Commission considers that the beneficiary will be able to return to viability in 2025, [...].
- (207) Furthermore, the expected ROCE in 2025 of the beneficiary, including the airport business, is [...] than the median 2019 ROCE (11,8 %) of the airlines listed in recital 56. This is an additional indication of the beneficiary's return to viability, since those airlines were able to compete in the market on their own merits in 2019.
- (208) With regard to the beneficiary's ability to compete on its own merits at the end of the restructuring period, the SATA Group will have a very small size and a limited scope of operations consisting of discharging PSOs and providing genuine SGEIs with contracts awarded by the Azorean Region, which limits commercial risks. Such PSOs confer stability of operations and the restructuring plan does not envisage diversification to new riskier activities, so that SATA's creditworthiness would normally allow access private funding markets without any aid from the Azorean Region post-restructuring.
- (209) In addition to the baseline scenario, Portugal also provided an adverse scenario for the duration of the restructuring plan until the end of 2025 (recital 60). In light of the positive developments of the main indicators registered in the first three quarters of 2021 (recital 52), the adverse scenario is conservative. In the scenario with 15 % less revenue and no PSO obligations, the beneficiary would generate a positive EBIT as of [...] (Table 3). The beneficiary's ability to access capital markets and compete on its own merits in 2025 would be nearly equivalent to the base case scenario, because the equity position would be improving continuously and become positive as of 2026 (EUR [...] million) whilst Azores Airlines would not in any event incur uncompensated costs of PSOs. While the adverse scenario indicates a negative impact on the profitability and creditworthiness of the beneficiary, it does not jeopardise SATA's return to viability by 2025.
- (210) For the reasons set out above, the Commission considers that the implementation of the restructuring plan should allow the beneficiary to be able to compete on its own merits without further rescue or restructuring aid after the end of the restructuring period at the end of 2025.

Conclusion on the development of economic activities and areas

- (211) In conclusion, the Commission considers the beneficiary's restructuring plan as realistic, coherent and credible. As such, it is suitable to restore the beneficiary's long-term viability, within a reasonable period of time, without relying on further State aid. Therefore, the restructuring aid meets the requirements provided for in points 44(b), (c) and (d) and 46 of the R&R Guidelines, thus contributing to developing the economic activity of air transport services connecting the Region of the Azores, in accordance with Article 107(3), point (c) TFEU.

⁽¹⁴⁸⁾ WACC is calculated as the weighted average of the beneficiary's cost of equity (16 %) and after tax cost of debt (9,1 %), with weights equal to the beneficiary's target debt to debt plus equity ratio (473,8 %), in line with standard methodology. Risk free rate consisting of mid yield to maturity of Azores Bonds 2030 (Bloomberg), market risk premium from industry consensus 'Equity Market Risk Premium – Research Summary – 2020 – KPMG', small cap premium and ultra-periphery premium IMAP assumption. Corporate debt spread TAP 4 3/8 2023, target D/E from Bloomberg (selected peers).

5.4.3. Positive effects of the aid on the development of economic activities outweigh the negative effects, in terms of distortions of competition and adverse effects on trade

- (212) In order to assess whether the aid does not unduly affect the competition and trading conditions it is necessary to examine the necessity, the incentive effect, appropriateness and proportionality of the aid, and to ensure transparency. It is also necessary to examine the effects of the aid on competition and trade and weight the positive effects of the aid for the development of the economic activities and areas that the aid intends to support, as described in section 5.4.2, against its negative effects on the internal market.

5.4.3.1. Necessity and incentive effect

- (213) 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 development of the economic activities or areas sought by the aid, referred to in section 3.1.1 of the R&R Guidelines will not be attained or would be attained to a lesser degree. Also, Member States must show that, in the absence of the aid, the beneficiary would have been restructured, sold or wound up in a way that would not have achieved the development of the economic activities or areas concerned (point 59 of the R&R Guidelines).
- (214) The objective of the restructuring aid is to prevent SATA from going out of business, and thereby to avert a situation of market failure and social hardship, which would inhibit the development of air transport services connecting the Region of the Azores with the mainland. That objective is achieved through the implementation of the restructuring plan, partially financed by the restructuring aid. The restructuring plan shows that in the short term, without liquidity support, SATA would not be able to continue providing essential air transport, comply with financial obligations or have access to financial markets (recitals 64 and 176). In the long term, given the sheer negative equity (of EUR - 319,5 million in 2021) that would continue for a prolonged period, [...]. The restructuring aid is therefore necessary for the successful completion of the restructuring plan, the implementation of which in turn seeks to facilitate the development of air transport services connecting the Region of the Azores.
- (215) On the basis of the above assessment on the need for State intervention, the Commission also concludes that the aid has an incentive effect, as without the restructuring aid SATA would almost certainly fail, depriving the local community of an essential instrument of economic and social development, so that the requirements set out in points 38(d) and 59 of the R&R Guidelines are met.

5.4.3.2. Appropriateness

- (216) Under points 38(c) and 54 of the R&R Guidelines, restructuring aid will not be considered compatible with the internal market if other less distortive measures achieve the same objective. As point 58 of the R&R Guidelines lays down, the aid instruments chosen must be adapted to the liquidity or solvency issue of the beneficiary that it is intended to address.
- (217) SATA faces problems of solvency and liquidity, which the restructuring aid needs to address adequately. The blending of fresh capital and guaranteed debt provided as restructuring aid addresses in parallel a situation of extreme deterioration of the equity of SATA, which is deeply negative, whilst servicing the existing debt and meeting cash flow needs for regular operation.
- (218) In that respect, the Commission considers the restructuring aid of EUR 453,25 million to SATA as appropriate as regards to the form, for two main reasons: (i) given that SATA is an undertaking in difficulty with negative equity in 2020 and in 2021 (recital 31), absent the restructuring aid improving its solvency, the beneficiary would not be able to build enough equity to offset past losses and be able to attract significant long-term funding in capital markets, and (ii), the liquidity projections show that, absent the restructuring aid, the beneficiary would have a negative cash position until 2023, which would worsen without equity injections, conversions of debt into equity or public guarantees for the amount of liquidity that SATA is unable to access at market conditions. For these two reasons, the Commission concludes that the form of the restructuring aid provided mainly through equity measures is the most appropriate way to address SATA's problems of solvency and liquidity.

- (219) The Commission therefore concludes that, by adequately addressing solvency and liquidity issues of SATA, the restructuring aid is appropriate.

5.4.3.3. Proportionality, own contribution and burden-sharing

- (220) The R&R Guidelines provide that the aid must not exceed the minimum needed to achieve its objective ⁽¹⁴⁹⁾. 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 ⁽¹⁵⁰⁾. In particular, a sufficient level of own contribution to the costs of the restructuring and, 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.

Own contribution

- (221) The own contribution of the beneficiary to the restructuring plan must be real and accurate 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 accurate 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, save for situations of exceptional circumstances or particular hardship, in which the Commission can accept lower own contribution as long as they remain significant. Furthermore, where the specific circumstances of assisted areas so require, for example, where a beneficiary faces particular difficulties in raising new market financing as a result of its location in an assisted area, the Commission may accept a contribution which is less than 50 % of the restructuring costs for the purposes of point 64 of the R&R Guidelines ⁽¹⁵¹⁾.
- (222) The Commission needs to verify whether the various sources of funding to the plan described in recitals 49 and 50 are free of aid and real, which means sufficiently certain to materialise in the course of the implementation of the restructuring plan, excluding expected future profits. Contributions by the State, such as, in the present case, those made by the ARA in its position as sole shareholder of SATA, are not free of aid and cannot be taken into account in the assessment.
- (223) From the sources of own financing put forward by Portugal (recitals 49 and 50), the only amounts that appear to be sufficiently real and actual are the contributions for approximately EUR [...] million, relating to:
- (a) labour streamlining measures (EUR [...] million) (recital 49(b)(3));
 - (b) saving generated through increased operating efficiency (recital 49(a)), for EUR [...] million, and other third parties' contributions, for EUR [...] million in addition to fleet restructuring for EUR [...] million (recitals 49(b)(1) and 49(b)(2)), for an overall amount of EUR [...] million;
 - (c) reduced charges negotiated with creditors for EUR [...] million (recital 50(3));
 - (d) sale of assets ([...]) and other savings for a total of EUR [...] million (recital 49(b)(4));
 - (e) contributions from own revenues to the amortisation of [...] (EUR [...] million) and to the cost of restructuring (EUR [...] million) (recitals 50(1) and 50(2)), and
 - (f) a non-public guaranteed financing of EUR [...] million from a commercial bank ([...]) (recital 50(4)).
- (224) Firstly, out of the EUR [...] million labour streamlining measures (recital 49(b)(3)), proposed by Portugal, only the payment of labour restructuring indemnities (second indent), for EUR [...] million, can be considered real and actual, as SATA has already paid out the amount and it relates to restructuring costs incurred as precondition for reducing the number of employees as provided for in the restructuring plan. Such costs are immediate, given that SATA has already terminated labour contracts and reduced staff, as part of the restructuring undertaken since 2021, and its financing source can be considered aid-free, as SATA has paid them with operational cash flow and are not

⁽¹⁴⁹⁾ Point 38(e) of the R&R Guidelines.

⁽¹⁵⁰⁾ Point 61 of the R&R Guidelines.

⁽¹⁵¹⁾ Point 98 of the R&R Guidelines.

financed by State aid, neither from the equity nor from the State guaranteed loans. Hence, the payment of indemnities can be considered as part of the beneficiary's own contribution to the restructuring costs and can be regarded as actual, within the meaning of point 63 of the R&R Guidelines. On the contrary, in keeping with the Commission's established practice, staff salary [...] during 2021 and 2022 (EUR [...] million) and renegotiated labour agreements with trade unions to improve crew productivity (EUR [...] million) cannot be accepted as the beneficiary's own contribution. Savings in wage costs involve a reduction of intrinsic, purely internal costs of the undertaking that is necessary in view of its restructuring ⁽¹⁵²⁾.

- (225) Secondly, in this respect, the contributions from third parties or cost-efficiency measures may amount to real and actual sources of own contribution, provided that they are permanent cost reductions, borne or made possible by external suppliers or clients with the beneficiary, and they result from binding agreements and are effective and not reversible ⁽¹⁵³⁾. The Commission has already considered that reductions of contractual liabilities set out in renegotiated agreements with suppliers and lessors amount to real sources of own contribution: compared to the terms of the initial agreements, they free resources that are available for financing restructuring costs, which otherwise would have to be spent on repaying the associated payables ⁽¹⁵⁴⁾. The same is true with regard to suppliers and buyers that firmly commit to, or amend the terms of their contracts freeing resources from the beneficiary ⁽¹⁵⁵⁾.
- (226) SATA's cost reductions deriving from increases in operating efficiency and from negotiations with suppliers (recitals 49(a) and 49(b)(2)), totalling EUR [...] million, as well as the fleet restructuring measures (around EUR [...] million, see recital 49(b)(1)), can be considered real sources of own contribution, as those savings result from binding agreements that are already in place and are thus sufficiently certain to be deemed actual ⁽¹⁵⁶⁾. Indeed, such measures have the same financial effect as the write-off of debt in insolvency proceedings, except that the effect is spread over years and is not one-off. Hence, these amounts (EUR [...] million) can be added to the debt reduction negotiated by SATA [...] EUR [...] million (recital 50(3)), so that the total amount of third party contributions that can be considered real and actual is equal to around EUR [...] million. Such an amount can also be considered aid-free, as the corresponding measures share the financial burden of SATA's restructuring costs with suppliers and lessors that would be otherwise entitled to higher payables on SATA's positive operating results. Likewise, in the case of the debt write off, which involves both public and private operators, there are no indications of that write-off giving rise to State aid.
- (227) Thirdly, the proceeds [...] of assets and activities relating to SATA's tour operators in North America and other savings for the amount of EUR [...] million (recital 49(b)(4)) can be considered as real and actual contribution to the restructuring costs of the beneficiary. That revenue has already been generated (except for the proceeds from the liquidation of Azores Vacations America that are already quantified and will be transferred to SATA upon the completion of the liquidation of that company). Likewise, increased revenues from operations compared to the original projections in the restructuring plan have allowed SATA to cover costs of amortisation of the Legacy debt (EUR [...] million, recital 50(1)) and other costs of restructuring (EUR [...] million, recital 50(2)). These own contributions can also be considered as real and actual, given that these amounts have already been paid by the beneficiary.

⁽¹⁵²⁾ Commission Decision of 9 November 2011 in case SA 31250 (N/2011) - Restructuring of BDZ – Bulgaria (OJ C 10, 12.1.2012, p. 9), recital 79: '[...] Payroll reductions as well as future saving on costs for social security seem to be necessary restructuring measures rather than an own contribution [...]'].

⁽¹⁵³⁾ Commission Decision of 30 April 2021 in case SA.58101 (2020/C) and SA.62043 (2021/N) – Portugal - Rescue aid and Restructuring aid to SATA Group (OJ C 223, 11.6.2021, p. 37), recital 72; Commission Decision of 26 July 2021 in case SA.63203 (2021/N) – Germany - Restructuring aid for Condor (not yet published), recital 132(c); Commission Decision of 12 May 2016 in case SA.40419 (2015/NN) – Restructuring aid for Polzela (OJ C 258, 15.7.2016, p. 3), recital 119.

⁽¹⁵⁴⁾ Commission Decision of 8 June 2015 on the State aid which Slovenia is planning to implement for the Cimos Group (SA.37792 (2014/C) (ex 2013/N)) (OJ L 59, 4.3.2016, p. 168), recital 80.

⁽¹⁵⁵⁾ Commission Decision of 20 August 2018 in case SA.51408 (2018/N) – Aid to Terramass B.V. (OJ C 406, 19.11.2018, p. 10), recitals 22 and 71.

⁽¹⁵⁶⁾ See submission by Portugal on 2 December 2021.

- (228) Finally, the fresh funding by a private financial institution ([...]) of EUR [...] million (recital 50(4)), not guaranteed by the Region, can be considered real and actual given that it has been already negotiated with the financial institution and can be executed in 2022. Furthermore, since SATA has the opportunity to choose among [...] alternative suitable lenders, the possibility of funding by private investors also indicates its ability to restore its full access to capital markets and represents a signal of market confidence in its return to viability.
- (229) Contrary to the views of the Portuguese authorities, the proceeds from the sale of the majority stake (51 %) of Azores Airlines and the entire ground-handling business (recital 51), even if already scheduled to take place by the end of the restructuring plan, cannot be considered as real and actual. In particular, the corresponding amounts (around EUR [...] million) consist of expected financial resources relating to the sale of assets that have not yet taken place and, although the Portuguese authorities have submitted their firm commitment to the divestiture, the process of privatisation has not yet started and there are no identified or even potential buyers for the acquisition.
- (230) The Commission thus estimates the overall own contribution that can be considered real and actual to be at most EUR [...] million, representing approximately 30 % of SATA's eligible restructuring costs, which, differently from what Portugal calculated (recital 47), are equal to EUR [...] million, as they include and are financed by the restructuring aid in the amount of EUR 453,25 million in addition to the said maximum amount of own contribution. The remaining costs, such as working capital, will need to be covered with SATA's normal operating revenues or improved payment terms not yet defined. The estimated proportion of 30 % of own contribution and 70 % of restructuring aid is manifestly conservative as, in the absence of any commitment from one or several identified buyers, it does not factor in, as sufficiently actual contribution, any proceeds from the future divestments to which Portugal commits before the restructuring plan. This approach disregards the future value of the shares of Azores Airlines and the ground handling business. The positive operating results expected at the end of the restructuring plan for these two businesses make it likely for the ARA to recover and reduce the amount of aid by a few dozens of millions of euro. In any event, the overall own contribution to the restructuring costs by the beneficiary, even if below the 50 % minimum normally required, may still be accepted, in line with points 64 and 98 of the R&R Guidelines.
- (231) In particular, in the current circumstances following the outbreak of the COVID-19 pandemic, the Commission considers that it may be justified, depending on the individual case, that own contribution remains below the threshold of 50 % of the restructuring costs, as long as it remains significant, as required by point 64 of the R&R Guidelines. By way of indication of a level which the Commission would consider appropriate, in its case practice, the Commission has considered that an own contribution amounting to 24 %-35 % of the restructuring costs may be significant and, thus, that restructuring aid amounting to around 65 %-76 % of the restructuring costs may be proportionate ⁽¹⁵⁷⁾.
- (232) In the case of SATA, the Commission considers that Portugal has demonstrated the presence of exceptional circumstances relating, in particular, to the fact that the COVID-19 pandemic and the measures taken to contain it have created exceptional circumstances for this small regional airline, in the context of a serious disturbance of the economy within the meaning of Article 107(3), point (b), TFEU, with immediate impact on the aviation and tourism sectors and its ability to raise market funding (recitals 34 to 37), although the Commission notes the fact that, despite those unfavourable circumstances, SATA still managed to raise a certain amount of fresh market funding as mentioned in recital 228. In particular, considering the lower operation levels linked to the steep decrease in travel demand to the Azores from March 2020 onwards, the COVID-19 pandemic has affected particularly SATA, beyond the direct losses due the travel bans and restrictions adopted by the public authorities in

⁽¹⁵⁷⁾ In the Decision of 26 January 2022, SA.59974 (2021/C) – Romania - Restructuring of CE Oltenia (not yet published), recitals 214 to 219, the Commission considered acceptable a level of own contribution of 32 % of the restructuring costs. Similarly, in the Decision of 21 December 2021, SA.60165 - Portugal - Restructuring aid to TAP SGPS (not yet published), recital 263, the Commission accepted a own contribution equal to 35 % of the restructuring costs. Under the 1999 R&R Guidelines, which required that the own contribution ought to be significant, without specifying a minimum threshold of application, which was set to 50 % in the 2004 R&R Guidelines, in the Decision of 24 April 2007 relating to the aid measure implemented by Belgium in support of Inter Ferry Boats (C 46/05 (ex NN 9/04 and ex N 55/05)) (OJ L 225, 27.8.2009, p. 1), recitals 348-350, the Commission had also accepted an own contribution of 24 %.

the Union, as it mainly operates PSO routes and SGEIs in the Azores, so that it has a very limited ability to diversify its services to other activities or destinations. In terms of own contribution, the presence of fresh funding at market conditions, representing almost one third of the sources of financing put forward by Portugal, is also in line with point 14bis of the Temporary Framework, where the Commission, in view of the unique situation created by the COVID-19, clarifies that it may be justified that, in individual cases, own contributions within the meaning of points (62) to (64) of the R&R Guidelines remain below 50 %.

- (233) Furthermore, the Commission gives particular consideration to (i) the unique function and position of the beneficiary in an outermost region of the Union that is also an assisted area (point 98 of the R&R Guidelines), as well as (ii) the paramount role played by SATA in ensuring territorial continuity – through PSOs and SGEIs – between the Azores islands, as well as between those island and mainland Portugal and Madeira. As for the first aspect, the Commission considers that the information provided by Portugal demonstrates SATA's difficulty in raising new market financing due to its location in an assisted area of an outermost region of the Union and that such difficulty goes beyond how difficult that access is for SATA only due to its financial standing (recital 67). In respect of the second point, the Commission also notes that the beneficiary serves as PSO/SGEI provider the distinct and specific socio-economic needs of an assisted area in an outermost region, as referred to in Article 349 TFEU. The vast majority of third parties supported this view in their interventions on the opening and the extension decisions, by stressing the unique role played by SATA, which is the only air carrier connecting the individual islands of the Azores, as well as providing air cargo to the Azores and flying from that outermost region of the Union to North America (recitals 93 to 101). Finally, the Commission takes into account the limited size and business of SATA, currently with only 13 airplanes (downsized from 15) and, following the sale of the controlling shareholding of Azores Airlines at the end of the restructuring period, only six airplanes. The Commission thus applies the exception provided for in point 98 of the R&R Guidelines to the case at hand and accepts the own contribution assessed in recitals 223 to 230, which, in any event, is still significant.

Burden sharing

- (234) Pursuant to points 65 to 67 of the R&R Guidelines, State support given in a form that enhances the beneficiary's equity position can have the effect of protecting shareholders and subordinated creditors from the consequences of their choice to invest in the beneficiary, thus creating moral hazard and undermining market discipline. The restructuring aid does not incentivise moral hazard or excessive risk taking having benefitted shareholders or creditors. Indeed, the ARA, which is now the aid provider, has been overseeing and taking as sole shareholder all the strategic and commercial decisions of SATA, whilst the company's operation has not been funded with subordinated debt or hybrid (loss-absorbing) funding likely to be partly written off in line with the burden sharing requirements of the R&R Guidelines.
- (235) Since SATA is fully owned by the ARA, in the current circumstances the enhancement of the beneficiary's equity position and any potential upsides envisaged from a successful restructuring supported by the aid provided by the ARA, including sales proceeds from foreseen asset divestments will fully accrue to the aid grantor in its capacity as sole shareholder. Burden sharing by existing shareholders can therefore be considered as irrelevant in the present case. SATA and the ARA have, for a long time, been negotiating with banks and other financial institutions with regards to the outstanding amounts of SATA's debt. Senior creditors have already agreed reductions of spread and longer maturity, as well as reductions of interest and commissions (recital 50), reducing future cash outflows of SATA, a fully publicly owned company, whose financial difficulties can only be imputed to its sole shareholder, the ARA. Furthermore, as explained by Portugal (recitals 111 to 112), the ARA is a borrower on the global financial markets, as well as the guarantor of SATA's financial debt, so that debt write-offs might harm market confidence with regard to the ARA itself, with potential spill-over effects to other companies of the Regional public sector.
- (236) In light of the above, the Commission considers that the restructuring aid fulfils the conditions of the R&R Guidelines with respect to proportionality, own contribution and burden sharing.

5.4.3.4. 'One time, last time' principle

- (237) In order to ensure that the negative effects of the aid are limited, to avoid undue effects on competition and trade and to ensure that the overall balance is positive ⁽¹⁵⁸⁾, aid must be granted to undertakings in difficulty in accordance with the 'one time, last time' principle. In light of this principle, it is necessary to limit such aid for a period of ten years.
- (238) The Commission allows restructuring aid only in support of one restructuring operation and provided, if appropriate, that more than ten years have elapsed after an earlier granting of restructuring aid or after the restructuring period had come to an end or the implementation of the restructuring plan was halted ⁽¹⁵⁹⁾. If such aid was granted, the Commission permits exceptions to that rule notably where restructuring aid is subsequent to rescue aid as part of a single restructuring operation or in exceptional and unforeseeable circumstances for which the beneficiary is not responsible ⁽¹⁶⁰⁾.
- (239) The restructuring aid to SATA supports a single restructuring operation, which has been already undertaken since the end of 2020 and will last until the end of 2025. The Commission notes that, as part of that operation, Portugal notified the rescue aid and the Commission approved the grant of liquidity support to SATA under point 103 of the R&R Guidelines. The Commission approved the grant of that support both when opening a formal investigation into the rescue aid and when extending that investigation into the restructuring aid, in order to maintain SATA's essential activities related to the provision of PSOs in the field of air transport to the Azores Region and to the management and operation of SGEIs in the airports in that Region. Therefore, the grant of that support did not have the effect of preventing SATA from receiving the restructuring aid in question.
- (240) As regards other State aid granted to SATA in the past and potentially relevant for the application of the 'one time, last time' principle, the Commission notes that it has approved a EUR 12 million compensation aid to SATA under Article 107(2), point (b), TFEU in the circumstances of the exceptional occurrence of the COVID-19 pandemic ⁽¹⁶¹⁾. That aid, however, does not amount to past rescue or restructuring aid: it compensates the damage directly caused by the COVID-19 outbreak from 19 March 2020 to 30 June 2020 and covers costs that SATA would not have incurred in the absence of air travel restrictions imposed on public health grounds prompted by that exceptional occurrence. In particular, other costs incurred by SATA from 19 March 2020 to 30 June 2020 as a result of government restrictions not amounting to travel bans/or air travel restrictions, as well as reduced demand stemming from the serious economic disturbance of the Portuguese economy in 2020-2021 were excluded from compensation.
- (241) As regards compensations for PSO and SGEIs, since 1996 SATA Air Açores has been providing services on the 14 inter-island routes referred to in recital 19) under PSOs imposed according to, initially, Regulation (EEC) No 2408/92 and, later, Regulation (EC) No 1008/2008. Those PSOs were included in contracts that provided a compensation for the service provided on the basis of an *ex ante* method for compensation calculation, yearly allowance and a mechanism for compensation adjustments that ensured the absence of overcompensation. Likewise, the SGEI provided by SGA is set out in a concession contract, which includes compensation determined *ex ante* for the period of that entrustment. The objective and the effect of granting such compensation to SATA was to cover the costs of performing the PSOs and SGEIs concerned, and not to rescue or restructure SATA.
- (242) Finally, with regard to the past capital increases of SATA subscribed in 2017-2020 by the Region, according to Portugal, they amount to a compensation for PSO and SGEI costs incurred by SATA and, in particular, were granted to partly cover the operational deficit of Azores Airlines between 2009 and 2019 for the provision of services discharging PSOs or SGEIs on the routes to mainland and Madeira (recitals 106 and 107), as well on the routes from Azores to North America (recital 108). Ryanair considers that, because of the capital increases, the Commission should not authorise any rescue aid in favour of SATA, as the COVID-19 crisis should not be considered as an exception to the 'one time, last time' principle.

⁽¹⁵⁸⁾ Point 38(f) of the R&R Guidelines.

⁽¹⁵⁹⁾ Points 70 and 71 of the R&R Guidelines.

⁽¹⁶⁰⁾ Points 72(a) and 72(c) of the R&R Guidelines.

⁽¹⁶¹⁾ Commission Decision in case SA.61771 (2021/N) COVID - 19 - SATA - Compensation of damages resulting from extraordinary events (OJ C 285, 16.7.2021, p. 7).

- (243) The Commission recalls that with respect to routes within the Union, any compensation claimed for the past would not be in line with Regulation (EC) No 1008/2008. In fact, the routes were subject to an open PSO. As recalled by Portugal (recital 107), Azores Airlines expressed repeatedly its interest to operate those routes according to the PSO conditions and without compensation. Therefore, any compensation granted to Azores Airlines for the provision of services on those routes under the open PSO would breach Article 17(8) of Regulation (EC) No 1008/2008 and qualify as unlawful and incompatible State aid. This is regardless of the fact that by engaging in this activity, Azores Airlines incurred losses that could have been avoided or reduced if it had operated only the commercially attractive routes, schedules and services.
- (244) Likewise, any purported compensation of losses incurred in discharging PSOs or providing SGEIs on routes from the Azores to North-America would also qualify as unlawful and incompatible State aid. In fact, Azores Airlines has been operating those extra-EU routes on a commercial basis, without an entrustment act. Therefore, Portugal cannot validly claim that the compensation for those routes is compatible with the SGEI Decision 2012/21/EU, since Article 4 thereof requires that the undertaking concerned is to be entrusted with the operation of the SGEI by way of one or more acts. In the same vein, in the absence of an entrustment act, any such compensation cannot be considered compatible under the SGEI Framework ⁽¹⁶²⁾.
- (245) It follows that the capital increases provided as compensations for PSO or SGEI costs amount to unlawful and incompatible State aid under the rules set out in Regulation (EC) No 1008/2008, the SGEI Decision 2012/21/EU or the SGEI Framework.
- (246) After the opening of the formal investigation, the Portuguese authorities have requested SATA to reimburse the past capital increases in SATA Air Açores subscribed by the Regional Government since 2017, totalling EUR 72,6 million that had been granted and were almost entirely disbursed to the company before the initiation of the procedure (recital 71) ⁽¹⁶³⁾. On 1 June 2021, Portugal submitted evidence to the Commission showing the transfer back to the Region in three instalments of the total amount of capital provided to SATA (recitals 9 and 116).
- (247) As a consequence of such reimbursement, SATA has proceeded with a reduction of its share capital and has registered that decrease in the Portuguese Commercial Registry. Portugal also provided evidence of the payment of recovery interest for an amount of EUR 815 233,24 that was transferred to the Region on 30 November 2021. The amount corresponds to the recovery interest referred to in Article 11 of Regulation (EC) No 794/2004 calculated on each of the past capital increases from the date when SATA received the relevant capital increase until the date when it was repaid.
- (248) The Union Courts have consistently held, with respect to unlawful and incompatible State aid, that the purpose underlying the recovery of such aid is to remove the distortion of competition caused by the competitive advantage, which the recipient of the aid has enjoyed in the market as compared with its competitors, thereby restoring the situation which existed before the aid was paid ⁽¹⁶⁴⁾. By repaying such aid, its recipient forfeits such competitive advantage ⁽¹⁶⁵⁾, whereas by paying interest on such aid, it forfeits the advantage arising from the availability of the aid, free of charge, from the date when it was put at the recipient's disposal until the date when it is paid back ⁽¹⁶⁶⁾. The Commission is thus satisfied that the repayment with interest calculated in accordance with Article 11 of Regulation (EC) No 794/2004 and the reduction of share capital removed the competitive advantage to SATA of the capital increases.

⁽¹⁶²⁾ Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011), p. 15, points 15 to 17.

⁽¹⁶³⁾ Recital 13 of the opening decision.

⁽¹⁶⁴⁾ Judgment of the Court of Justice of 11 December 2012, *Commission v Spain* ('*Magfesa II*'), C-610/10, ECLI:EU:C:2012:781, paragraph 105; judgment of the Court of Justice of 17 November 2011, *Commission v Italy*, C-496/09, ECLI:EU:C:2011:740, paragraph 61.

⁽¹⁶⁵⁾ Judgment of the Court of Justice of 4 April 1995, *Commission v Italy* ('*ALFA Romeo*'), C-348/93, ECLI:EU:C:1995:95, paragraph 27.

⁽¹⁶⁶⁾ Judgment of the Court of First Instance of 8 June 1995, *Siemens v Commission*, T-459/93, ECLI:EU:T:1995:100, paragraphs 97-101.

- (249) Notwithstanding the repayment of the amount of capital increases and removal of any competitive advantage conferred on SATA, the Commission will also assess whether the notified restructuring aid to SATA, in light of the capital increases, would breach the ‘one time, last time’ principle set out in points 70 and 71 of the R&R Guidelines.
- (250) The evidence provided in the proceedings allows the conclusion that the capital increases to the benefit of SATA were decided since 2017 by its sole shareholder in order to compensate SATA for its PSOs and SGEIs, in a context where the costs and operating deficits of meeting PSO obligations discharged since at least 2009 were not lawfully compensated (recitals 102 to 108). However, such compensation not provided for *ex ante* in the relevant PSCs or entrustment acts, thus, *ex post facto* is neither allowed under Article 17(8) of Regulation (EC) No 1008/2008, nor under the SGEI Decision 2012/21/EU or the SGEI Framework. The Commission notes that, contrary to SATA Air Açores and SGA, which had positive net earnings, Azores Airlines incurred relatively significant operating losses and negative net earnings (recital 32). In any event, as regards the alleged amount of the compensations Portugal has not demonstrated that SATA, due to its discharging the PSOs in question, effectively incurred an amount of costs and losses that would match the amount of the purported compensation in the form of capital increases. Furthermore, even if the amount of the *ex post* compensations for audited PSOs/SGEIs operations (EUR 65,5 million) could be found substantiated, the further deficit claimed by SATA (EUR 33 million) for its PSOs (recital 102) could not be considered duly demonstrated, in the absence of sufficient evidence supporting that amount (notably given that it was not confirmed by public audits, unlike the EUR 65,5 million amount that was attributed exclusively to the SATA airline’s PSO operations). The Commission also notes that the abovementioned EUR 33 million amount indistinctively covers costs for both airlines, not allowing to establish how much of that deficit was attributable to either of those airlines. It follows that the past capital increases cannot be considered compatible with the internal market as compensation for SATA’s operational deficits stemming from its PSO and SGEI operations, as no such compensation had been provided for *ex ante*, and in any event Portugal has failed to demonstrate the amount of such operational deficits and to reconcile that amount with the amounts of the past capital increases. On those grounds, and absent any alternative compatibility grounds that Portugal would have argued and established, the Commission concludes that the past capital increases constitute incompatible State aid.
- (251) However, the objective and the effect of the capital increases, as described in recital 102, was not to rescue or restructure SATA. Portugal explains that the intervention of the ARA, regardless of compatibility with Regulation (EC) No 1008/2008, was meant to compensate SATA for its PSOs. Indeed, the information submitted by Portugal ⁽¹⁶⁷⁾ shows that the 2017 capital increase (EUR 21,5 million), was ultimately aimed at tackling SATA’s capital shortfalls to allow it to continue to fly and connect the Azores islands. Likewise, the evidence gathered in the proceedings shows that ARA adopted the subsequent decisions of capital increases of 2018 (EUR 27 million) and 2020 (EUR 24 million) with a view to comply with its (sole) shareholder’s obligation to deliberate regarding the company’s capital losses ⁽¹⁶⁸⁾, as well as allowing SATA to maintain ‘regular compliance with its corporate purpose of inter-island scheduled air transport’ ⁽¹⁶⁹⁾ and providing it with the ‘financial conditions necessary for the fulfilment of its objectives’ ⁽¹⁷⁰⁾. While the past capital increases cannot be accepted to constitute compatible compensation of the PSOs discharged and SGEIs provided by SATA, their objective and effect was to address SATA’s operational deficits stemming from the performance of such PSOs and SGEIs, hence they were not of the same type as the present restructuring aid supporting the restructuring plan ⁽¹⁷¹⁾.
- (252) Even if the capital increases amounted to rescue or restructuring aid, *quod non*, a breach of the ‘one time, last time’ principle could still be held to exist if the new restructuring aid were considered to reveal recurrent difficulties or ones that were not adequately addressed in the past, as mentioned in point 70 of the R&R Guidelines. Even on that assumption, the Commission does not apply the principle mechanically, but needs to take into account the circumstances in which the notified restructuring aid is granted to SATA by way of exception to the ‘one time, last time’ principle (point 72(c) and footnote 40 of the R&R Guidelines). The Commission can allow further

⁽¹⁶⁷⁾ Portugal’s submission of 19 October 2020, pt. 167 ff. and Portuguese Court of Auditors’ Opinion on the 2017 ARA accounts <https://www.tcontas.pt/pt-pt/ProdutosTC/PareceresTribunalContas/pareceres-craa/Documents/2017/sratc-cra-2017.pdf>.

⁽¹⁶⁸⁾ See footnote 109.

⁽¹⁶⁹⁾ Resolution of the Council of Government no 85 of 18 July 2018.

⁽¹⁷⁰⁾ Resolution of the Council of Government no 66/2020.

⁽¹⁷¹⁾ Points 71 and footnote 38 of the R&R Guidelines.

restructuring aid under the exception set out in point 72(c) of the R&R Guidelines, if those exceptional and unforeseeable circumstances for which SATA is not responsible are established, as the opening and the extension decisions recall ⁽¹⁷²⁾.

- (253) The outbreak, spread and economic effects of the COVID-19 pandemic are exceptional and unforeseeable circumstances of the kind referred to in point 72(c) of the R&R Guidelines: they were unprecedented (since the time when the Union and its internal market were established), as much as they were also unforeseeable and unforeseen a few months before their occurrence. They could not have been anticipated by the beneficiary's management when the capital increases were provided or a few months before the need for urgent rescue and subsequent restructuring arose, nor are they due to negligence or errors of management or decisions of SATA's group, in line with the criteria recalled in footnote 40 of the R&R Guidelines. In various decisions the Commission has recognised the exceptional nature and impact of COVID-19 in Portugal and in particular on the Azores' economy so as to qualify as serious disturbance in the economy pursuant to Article 107(3), point (b) TFEU and how the impact is still felt because of the disturbance of the supply chains, the reduction of the demand and its consequent impact on the liquidity of many undertakings ⁽¹⁷³⁾. The exceptional and unforeseen circumstance of the COVID-19 pandemic and the serious economic disturbance in which SATA's multifaceted and far-reaching plan for restructuring and increasing efficiency of operations needs to be implemented cannot be imputed to the beneficiary's responsibility.
- (254) It is apparent that the impact of such exceptional circumstance has considerably deteriorated the operation of SATA by unprecedented drops of demand in excess of 40 % since the COVID-19 outbreak until now so that the impact on the beneficiary is manifest and material. Despite such a dramatic drop in passenger numbers which no industry forecasts or projections (IATA, Eurocontrol etc.) predicted whether in 2017 or shortly before the outbreak of the pandemic, in line with its contractual obligations with the Region, the beneficiary could not reduce its services based on its commercial or financial interests alone. SATA continued to discharge its PSOs and ensure connectivity in the absence of alternative means of transport throughout a period in which the containment measures and reduction of air transport demand in Portugal or abroad related to the COVID-19 pandemic produced and continue producing significant effects. Maintaining passenger transport services between the islands of the Region and to/from other Regions (Madeira and mainland Portugal) with sufficient frequency plays a crucial role in ensuring continuously basic connectivity with Azores, whilst significantly aggravating SATA's financial situation in the last two years 2020 and 2021 (recitals 34 to 36) ⁽¹⁷⁴⁾, well beyond the direct losses stemming from the travel bans imposed by the Portuguese public health authorities.
- (255) The relevance of the exception under point 72(c) of the R&R Guidelines must be considered and assessed in the present economic context of the need for restructuring that the COVID-19 pandemic aggravates materially: in this sense, the exceptional and unforeseeable circumstances are not SATA and its owner's responsibility. The exceptional circumstance of a COVID-19 pandemic and its effects on air transport demand, in general or addressed to SATA, were not foreseen and could not have been foreseen when either of the past capital increases were granted or shortly before the pandemic outbreak, which prompted Portugal to notify the need for urgent rescue and now

⁽¹⁷²⁾ Recitals 90 and 91 of the opening decision and 79 and 80 of the extension decision.

⁽¹⁷³⁾ Commission Decisions of 16 April 2021 in Case SA.62505 (2021/N) COVID-19: Amendment of SA.56873 Direct grant scheme and loan guarantee scheme (OJ C 177, 7.5.2021, p. 21), of 7 March 2022 in Case SA.100205 (2022/N) – Portugal - COVID-19: Direct grants to micro, small and medium-sized enterprises in specific sectors established in the Outermost Region of the Azores ('APOIAR. PT Açores') - November 2021 to January 2022, not yet published, of 4 June 2021 in case SA.63010 (2021/N) 'COVID-19: Aid to passengers transport sector in Azores' (OJ C 233, 11.6.2021, p. 33), of 13 September 2021 in case SA.64599 (2021/N) 'COVID-19: Aid to passengers transport sector in Azores for 2021' (OJ C 389, 24.9.2021, p. 16), of 6 April 2022 in case SA.102334 (2022/N) – Portugal - COVID-19: Aid to passengers transport sector in Azores for 2022, not yet published (in particular recitals 4, 36 and 37).

⁽¹⁷⁴⁾ A similar analysis was conducted by the Commission, *inter alia*, in its Decision of 7 August 2020 in case SA.57675 (2020/N) – Germany - COVID-19 - scheme for regional and local public passenger transport (OJ C 277, 21.8.2020), recitals 18-20, 54-55 and 65-66, where the Commission found that the disruption caused by COVID-19 is clearly outside the normal functioning of the market and has particularly affected public service providers in the transport sector, as '[t]hey have not had the choice to reduce their capacity and thereby to reduce their fixed cost, as companies in other sectors. As such, [they] have had to continue to offer almost full capacity despite the still very low number of passengers' (recital 66). See also Commission Decision of 3 November 2020, in case SA.58738 (2020/N) – The Netherlands COVID-19 – Support for regional and long-distance public passenger transport (OJ C 397, 20.11.2020), recitals 57-62, as well as Commission Decision of 7 January 2021, in case SA.59747 (2020/N) COVID-19: Damage compensation to operators of rail passenger services that concluded net-cost public service contracts (OJ C 50, 12.2.2021), recitals 58-62 and 67-68.

restructuring aid necessary to finance a restructuring plan ensuring the return to viability of the beneficiary. Furthermore, the Commission notes that SATA has been operating uncompensated PSOs in terms of frequencies, schedules, prices and routes, which were based on its sole shareholder's public policy objectives of connectivity of an outermost region of the Union, prevailing over the financial and commercial interest of the beneficiary, in the absence of any expression of interest of competing carriers in discharging similar obligations in the area (recital 21) or operating the routes in question (recital 28). Finally, the Commission does not discern that the capital increases have supported any risky commercial conduct of SATA, or any expansion of its air transport or airport management activities by starting new routes or expanding airport facilities within the internal market to the detriment of competition, in the relevant past period (2017-2020) or during the restructuring period now envisaged.

- (256) At the same time, the full reimbursement with interest of the amount of capital unlawfully provided by the ARA reduces any possible moral hazard referred to in the R&R Guidelines to support the rationale of the 'one time, last time' principle. The full reimbursement implies that recurrent restructuring operations supported with supposedly recurrent and ineffective restructuring aid are not incentivised in this or other cases. Moreover, the reimbursement reduces distortions of competition referred to in the R&R Guidelines and that are already limited on the markets where SATA and its controlled subsidiaries are and will remain active at the end of the restructuring plan, namely intra-Azores air transport and small island airports.
- (257) On those grounds, the Commission considers that SATA has not received aid in the past that would fall within the scope of the 'one time, last time' principle, and even if the past capital increases now reimbursed amounted to past rescue or restructuring aid, the restructuring aid meets the exception set out in point 72 c) of the R&R Guidelines and, accordingly, does not produce undue negative effects on competition and trade in the internal market.

5.4.3.5. Measures limiting distortions of competition

- (258) As explained in points 87 to 93 of the R&R Guidelines, measures to limit distortions of competition should be set out in proportion to the distortive effects of the aid, and in particular: to (i) the size and the nature of the aid and the conditions and circumstances under which it is granted; (ii) the size and relative importance of the beneficiary in the market and the characteristics of the market concerned, and (iii) the extent to which moral hazard concerns remain following the application of the own contribution and burden sharing measures. Measures to limit distortions of competition should not compromise the prospects of the return to viability, nor should they come at the expense of consumers and competition. ⁽¹⁷⁵⁾
- (259) The structural measures might include divestment of assets, reducing capacity or market presence. They should favour the entry of new competitors, as well as 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.
- (260) As set out above in recital 62, Portugal confirms that SATA will take the following measures limiting distortions of competition, which will apply until the end of the restructuring plan, namely 31 December 2025:
- (a) the sale of a majority and controlling stake of SATA Internacional - Azores Airlines, S.A., equal to at least 51 % of the share capital of that company;
 - (b) the carve-out and sale of the business unit that currently provides ground handling to all airports and airfields in the Region;
 - (c) a cap on the aircraft fleet not exceeding a maximum of 14 aircraft and, after the sale of Azores Airlines, six aircraft for the remaining perimeter of SATA's controlled business;

⁽¹⁷⁵⁾ Points 87 to 90 and 92 of the R&R Guidelines.

- (d) an advertising ban of received State aid, and
- (e) an acquisition ban.

Structural measures

- (261) Pursuant to point 80 of the R&R Guidelines, measures to limit distortions of competition should not lead to a deterioration in the structure of the market. Structural measures should therefore normally take the form of divestments on a going concern basis of viable stand-alone businesses that, if operated by a suitable purchaser, can compete effectively in the long term.
- (262) The Commission has therefore assessed the divestiture measures proposed in order to ensure that they would constitute a viable, stand-alone business able to compete effectively in the relevant markets at the end of the restructuring period and beyond (recital 260).

Divestiture of a controlling stake in Azores Airlines

- (263) With regard to the first structural measure that Portugal committed to put in place (recital 260(a) in combination with 260(c)), the Commission notes from the outset that SATA Air Açores is a relatively small regional airline, whose business essentially revolves around the provision of PSO routes to and from the Region of the Azores. Similarly, Azores Airlines is also a small airline, with a limited number of flights concentrated towards the USA and Canada, combined with a limited number of PSOs (on four routes, under the main case base scenario, or none, under the alternative scenario where it would not be awarded the PSO contracts), and a limited number of charter flights and cargo services. The divestiture of Azores Airlines would therefore constitute an important divestment of assets for SATA.
- (264) The Commission also notes that: (i) while Azores Airlines has indeed been loss-making for a number of years, that was to a considerable degree due to its old fleet and due to a lack of compensation of the PSO services, which it operated between the mainland and the Azorean destinations; and (ii) as the restructuring plan shows, the bulk of the restructuring measures are adopted precisely in order to bring Azores Airlines on a path to long-term profitability. As assessed in detail in section 2.3.1, such measures are well suited to addressing the causes of difficulty, and are credible and appropriately calibrated to ensure long-term viability.
- (265) Furthermore, in compliance with point 78 of the R&R Guidelines, the ARA will divest the controlling stake in Azores Airlines by the end of 2025 at the latest, by when Azores Airlines would achieve a normalised/recurrent EBITDA of around EUR [...] million, sufficient as to consider the business profitable. Under the restructuring plan, Azores Airlines is expected to [...], becoming profitable [...], with revenues expected to reach around EUR [...] million by 2025, a fleet of eight jets ([...]) and an EBIT of EUR [...] million by 2025, resulting in approximately [...] % EBIT margin, aligned with industry benchmarks (between 8-12 % on average for the peer group). In addition, [...].
- (266) The Commission considers that the alternative solutions presented by Portugal in which PSO might not be awarded to Azores Airlines in the future are credible, and that a potential failure to obtain such contracts after the expiration of the current agreements in place would not jeopardise the viability of the airline after its divestiture.
- (267) As described (recitals 24 to 26), Azores Airlines already operates few commercial flights, notably to North America (Boston, Oakland, Toronto and Montreal), in addition to the four PSO routes, as well as charter and cargo services. Therefore, in terms of market presence, even if on the overall Portuguese air transport market, SATA is far behind the biggest service provider, (the TAP group), it has the strongest market presence in the routes to/from the Azores ⁽¹⁷⁶⁾. In 2020, Azores Airlines had a share of [35-45] % of the passengers arriving to the Azores, whereas in terms of air cargo services Azores Airlines represented more than [60-70] % of air cargo from or to outside the Azores ⁽¹⁷⁷⁾. Therefore, competitors could take the opportunity to replace SATA in a position of relative importance as far as such regional routes are concerned.

⁽¹⁷⁶⁾ Autoridade Nacional da Aviação Civil (ANAC) – Trimestral statistical Bulletin no 49, JAN-MAR 21

⁽¹⁷⁷⁾ Source: SREA and company data.

- (268) Even if [...], the Commission considers that the planned measures allow competitors to step in the market where SATA, post-restructuring, will still be present, although mainly with PSO and SGEI activities and a very reduced fleet of six aircraft, as ensured by the measure under recital 260(c). Hence, by acquiring control of the subsidiary, SATA's competitors might decide to partly replace or complement Azores Airlines' PSO routes by offering connections to mainland Portugal and Madeira on a commercial basis, as well as to grow on other international flights or niche tourist routes and charter services.
- (269) Finally, in view of (i) the corporate re-organisation undertaken by SATA, whereby its operating companies will be clearly separated among themselves and put under the control of a holding company, (ii) the restructuring of Azores Airlines' activities on a more efficient basis, including the possible remuneration of PSO operations or the discontinuance of loss-making PSOs and, possibly, diversification towards new and viable activities, as well as (iii) the revised timeline for the divestiture, to be carried out within the restructuring period, the Commission no longer has doubts on the effectiveness of the divestment in addressing difficulties caused by possibly conflicting interests of Azores Airlines' shareholders (recital 75).

Divestiture of the new ground handling unit

- (270) Second, with regard to the measure referred to in recital 260(b), it concerns a second, smaller divestiture, namely of the new ground handling unit, which is vertically related to the main operations of the SATA airlines. This divestiture would occur in [...], adding on the package of the structural measures, at a time which would allow the beneficiary to achieve recurrent EBITDA of around EUR [...] million/year for this ground handling business. In addition, the projections for the new ground-handling unit show a positive EBIT as of [...] onwards (see table 1.A). Therefore, post-restructuring, it is expected that this new ground handling businesses would also consist of viable and stand-alone businesses.

Conclusions on the structural measures

- (271) The Commission notes that the restructuring aid to SATA under Article 107(3), point (c), TFEU is planned to be granted in circumstances of a serious economic disturbance of the economy of the Member States of the Union referred to in Article 107(3), point (b), TFEU. The economic effects of the COVID-19 pandemic since March 2020 have been particularly acute on supply and demand for air transport and tourism services ⁽¹⁷⁸⁾. In addition, the restructuring aid is provided to an operator located in an assisted area with an aim to ensure that SATA, currently in charge of PSOs and SGEIs to the Azorean community, continues to guarantee the territorial continuity of the Region of Azores both internally and with the mainland and Madeira, as well as with other Member States.
- (272) In this respect, SATA is a small regional airline, with negative operating results already before the COVID-19 pandemic and made more fragile by the latter, (section 2.3.1.4). The business being divested, namely Azores Airlines and ground handling operations, accounts at present for [50-60] % of the revenues of the beneficiary. At the end of the restructuring period, by when the divestment must be completed the proportion of revenues is projected to amount to [...] % (or [...]). Given its current financial situation, the Commission thus considers that SATA cannot withstand further divestments or further withdrawals of capacity without impairing the return to viability.
- (273) Furthermore, the planned divestments seem adequate to counterbalance SATA's limited own contribution to the restructuring costs, which is exceptionally accepted in the present case, as explained in recitals 231 to 236, on the grounds of:
- the relatively small size and the specific circumstances of the beneficiary, entirely owned by the Region of Azores;
 - the socio-economic difficulties - in particular, in terms of raising new market financing - of such outermost Region, which is also an assisted area of the Union, and
 - the fact that these difficulties have been exacerbated by the COVID-19 crisis, given that the economy of the Azores is heavily dependent on tourism.

⁽¹⁷⁸⁾ Points 1 to 4 of the Temporary Framework.

Behavioural measures

- (274) With the cap on the fleet size (recital 260(c)), SATA will meaningfully reduce by 7 % the size of its aircraft fleet compared to the situation in 2019, before the restructuring period. This reduction eases possible excess supply on the Portuguese air travel market where it will remain active, to an extent which is appropriate in light of its relatively limited position therein. In effect, with a reduced and capped aircraft fleet, SATA would be in a position to serve customers and withstand competition from airlines not subject to similar limitations only if it can use the aircraft more efficiently, with higher load factors and with a higher frequency.
- (275) SATA will be further limited regarding growth through external acquisitions of competitors or suppliers of products or services complementary to its own until the end of the restructuring plan, unless indispensable to ensure its long-term viability (recital 260(e)). In that case, Portugal will have to notify the planned acquisition to the Commission, substantiate the purported indispensability of it and refrain from implementing the acquisition until the Commission confirm that the acquisition is necessary to support the long-term viability of SATA.
- (276) Furthermore, SATA will also refrain from publicising State support as a competitive advantage when marketing products and services above (recital 260(d)).

Conclusion on the measures to limit the distortion of competition

- (277) In line with point 83 of the R&R Guidelines, those measures will ensure that aid is used only to finance the restoration of long-term viability and that it is not abused to prolong serious and persistent market structure distortions or to shield the beneficiary from healthy competition.
- (278) Therefore, the Commission considers that the measures to limit the restrictions of competition appropriately reduce the negative effects of the restructuring aid.

5.4.3.6. Transparency

- (279) 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. Hence, in keeping with point 96 of the R&R Guidelines, the Portuguese authorities undertake to meet transparency requirements and make the relevant information available on the following website:

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

6. CONCLUSION ON COMPATIBILITY

- (280) Pursuant to Article 9(6) of Regulation (EU) 2015/1589, decisions closing the formal investigation procedure are to be taken as soon as the doubts raised on the compatibility with the internal market of a notified measure have been removed.
- (281) In light of the above, the Commission concludes that, whilst the doubts it raised in the opening decision have been removed, the negative effects of the restructuring aid on the air transport sector are limited, given the small size of SATA, as well as the measures limiting the distortions of competition, which Portugal should ensure are implemented. Consequently, provided that Portugal ensures the implementation of the restructuring plan, the positive effects of the restructuring aid on the development of the economic activity - concerning the air transport ensuring connectivity of the Region of the Azores, as well as related activities benefitting therefrom - outweighs the potential negative effects on competition and trade, which are therefore not adversely affect to an extent contrary to the common interest. The commitments provided by Portugal should be laid down, therefore, as conditions for the compatibility of the aid.
- (282) In its overall assessment, therefore, the Commission concludes that the restructuring aid complies with Article 107(3), point (c), TFEU as it facilitates the development of the regional air transport and related activities, especially in the tourism sector, in the Azores and does not distort competition to an extent contrary to the common interest.

- (283) Finally, the Commission recalls the obligation of Portugal to see to it that the beneficiary fully implements the restructuring plan ⁽¹⁷⁹⁾, as well as to provide regular reports on the implementation of the restructuring plan every six months until the end of the restructuring period. Those reports should specify, in particular, the dates of disbursement of the funding committed by Portugal and of the own contribution of the beneficiary, the developments as regards the aircraft and capacity of SATA's fleet, any deviations from the financial or operational trajectories of the restructuring plan in terms of revenues, containment of cost and cost reductions from the restructuring measures and earnings, and the corrective measures envisaged or taken by Portugal or the beneficiary where appropriate.
- (284) With respect to the rescue aid, the Commission notes that Portugal withdrew its notification of that aid and that the rescue aid has not been granted. As a result, the formal investigation procedure with regard to the rescue aid has become without object (recital 136).
- (285) With respect to the past capital increases, the Commission considers that they represent an unlawful aid and that such aid is not compatible with the internal market (recital 245). However, since Portugal has recovered the corresponding amount with interest, the Commission concludes that it can close the investigation in respect of the past capital increases without ordering their recovery,

HAS ADOPTED THIS DECISION:

Article 1

The restructuring aid that the Portugal is planning to implement for the benefit of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A. and all its controlled subsidiaries, in the form of equity measures amounting to EUR 318,25 million and a guarantee on loans amounting to EUR 135 million, is compatible with the internal market within the meaning of Article 107(3), point (c), of the Treaty on the Functioning of the European Union (TFEU), subject to the conditions set out in Article 2 of this Decision.

Article 2

1. Portugal shall ensure that SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A., and/or its subsidiaries as appropriate, fully implement, within the relevant timelines, the measures included in the restructuring plan set out in this Decision.
2. Portugal shall ensure that SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A., and/or its subsidiaries as appropriate, fully implement, within the relevant timelines and at the latest before the end of the restructuring period on 31 December 2025, the measures limiting the distortions of competition as described in this Decision, namely:
 - (a) fully divesting at least 51 % of the share capital of SATA Internacional - Azores Airlines, S.A.,
 - (b) fully divesting the business unit that currently provides ground handling services to the airports and airfields in the Region of the Azores under the sole control of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A.;
 - (c) respecting a cap on the aircraft fleet under the control of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A. not exceeding a maximum of 14 aircraft and, after the sale of the shares in SATA Internacional - Azores Airlines, S.A., referred to in point (a), six aircraft;
 - (d) refraining from acquiring shares in any company except where indispensable to ensure the long-term viability of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A., and/or its subsidiaries as appropriate, and, in that case subject to the Commission's prior approval; and

⁽¹⁷⁹⁾ Point 122 of the R&R Guidelines.

(e) refraining from publicising State support as a competitive advantage when marketing products and services of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A., and/or its subsidiaries.

3. Portugal shall send the Commission regular reports on the implementation of the restructuring plan every six months starting from the date of adoption of this Decision until the end of the restructuring period on 31 December 2025. Those reports shall specify, in particular: the dates of the actual disbursement of the funding committed by Portugal and the own contribution of the beneficiary; the developments on the network, market position, aircraft and capacity of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A.'s fleet; any deviations from the financial or operational trajectories of the restructuring plan in terms of revenues, containment of costs and cost reductions, and earnings achieved by the restructuring measures; and any corrective measures envisaged or taken by Portugal or the beneficiary where appropriate.

Article 3

The formal investigation procedure is closed with regard to the State aid in the form of a public guarantee to a bank loan of EUR 169 million for the rescue of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A. on the grounds that the procedure has become without object, since Portugal has withdrawn the notification of that State aid without putting the aid into effect.

Article 4

1. The three capital increases of SATA Air Açores - Sociedade Açoriana de Transportes Aéreos S.A. subscribed by the Portugal since 2017 for a total amount of EUR 72,6 million constitute State aid within the meaning of Article 107(1) TFEU.

2. That State aid was unlawfully put into effect by Portugal in breach of Article 108(3) TFEU and is incompatible with the internal market.

3. Since Portugal has already recovered the incompatible State aid from the beneficiary with interest from the date on which the three capital increases were respectively put at the disposal of the beneficiary until their actual recovery, the Commission has no grounds to require the recovery of the aid.

Article 5

Portugal shall inform the Commission, within two months of notification of this Decision, of the measures taken and envisaged to be taken to comply with it.

Article 6

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 7 June 2022.

For the Commission
Margrethe VESTAGER
Member of the Commission

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