Commission Decision of 3 October 2012 on the measure SA.23600 — C 38/08 (ex NN 53/07) — Germany Financing arrangements for Munich Airport Terminal 2 (notified under document C(2012) 5047) (Only the German text is authentic) (Text with EEA relevance) (2013/693/EU)

(**1**) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union (TFEU). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty, where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU is used throughout this Decision.

(**2**) OJ C 5, 10.1.2009, p. 4.

(**3**) The action was registered as Case T-423/07 *Ryanair* v *Commission*, OJ C 8, 12.1.2008, p. 28.

(**4**) See footnote 2.

(**5**) Case T-423/07 *Ryanair* v *Commission*, not yet published in the European Court Reports.

(**6**) FMG is the state-owned limited liability company that operates Munich Airport. The shareholders in FMG are the Free State of Bavaria (51 % of the shares), the Federal Republic of Germany (26 % of the shares) and the City of Munich (23 % of the shares).

(**7**) LH is a global air carrier that has been listed on the German Stock Exchange since 1966 and was fully privatised in 1997.

(**8**) Confidential information.

(**9**) KfW Bankengruppe (hereinafter: 'KfW') is an institution established under public law (*Anstalt des öffentlichen Rechts*) to support development in different areas, for example promotion of small and medium-sized enterprises, environmental protection measures, and infrastructure. It is owned by the Federal State of Germany (80 %) and the *Länder* (20 %). KfW refinances its lending business on the international capital markets.

(**10**) Bayerische Landesbank (hereinafter: 'BayernLB') is an institution established under public law. At the time the individual loan agreements were concluded, it was jointly owned indirectly through BayernLB Holding AG by the Free State of Bavaria and the Association of Bavarian Savings Banks (*Sparkassenverband Bayern*), each with a 50 % stake. Currently, the Free State of Bavaria holds a 94 % stake in BayernLB Holding, and the remaining 6 % stake is owned by the Association of Bavarian Savings Banks.

(**11**) LfA Förderbank Bayern (hereinafter: 'LfA') is an institution established under public law specialised in facilitating general business development in Bavaria (including development of the local infrastructure). It is wholly owned by the Free State of Bavaria.

(**12**) Letter dated 17 March 2005.

(**13**) OJ C 88, 12.4.2005, p. 5.

(**14**) OJ C 14, 19.1.2008, p. 6.

(**15**) Case T-128/98 *Aéroports de Paris* v *Commission* [2000] ECR II-3929 (hereinafter: *Aéroports de Paris* judgment), upheld on appeal in Case C-82/01P *Aéroports de Paris* v *Commission* [2002] ECR I-9297 (hereinafter: *Aéroports de Paris* judgment on appeal).

(**16**) This rating category means that the borrower has an adequate capacity to meet its financial commitments. However, adverse economic conditions or changing circumstances are likely to lead to a weakened capacity of the borrower to meet its financial commitments.

(**17**) This rating category means that the borrower has a strong capacity to meet its financial commitments, but is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than borrowers in higher-rated categories.

(**18**) This rating category means that the borrower has a very strong capacity to meet its financial commitments.

(**19**) […].

(**20**) OJ L 83, 27.3.1999, p. 1.

(**21**) Communication on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ C 350, 10.12.1994, p. 5.

(**22**) *Aéroports de Paris* judgment on appeal, paragraph 75 with further references.

(**23**) Judgment of 24 March 2011 in Case T-455/08 *Flughafen Leipzig-Halle GmbH und Mitteldeutsche Flughafen AG* v *Commission*, in particular paragraphs 105 and 106, not yet published in the European Court Reports.

(**24**) See in particular Commission Decision of 17 June 2008 in Case C 29/08 Frankfurt-Hahn airport - Possible state aid to the airport and the agreement with Ryanair, OJ C 12, 17.1.2009, p. 6, paragraphs 204–208; Commission Decision of 21 March 2012 in Case C 76/2002 Charleroi airport – Possible state aid to the airport and Ryanair, OJ C 248, 17.8.2012, p. 1.

(**25**) *Leipzig/Halle Airport* judgment, in particular paragraph 106.

(**26**) Commission Communication to the Member States: Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, OJ C 307, 13.11.1993, p. 3, paragraph 11. This communication deals with the manufacturing sector, but is also applicable to other economic sectors. See judgment in Case T-16/96 *Cityflyer* [1998] ECR II-757, paragraph 51.

(**27**) The swap rate is the longer maturity equivalent to the Inter-Bank Offered Rate (IBOR rate). It is used in the financial markets as a benchmark rate for establishing the funding rate.

(**28**) A credit default swap (CDS) is a (tradable) credit derivative contract between two counterparties, the protection buyer and the protection seller, transferring the credit risk on an underlying reference entity from the protection buyer to the protection seller. The protection buyer pays a premium to the protection seller every period until maturity of the CDS contract or until a pre-defined credit event occurs on the underlying reference entity (whichever occurs first). The periodic premium paid by the protection buyer (expressed as a percentage or in terms of basis points of the protected amount, the 'notional') is called the CDS spread. CDS spreads can be used as a close proxy for the price of credit risk.

(**29**) See, for example, Oxera, *Estimating the cost of capital for Dutch water companies*, 2011 (p. 3), or Bloomberg data on underwriting fees for bond issuance. In the remainder of this Decision, a 20 bps fee will be used to arrive at a conservative estimate.

(**30**) Bloomberg-Code EUSA2.

(**31**) Bloomberg-Code EUSA5.

(**32**) *Source*: Bloomberg.

(**33**) See recitals 24, 25 and 44.

(**34**) See, for example, Moody's, Updated Summary Guidance for Notching Bonds, Preferred Stocks and Hybrid Securities of Corporate Issuers (February 2007).

(**35**) The CDS spread for loan 17 should in principle match the WAL of the loan of […] years (approximated at two years). However, there are no CDS data available for a maturity of two years at the time the loan was granted. For that reason CDS spreads with the maturity of the loan (three years) have been considered. This approach provides for an upper bound.

(**36**) Source: Bloomberg. Interquartile range (i.e. the range between the first and third quartile): 16-29 bps.

(**37**) Source: Bloomberg. Interquartile range: 23-37 bps.

(**38**)

(**39**)

(**40**) At the time, there was no CDS trade on LH for a maturity of two years or less.

(**41**) The level of collateral can be measured as the loss given default (LGD), which is the expected loss in percentage of the debtor's exposure, taking into account recoverable amounts from collateral and the insolvency assets; as a consequence, the LGD is inversely proportional to the value of collateral. This is reflected in the difference in LGD between the collateralisation categories 'High' (LGD < 30 %) and 'Normal' (30 % < LGD < 60 %) set out in the 2008 Reference Rate Communication.

(**42**) The Euro Interbank Offered Rate (hereinafter: 'EURIBOR') is a daily reference rate based on the average interest rates at which eurozone banks offer to lend unsecured funds to other banks in the euro wholesale money market (interbank market).

(**43**) […].

(**44**) See Bank for International Settlements: International Convergence of Capital Measurement and Capital Standards, http://www.bis.org/publ/bcbs128.pdf

Changes to legislation:
There are currently no known outstanding effects for the Commission Decision of 3 October 2012 on the measure SA.23600 — C 38/08 (ex NN 53/07) — Germany Financing arrangements for Munich Airport Terminal 2 (notified under document C(2012) 5047) (Only the German text is authentic) (Text with EEA relevance) (2013/693/EU).