

Commission Decision (EU) 2015/1073 of 9 January 2015 on the State aid SA.35888 (2013/C) (ex 2013/NN) SA.37220 (2014/C) (ex 2013/NN) SA.38225 (2014/C) (ex 2013/NN) implemented by Cyprus for Cyprus Airways (Public) Ltd (notified under document C(2014) 9362) (Only the English text is authentic) (Text with EEA relevance)

- Article 1 The formal investigation procedure under Article 108(2) of the Treaty initiated...
- Article 2 The State aid amounting to at least EUR 66 099 317.94, which...
- Article 3 Any State aid in addition to the amounts referred to...
- Article 4 (1) Cyprus shall recover the incompatible aid referred to in...
- Article 5 (1) Recovery of the aid referred to in Article 2 and...
- Article 6 (1) Within two months following notification of this Decision, Cyprus...
- Article 7 This Decision is addressed to the Republic of Cyprus.
Signature

ANNEX

INFORMATION ABOUT THE AMOUNTS OF AID RECEIVED, TO BE RECOVERED AND ALREADY RECOVERED (ALL AMOUNTS IN EUR)

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2015/1073. (See end of Document for details)

- (1) SA.35888: [OJ C 152, 30.5.2013, p. 12](#); SA.37220 and SA.38225: [OJ C 117, 16.4.2014, p. 125](#).
- (2) Cf. footnote 1.
- (3) SA.27573 (2012/MX) — *Scheme for constant training programmes for individual enterprises — Cyprus*, approved in Cyprus by the Decision of the Commissioner for State Aid Control, published in the Cypriot Official Gazette nr. 8025 of 21 November 2008.
- (4) Cf. footnote 1.
- (5) Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([OJ L 124, 20.5.2003, p. 36](#)).
- (6) Commission decision of 3 May 2005 in case N69/2005 ([OJ C 191, 5.8.2005, p. 4](#)) and Commission Decision 2008/137/EC of 7 March 2007 — State aid C 10/06 (ex N555/05) — Cyprus Airways Public Ltd — Restructuring plan ([OJ L 49, 22.2.2008, p. 25](#)).
- (7) Commission decision of 27 June 2012 in case SA.32523 (11/N) ([OJ C 230, 1.8.2012, p. 1](#)).
- (8) ATH: Athens; SKG: Thessaloniki; HER: Heraklion-Crete; RHO-Rhodes; LED: St. Petersburg.
- (9) FCO: Rome Fiumicino; VIE: Vienna, LHR: London Heathrow, STN: London-Stansted.
- (10) LON: Collectively referred to airports in the London area.
- (11) AMS: Amsterdam Schiphol; CDG: Paris Charles de Gaulle; SVO: Moscow Sheremetyevo; SOF: Sofia; FRA: Frankfurt am Main; MUC: Munich; ZRH: Zurich; TLV: Tel Aviv; BEY: Beirut.
- (12) Available seat kilometres.
- (13) The 2013 restructuring plan considered routes which have positive gross contribution to the company's costs, that is to say, revenue minus variable cost, to be profitable routes.
- (14) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty ([OJ L 214, 9.8.2008, p. 3](#)).
- (15) Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty ([OJ C 244, 1.10.2004, p. 2](#)), the validity of which was extended in 2009 ([OJ C 156, 9.7.2009, p. 3](#)) and in 2012 ([OJ C 296, 2.10.2012, p. 3](#)). Although the Commission has adopted and published new guidelines for rescue and restructuring aid ([OJ C 249, 31.7.2014, p. 1](#)), in this decision the Commission will continue to refer to the 2004 Rescue and Restructuring Guidelines, because the measures under investigation were notified before 1 August 2014. In addition, to the extent aid has already been granted without the Commission's authorisation and therefore in breach of Article 108(3) of the Treaty (i.e. measures 1, and 5), it was granted before the entry into force of the new guidelines.
- (16) This is lower than the interest rate which was reported in the notification of the rescue aid, see recital 29.
- (17) Commission decision of 22 February 2006 in case N 464/2005, restructuring aid in favour of AB Kauno ketaus liejykla ([OJ C 270, 7.11.2006, p. 2](#)); Commission decision of 18 July 2001 in case NN 92/1999, measures in favour of Zentrum Mikroelektronik Dresden AG — Sachsen ([OJ C 328, 23.11.2001, p. 5](#)); Commission decision of 1 June 2005 in case N 584/2004, restructuring aid to AB Vingriai ([OJ C 187, 30.7.2005, p. 15](#)); Commission Decision 2010/3/EC of 6 November 2008 on State aid C 19/05 (ex N 203/05) granted by Poland to Stocznia Szczecińska ([OJ L 5, 8.1.2010, p. 1](#)).
- (18) The route LCA-ATH-LCA appeared to have a negative gross contribution in 2012. The Cypriot authorities explained that this route was operated in combination with other domestic routes in Greece and that between LCA and ATH it was profitable on a gross contribution level. However, the Cypriot authorities never submitted the data that would justify this claim.
- (19) PASYPI-PALPU (Pancyprian Airline Pilots Union), SYNIKA (Cyprus Airways Employees Trade Union), ASYSEKA (Independent Trade Union of Employees in Cyprus Airways Group), SIDIKEK PEO (Trade Union of Semi-public, municipal and communal employees of Cyprus), SYPKKA (Trade Union of Flight Attendants of Cyprus Airways).
- (20) See, for example, Case C-305/89 *Italy v Commission* ('ALFA Romeo') [1991] ECR I-1603, paragraphs 18 and 19; Case T-16/96 *Cityflyer Express v Commission* [1998] ECR II-757, paragraph 51; Joined Cases T-129/95, T-2/96 and T-97/96 *Neue Maxhütte Stahlwerke and Lech-*

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- Stahlwerke v Commission* [1999] ECR II-17, paragraph 104; Joined Cases T-268/08 and T-281/08 *Land Burgenland and Austria v Commission* [2012] ECR II-0000, paragraph 48.
- (21) Case C-364/90, *Italy v Commission*, [1993] ECR I-2097, paragraph 20.
- (22) Joined Cases T-102/07 *Freistaat Sachsen v Commission* and T-120/07 *MB Immobilien and MB System v Commission*, [2010] ECR II-585, paragraph 106.
- (23) See Commission Decision 2008/716/EC of 2 April 2008 on State aid C 38/07 (ex NN 45/07) implemented by France for Arbel Fauvet Rail SA, paragraph 35 ([OJ L 238, 5.9.2008, p. 27](#)).
- (24) See Commission decision of 9 July 2014 in case SA.34191 (2012/C) regarding measures implemented by Latvia for A/S Air Baltic Corporation (airBaltic), not yet published, recital 179; Commission decision of 9 July 2014 in case SA.32715 (2012/C) regarding Adria Airways d.d., not yet published, recital 131; Commission Decision 2013/151/EU of 19 September 2012 on the State aid SA.30908 (11/C, ex N 176/10) implemented by the Czech Republic for České aerolinie, a.s. (ČSA — Czech Airlines — Restructuring plan) ([OJ L 92, 3.4.2013, p. 16](#)), recital 107 and Commission Decision 2012/661/EU of 27 June 2012 on the State aid No SA.33015 (2012/C) which Malta is planning to implement for Air Malta plc. ([OJ L 301, 30.10.2012, p. 29](#)), recital 93; Commission decision of 29 July 2014 in case SA.36874 (2013/N) regarding restructuring aid for LOT Polish Airlines S.A., not yet published, recital 241.
- (25) Around four months elapsed between the Board resolution in February 2012 and the Council of Ministers approval of a draft law allowing the capital increase in June 2012. Further, additional conditions were asked for by the House of Representatives before approving the capital increase.
- (26) In the Commission decision of 22 February 2006 in case N 464/2005, restructuring aid in favour of AB Kauno ketaus liejykla, also cited by the Cypriot authorities, the Commission approved a longer restructuring period based among others on a 46 % reduction in capacity. Cyprus Airways will only reduce its capacity by 35 %. The Commission has also approved a longer restructuring period taking into account the very small market share of the company, the fact that measures occurred before the country was being considered a functioning market economy, and dramatic operational restructuring measures. Commission decision of 1 June 2005 in case N 584/2004, restructuring aid to AB Vingriai ([OJ C 187, 30.7.2005, p. 15](#)). The precedents of Zentrum Mikroelektronik Dresden AG — Sachsen and Stocznia Szczecińska, referred to by the Cypriot authorities, are also not relevant, because in the former the aid was approved under older guidelines for rescue and restructuring and took into account the specific situation of an originally State owned enterprise in the former East Germany, while in the latter the aid was not approved.
- (27) See for instance Commission decision of 9 July 2014 in case SA.34191 (2012/C) regarding measures implemented by Latvia for A/S Air Baltic Corporation (airBaltic), not yet published, recital 185; or Commission decision of 29 July 2014 in case SA.36874 (2013/N) regarding restructuring aid for LOT Polish Airlines S.A., not yet published, recital 234.
- (28) Fully coordinated airports are defined in Article 2(g) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports ([OJ L 14, 22.1.1993, p. 1](#)). According to Article 3(4) of Regulation (EEC) No 95/93, those airports experience, at least during certain periods, capacity constraints.
- (29) See Commission decision of 9 July 2014 in case SA.34191 (2012/C) regarding measures implemented by Latvia for A/S Air Baltic Corporation (airBaltic), not yet published, recital 194; Commission decision of 9 July 2014 in case SA.32715 (2012/C) regarding Adria Airways d.d., not yet published, recital 143; Decision 2013/151/EU, recital 130.
- (30) See Commission decision of 9 July 2014 in case SA.34191 (2012/C) regarding measures implemented by Latvia for A/S Air Baltic Corporation (airBaltic), not yet published, recital 195; Commission decision of 9 July 2014 in case SA.32715 (2012/C) regarding Adria Airways d.d., not yet published, recital 136.
- (31) The statutes of Cyprus Airways and the Company's annual accounts reveal that it operates a number of retirement benefit plans, including the Provident Fund and that the Company assumes the liability for safeguarding the value of the Provident Fund and this liability is included in the Company's payables and provisions. In addition, the Company guarantees the purchasing power of the retirement benefits so that these are not less than a defined minimum total benefit.
- (32) See Commission Decision 2010/175/EC of 22 July 2009 on State aid C 18/05 (ex N 438/04, N 194/05 and PL 34/04) awarded by Poland to Stocznia Gdańsk ([OJ L 81, 26.3.2010, p. 19](#)), recital 276.

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- (33) See Commission decision of 24 January 2006 in case N 814/2006, on the Regional aid map 2007-13 (OJ C 68, 24.3.2007, p. 28).
- (34) The Cypriot authorities refer to the Air Malta rescue aid decision which would have acknowledged exceptional circumstances and allowed rescue aid in a period that was shorter than 10 years from a previous restructuring aid (Commission decision of 15 November 2010 in case N 504/2010 — Air Malta plc — Rescue aid (OJ C 102, 2.4.2011, p. 4). The Commission notes that there are significant differences between the Air Malta case and the current case. The previous measure in the Air Malta case was carried out in April 2004, before accession of Malta to the EU, and was thus not subject to approval by the Commission. The Maltese authorities argued that the 2004 measure was in line with the market economy investor principle and thus did not constitute State aid. Due to the urgency of the rescue aid approval, the Commission was not in a position to arrive at a definitive conclusion about the aid character of the 2004 measure. However, in the subsequent restructuring aid decision (Decision 2012/661/EU) the Commission concluded that the 2004 measure did not constitute State aid. In the current case, there is no doubt that Cyprus Airways received restructuring aid in 2007. Further, one of the exceptional circumstances accepted by the Commission concerned the fact that at the time of the 2004 measure, access to Malta International Airport was governed exclusively by traffic rights in bilateral air agreements, while in 2010 access was open to all EU carriers. There was no such fundamental change between 2007 and now as regards access to Cypriot airports. Finally, while Malta depended for more than 50 % of its air traffic on Air Malta, the share of Cyprus Airways of the Cyprus air traffic was only 15 % in 2012 and since then has been further decreasing.
- (35) See Commission decision of 27 June 2012 in case SA.32523 (11/N), paragraph 11.
- (36) See 2007 Annual Report, p. 97; 2008 Annual Report, p. 88; 2009 Annual Report, p. 91.
- (37) See Case C-70/72 *Commission v Germany* [1973] ECR 813, paragraph 13.
- (38) See Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 75.
- (39) See Case C-75/97 *Belgium v Commission* [1999] ECR I-030671 paragraphs 64 and 65.
- (40) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

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