II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2016/1031

of 6 November 2015

on the measures SA.35956 (13/C) (ex 13/NN) (ex 12/N) implemented by Estonia for AS Estonian Air

and

on the measures SA.36868 (14/C) (ex 13/N) which Estonia is planning to implement for AS Estonian Air

(notified under document C(2015) 7470)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Having regard to the decisions by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty, in respect of the aid SA.35956 (13/C) (ex 13/NN) (ex 12/N) [1] and in respect of the aid SA.36868 (14/C) (ex 13/N) [2],

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments,

Whereas:

1. PROCEDURE

1.1. The rescue case (SA.35956)

(1) By letter dated 3 December 2012, Estonia notified the Commission of its plans to provide rescue aid in favour of AS Estonian Air ('Estonian Air' or 'the airline') as well as of several capital injections carried out in the past. A meeting with the Estonian authorities took place on 4 December 2012.

(2) Following those pre-notification contacts, by SANI notification number 7853 of 20 December 2012, Estonia notified to the Commission the planned provision of rescue aid to the airline in the form of a loan facility amounting to EUR 8,3 million.

(3) On the basis of the information provided by the Estonian authorities, it appeared that the first tranche of the rescue loan was disbursed to Estonian Air on 20 December 2012. For this reason, the Commission registered the case as non-notified aid (13/NN) and informed Estonia of the reclassification of the case by letter of 10 January 2013. Furthermore, the Commission requested additional information by letter of 10 January 2013, to which Estonia replied by letter of 21 January 2013.

[1] OJ C 150, 29.5.2013, p. 3 and 14.
[2] OJ C 141, 9.5.2014, p. 47.

(4) By letter dated 20 February 2013, the Commission informed Estonia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the rescue aid amounting to EUR 8,3 million and the measures granted in the past.

(5) By letter dated 4 March 2013, Estonia informed the Commission of its decision of 28 February 2013 to increase the rescue loan granted to Estonian Air by EUR 28,7 million. By letter dated 16 April 2013, the Commission informed Estonia that it had decided to extend the procedure laid down in Article 108(2) of the Treaty to the additional rescue aid (jointly with the decision referred to in recital 4, 'the rescue aid opening decisions').

(6) Estonia submitted comments on the rescue aid opening decisions by letters dated 9 April and 17 May 2013. The Commission requested additional information from Estonia by letter of 8 April 2013, which Estonia replied to on 18 April 2013.

(7) The rescue aid opening decisions were published in the *Official Journal of the European Union* on 29 May 2013 ([3]). The Commission invited interested parties to submit comments on the measures. The Commission received comments from two interested parties, namely International Airlines Group ('IAG') and Ryanair. The Commission forwarded them to Estonia, which was given the opportunity to react; Estonia's observations were received on 5 August 2013.

1.2. **The restructuring case (SA.36868)**

(8) Following informal contacts with the Commission, Estonia notified a restructuring plan — including a recapitalisation of the airline amounting to EUR 40,7 million — on 20 June 2013, by SANI notification number 8513. The notification was registered with number SA.36868 (13/N).

(9) The Commission requested additional information by letters dated 16 July and 28 October 2013, to which the Estonian authorities replied by letters dated 28 August and 25 November 2013. Estonia submitted additional information by e-mail of 22 December 2013.

(10) In addition, the Commission received a complaint from Ryanair dated 23 May 2013 concerning Estonia's plans to increase the capital of Estonian Air as well as a sale-and-lease-back agreement between Estonian Air and Tallinn Airport regarding an office building owned by Estonian Air. On 25 June 2013, the Commission forwarded the complaint to Estonia. Estonia's comments were submitted by letter dated 5 August 2013 ([4]).

(11) By letter dated 4 February 2014, the Commission informed Estonia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the notified restructuring aid ('the restructuring aid opening decision') ([5]).

(12) Estonia submitted comments on the restructuring aid opening decision by letter dated 19 March 2014. A meeting with the Estonian authorities and Estonian Air took place on 7 May 2014, followed by a telephone conference on 30 June 2014. In addition, a meeting with the Estonian authorities and their legal representative took place on 28 August 2014, after which Estonia provided additional information by e-mail on 10 September 2014.

(13) On 31 October 2014, the Estonian authorities submitted a modified restructuring plan. Following that, meetings with the Estonian authorities were held on 23 November, 11 December and 19 December 2014 and additional information was submitted by the Estonian authorities on 3, 10 and 19 December 2014.

(14) Additional information was submitted by the Estonian authorities on 14, 27 and 28 January, 13 February, 11 March, 8 and 30 April, 27 May, 17 July and 26 August 2015. In addition, meetings with the Estonian authorities were held on 14 and 15 January, 27 March, 21 April (telephone conference), 7 May (telephone conference), 28 May and 15 September 2015.

([3]) See footnote 1.

([4]) Given that the complaint was submitted on 23 May 2013, before Estonia notified Estonian Air's restructuring plan on 20 June 2013, the complaint was registered under the rescue case, i.e. SA.35956. However, given that the complaint partly related to the plans of the Estonian authorities to recapitalise the airline, it was assessed in the context of the opening decision on the restructuring case, i.e. SA.36868.

([5]) The restructuring aid opening decision was corrected by Commission decision C(2014) 2316 final of 2 April 2014.

(15) The restructuring aid opening decision was published in the *Official Journal of the European Union* on 9 May 2014 ([6]). The Commission invited interested parties to submit their comments on the measures. The Commission received comments from two interested parties, namely Ryanair and an interested party who does not wish its identity to be disclosed. The Commission forwarded them to Estonia, which was given the opportunity to react; Estonia's observations were received on 15 August 2014.

(16) By letter dated 8 October 2015, Estonia informed the Commission that they exceptionally accept that this Decision be adopted and notified in English, thereby waiving its rights deriving from Article 342 of the Treaty in conjunction with Article 3 of Regulation 1 ([7]).

2. THE ESTONIAN AIR TRANSPORT MARKET

(17) The main airport of Estonia is Tallinn Airport, which in 2013 served 1,96 million passengers down from 2,21 million passengers in 2012, that is to say, a decrease of 11,2 %. In 2013, 13 different airlines performed scheduled flights to and from Tallinn and a total of 20 routes were operated all year round ([8]). In 2014, Tallinn Airport served 2,02 million passengers, an increase of 3 % compared to 2013. In total 15 different airlines operated 20 routes on a year-round basis ([9]).

(18) Estonian Air carried 27,6 % of the passengers flying via Tallinn in 2013, down from 40,2 % in 2012, although it maintained its leader position. Also in 2013, Ryanair and Lufthansa carried 15,1 % and 10,5 %, respectively, of passengers travelling to/from Tallinn, closely followed by Finnair and airBaltic ([10]). In 2014, Estonian Air's share of total passengers further decreased to 26,6 %, followed by Lufthansa with 13,4 % and Ryanair with 11,5 % of the total passengers ([11]).

(19) Due to the stability of the Estonian economy in 2013, passenger demand for air transport remained high, which presented other airlines an opportunity to increase their supply and market share ([12]). In 2013, Turkish Airlines started to operate flights to/from Istanbul and Ryanair added seven new routes, while Lufthansa and airBaltic increased their frequencies. In 2014, new airlines started operating scheduled routes from Tallinn, such as for example TAP Portugal (to/from Lisbon) and Vueling (to/from Barcelona) ([13]).

(20) According to the manager of Tallinn Airport, the whole of Estonia can be deemed the catchment area of this airport. At the same time, most of Estonia is also located within the catchment area of other international airports such as Helsinki, Riga and Saint Petersburg ([14]).

3. THE BENEFICIARY

(21) Estonian Air, a stock company under Estonian law, is the flag carrier airline of Estonia, based in Tallinn Airport. Currently, the airline has around 160 employees and operates a fleet of seven aircraft.

(22) Estonian Air was formed as a State-owned company after the independence of Estonia in 1991 from a division of the Russian airline Aeroflot. After privatisation efforts and subsequent changes in the airline's shareholding structure, Estonian Air is currently owned by Estonia (97,34 %) and the SAS Group ('SAS') (2,66 %).

([6]) See footnote 2.
([7]) Regulation 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).
([8]) The other airports in Estonia (Tartu, Pärnu, Kuressaare and Kärdla regional airports and Kihnu and Ruhnu airfields) carried 44 288 passengers in 2013. In 2013, Tartu was the only regional airport in Estonia with a scheduled international flight to Helsinki. Source: 2013 annual report of AS Tallinna Lennujaam, manager of Tallinn Airport, available at http://www.tallinn-airport.ee/upload/Editor/Aastaaruanded/Lennujaama%20aastaraamat_2013_ENG.pdf
([9]) Source: 2014 annual report of AS Tallinna Lennujaam, manager of Tallinn Airport, available at http://www.tallinn-airport.ee/upload/Editor/Ettevote/Lennujaama%20aastaraamat_ENG_2014_23.5.15.pdf
([10]) Source: Estonian Air's consolidated annual report for 2013, available at http://estonian-air.ee/wp-content/uploads/2014/06/ESTONIAN-AIR-ANNUAL-REPORT-2013.pdf
([11]) Source: Estonian Air's consolidated annual report for 2014, available at https://estonian-air.ee/wp-content/uploads/2014/04/Estonian-Air-Annual-Report-2014-FINAL-Webpage.pdf
([12]) Source: 2013 annual report of AS Tallinna Lennujaam, see footnote 8.
([13]) Source: web page of Tallinn Airport (http://www.tallinn-airport.ee/eng/).
([14]) See footnote 12.

(23) Estonian Air participates in one joint venture: Eesti Aviokütuse Teenuste AS (51 % share), which provides refuelling service to aircrafts at Tallinn Airport. Estonian Air also participated in the joint venture AS Amadeus Eesti (60 % share), which provides Estonian travel agencies with booking systems and support, but in early 2014 it sold its stake to Amadeus IT Group, SA ([15]). Estonian Air also had a 100 %-owned subsidiary, AS Estonian Air Regional, which operated commercial flights to neighbouring destinations in cooperation with Estonian Air. This subsidiary was sold in June 2013 to Fort Aero BBAA OÜ, a private jet operator ([16]).

(24) Estonian Air has made heavy losses since 2006. More than half of the airline's equity disappeared between 2010 and 2011. In that period, the airline lost more than one quarter of its capital.

(25) Despite capital injections in 2011 and 2012, the airline's financial situation continued to deteriorate in 2012. In May 2012, a monthly loss of EUR 3,7 million was incurred, above the budgeted loss of EUR 0,9 million. By the first half of 2012, the losses of Estonian Air had reached EUR 14,9 million ([17]). In June 2012, Estonian Air revised its forecast for 2012 and estimated EUR 25 million in operational losses for the year (the original budget forecasted an annual loss of EUR 8,8 million). By the end of July 2012, Estonian Air had reached a state of technical bankruptcy under Estonian law. In the financial year 2012, the airline made a loss of EUR 49,2 million.

(26) The net loss of Estonian Air in 2013 amounted to EUR 8,1 million ([18]). In 2014, its net loss reached EUR 10,4 million ([19]).

4. DESCRIPTION OF THE MEASURES AND THE RESTRUCTURING PLAN

(27) This section provides a description of the measures under assessment both as regards the rescue case (SA.35956), that is to say, measures 1 to 5, and the restructuring plan notified under the restructuring case (SA.36868).

4.1. **The 2009 capital increase (measure 1)**

(28) Tallinn Airport and the airline were a single company until 1993, when the airline became an independent entity. In 1996, Estonia privatised 66 % of the shares of the airline. After privatisation, the shares were held as follows: 49 % by Maersk Air, 34 % by the Ministry of Economic Affairs and Communications of Estonia, and 17 % by Cresco Investment Bank ('Cresco'), a local investment bank. In 2003, SAS bought the 49 % stake of Maersk Air, while the other shareholdings remained the same.

(29) According to the information provided by Estonia, the airline sought new capital from its shareholders in 2009 for two main reasons. First, at the beginning of 2008, Estonian Air made a down payment in cash of EUR […] (*) million to acquire three new Bombardier regional jets in order to upgrade the fleet to more efficient aircraft. Secondly, the business model did not work under the stress of the financial crisis and the airline faced liquidity problems at the end of the year.

(30) In February 2009 all the shareholders increased the airline's capital by EUR 7,28 million in proportion to their shareholdings. Estonia injected in cash EUR 2,48 million, while Cresco provided EUR 1,23 million also in cash. SAS injected a total of EUR 3,57 million, of which EUR 1,21 million in cash and EUR 2,36 million in the form of a loan-to-equity conversion. The shareholding structure of Estonian Air did not change as a result of measure 1.

4.2. **The sale of the ground handling section in 2009 (measure 2)**

(31) In June 2009, Estonian Air sold its ground handling business to the State-owned Tallinn Airport at a price of EUR 2,4 million. At the time of the sale, Tallinn Airport was 100 % owned by Estonia.

([15]) See http://www.baltic-course.com/eng/transport/?doc=86191
([16]) See http://www.aviator.aero/press_releases/13003. At the time of the sale, AS Estonian Air Regional was dormant and had no aircraft, no employees, and no assets.
([17]) Source: Estonian Air's review of performance for the first half of 2012, available at http://estonian-air.ee/wp-content/uploads/2014/04/ENG-1H-2012.pdf
([18]) See footnote 10.
([19]) See footnote 11.
(*) Business secret

(32) The Estonian authorities explained that no open, transparent and unconditional tender took place. Also, the sale price was not based on an expert opinion but it was based on the book value of the assets for sale. Depreciated assets were taken into account by adding value. According to the Estonian authorities, the price was established in direct negotiations between Tallinn Airport and Estonian Air.

4.3. **The 2010 capital injection (measure 3)**

(33) On 10 November 2010, Estonia injected EUR 17,9 million (EEK 280 million) in cash into the capital of Estonian Air while SAS carried out a loan-to-equity conversion for an amount of EUR 2 million. At the same time, SAS acquired Cresco's 17 % stake in the airline in exchange for a EUR […] loan write-off that Cresco held with SAS and thus Cresco ceased to be a shareholder.

(34) The decision to acquire the majority ownership of the airline was based on a business plan dating from 2010 ('the 2010 business plan'). At the same time, Estonia wanted to ensure long-term flight connections between Tallinn and the most important business destinations and saw gaining control of the airline through a capital injection as the best way to reach this objective.

(35) The capital was apparently used for pre-payments of USD […] million for three Bombardier CRJ900 aircraft which were delivered in 2011, as well as to cover part of the net loss in 2011 amounting to EUR 17,3 million.

(36) As a result of the 2010 capital injection, Estonia became majority owner with 90 % of the shares of Estonian Air, while SAS's participation was diluted to 10 %. As indicated in recital 33, Cresco — which held 17 % of the shares of Estonian Air since the airline's privatisation in 1996 — ceased to be a shareholder and decided not to inject more money into the airline ([20]).

4.4. **The 2011/2012 capital increase (measure 4)**

(37) In November 2011, Estonia decided to inject EUR 30 million in capital into Estonian Air and to increase its stake to 97,34 %. The capital injection was carried out in two tranches of EUR 15 million each, one on 20 December 2011 and the other on 6 March 2012. SAS did not participate to this capital injection and its shareholding was diluted from 10 % to 2,66 %. Since then, the shareholding structure of Estonian Air has not changed.

(38) The capital injection was apparently carried out on the basis of a business plan dated October 2011 ('the 2011 business plan'). The 2011 business plan was based on the assumption that a bigger network and more frequencies would improve the airline's competitiveness. It was considered that a good hub structure (hub-and-spoke network) would attract passengers and allow flexibility to reallocate traffic through a hub to counter seasonality or sudden changes in demand. In addition, the hub volumes were considered to allow the lowering of seat cost by utilising bigger aircraft. The regional network model was considered to allow the airline to grow in size and reduce risks. The 2011 business plan also implied an increase of connections to and from Estonia, of the fleet and consequently an increase of staff to handle more round trips.

(39) According to the 2011 business plan, Estonian Air would require EUR 30 million from its shareholders and loan from the private bank […]. Although the Estonian branch of the bank allegedly approved the loan through its credit committee, the loan was in the end refused by the highest credit committee of […] in November 2011. Notwithstanding this refusal, Estonia decided to provide EUR 30 million to Estonian Air.

4.5. **Rescue loan facility (measure 5)**

(40) In view of the bad mid-2012 results of Estonian Air (losses of EUR 14,9 million), it became clear to the management of the airline that the hub-and-spoke strategy of the 2011 business plan had not succeeded. In this context, Estonia decided to provide additional support to the airline in the form of rescue aid.

([20]) See Baltic Reports of 7 June 2010, *Government sets bailout deal for Estonian Air,* http://balticreports.com/?p=19116

(41) The rescue measure consisted of a loan amounting to EUR 8,3 million provided by the Ministry of Finance of Estonia with an annual interest rate of 15 %. A first instalment of the loan of EUR 793 000 was already disbursed on 20 December 2012, the second instalment of EUR 3 000 000 on 18 January 2013 and the remaining EUR 4 507 000 on 11 February 2013 ([21]). Estonia committed to communicate to the Commission a restructuring plan or a liquidation plan or proof that the loan had been reimbursed in full not later than six months after the first implementation of the rescue aid measure, namely by 20 June 2013.

(42) On 4 March 2013, the Estonian authorities informed the Commission of their decision dated 28 February 2013 to increase the rescue loan facility by EUR 28,7 million on the basis of a request of Estonian Air setting out its liquidity needs. Of that amount, EUR 16,6 million were granted to the airline on 5 March 2013 after signing an amendment to the previous loan agreement, while the remaining EUR 12,1 million of the rescue aid facility were provided to Estonian Air on 28 November 2014 ([22]). The terms of the additional rescue loan were the same as those of the original rescue loan, namely the loan had to be originally reimbursed at the latest by 20 June 2013 (reimbursement was then postponed following the notification of the restructuring case) and an interest of 15 % p.a. would be charged.

(43) The total amount of the rescue loan facility was thus of EUR 37 million and it has been all discharged to Estonian Air in several tranches as described in recitals 40 and 41.

(44) On 5 December 2013, at the request of Estonian Air, Estonia decided to lower the interest rate of the rescue loan from the initial 15 % to 7,06 % as from July 2013. According to the Estonian authorities, the reason for this decision was that the airline's risk profile had changed since the rate was set in December 2012.

4.6. **The notified restructuring aid and the restructuring plan (measure 6)**

(45) On 20 June 2013, Estonia notified restructuring aid of EUR 40,7 million to Estonian Air in the form of an equity injection, on the basis of a restructuring plan ('the restructuring plan') covering a five-year restructuring period from 2013 to 2017.

4.6.1. *Return to viability by 2016*

(46) The restructuring plan aims at restoring Estonian Air's long-term viability by 2016. The restructuring plan assumes that it will be possible to turn around the existing level of losses from earnings before taxes ('EBT') of EUR – 49,2 million in 2012 to break-even level by 2015 and to profitability by 2016. According to the restructuring plan's assumptions, Estonian Air will generate EBT of EUR 1,3 million by 2016.

Table 1

Profit and loss 2009-2017

(in EUR million)

	2009	2010	2011	2012	2013(f)	2014(f)	2015(f)	2016(f)	2017(f)
Revenues	62,759	68,583	76,514	91,508	71,884	73,587	76,584	78,790	80,490
EBITDA ([1])	2,722	3,181	(6,830)	(10,037)	6,510	8,454	9,918	10,000	10,813
EBT	(4,434)	(2,617)	(17,325)	(49,218)	(7,052)	(1,577)	(0,002)	1,296	2,031
EBT margin	(7 %)	(4 %)	(23 %)	(54 %)	(10 %)	(2 %)	(0 %)	2 %	3 %
Total equity	7,931 ([2])	23,958	36,838	(14,683)	18,964	17,387	17,385	18,681	20,712

([1]) Earnings before interest, taxes, depreciation and amortisation.
([2]) Exchange rate EUR 1 = EEK 15,65.

(47) Concerning profitability, the restructuring plan aims at achieving a return on capital employed ('ROCE') of 6,2 % and a return on equity ('ROE') of 6,9 % by 2016, and of 9,8 % and 8,9 % respectively by 2017.

([21]) See also http://www.e24.ee/1106240/estonian-airile-makstakse-valja-kolm-miljonit-eurot/
([22]) See Estonian Air's consolidated annual report for 2014, available at https://estonian-air.ee/wp-content/uploads/2014/04/Estonian-Air-Annual-Report-2014-FINAL-Webpage.pdf as well as press article 'Estonian government approves of last loan payment to Estonian Air' of 20 November 2014: http://www.baltic-course.com/eng/transport/?doc=99082

Table 2

Forecasted ROE and ROCE 2013-2017

(%)

	2013	2014	2015	2016	2017
ROE	(37,2)	(9,1)	(0,0)	6,9	9,8
ROCE	(6,6)	0,8	7,1	6,2	8,9

4.6.2. *Restructuring measures*

(48) To achieve those results, the restructuring plan envisages a number of key actions. For instance, Estonian Air decreases the size of its fleet, passing from 11 aircraft in December 2012 to 7 planes as of August 2013. The airline also rationalises the fleet: from the initial aircraft mix (including four Embraer E170, three Bombardier CRJ900, three Saab 340 and one Boeing 737), Estonian Air aims at having a single- type fleet of seven CRJ900 by the end of 2015. Of these seven aircraft, five would be used to serve the airline's route network and the remaining two would be wet-leased or chartered.

(49) Estonian Air has downsized its route network, passing from 24 routes available in 2012 to 12 routes, of which two are seasonal ([23]). The airline thus discontinued 12 routes, which are designated as compensatory measures (see Table 4). The downsizing of the route network entails a capacity reduction of 37 % in terms of ASK ([24]) and 35 % in terms of seats offered (in 2013 figures compared to 2012). Furthermore, Estonian Air reduced by 23 % the ASK in those routes maintained as core.

(50) Estonian Air has already reduced its headcount from 337 employees in April 2012 to 197 in March 2013 and around 160 at present, beyond the original plan to reduce staff down to 164 employees. Furthermore, Estonian Air sold to Tallinn Airport an office building and a hangar.

(51) According to the restructuring plan, Estonian Air also plans to implement a new pricing model (fewer booking classes/price groups and fare regulations, as well as product disaggregation aimed at generating higher levels of ancillary income) and a number of measures to improve the quality of its services, including the channels through which they are sold. In particular, Estonian Air intends to increase the revenues resulting from marketing campaigns — mainly through digital channels — from EUR [200-500 thousand] in 2013 to EUR [1,5-2,5] million in 2017. Also, the new online service fee will increase revenues from EUR [200-500 thousand] in 2013 to EUR [1-2] million in 2017. Those measures should increase revenues by EUR [10-20] million in the next five years.

(52) In addition, according to the restructuring plan, Estonian Air plans to implement a number of measures to reduce costs, including the signing of a collective agreement regarding pay scale increases, vacation and pilot utilisation; the introduction of a multifunctional employee concept, especially in back office staff; increased fuel efficiency via improved flight operations, including reduced take off power and fine tuning, reduced distribution and commission costs; efficiencies from the single type fleet; and contractual renegotiations such as ground handling, catering and airport charges. Those measures should yield EUR [20-30] million in the next five years.

(53) Furthermore, the restructuring plan envisages the reorganisation of the airline's senior management team.

4.6.3. *Compensatory measures*

(54) As part of its restructuring, Estonian Air discontinued a total of 12 routes, which are designated as compensatory measures. The restructuring plan also highlights that the slots given up in London Gatwick (LGW), Helsinki (HEL) and Vienna (VIE) should be counted as compensatory measures since these are coordinated (capacity constrained) airports.

([23]) The restructuring plan maintains the following 10 'core' routes: Amsterdam (AMS), Stockholm (ARN), Brussels (BRU), Copenhagen (CPH), Kiev (KBP), Saint Petersburg (LED), Oslo (OSL), Moscow Sheremetyevo (SVO), Trondheim (TRD) and Vilnius (VNO). The seasonal routes are Paris Charles de Gaulle (CDG) and Nice (NCE). However, it appears from press articles and public statements of Estonian Air that Estonian Air has operated — and intends to operate in the future — seasonal routes beyond the ones contained in the restructuring plan, namely Munich (MUC), Split (SPU) and Berlin (TXL). It also appears that as from 2015, Estonian Air intends to add Milan (MXP) to its offers of seasonal routes.

([24]) ASK stands for available seat kilometre (seats flown multiplied by the number of kilometres flown). ASK is the most important capacity indicator of an airline as employed by the air transport industry and by the Commission itself in previous restructuring cases in the air transport sector.

Table 3

Routes designated as compensatory measures

(%)

Destination	Load factor (2012)	Level 1 contribution [1] (2012)	DOC contribution [2] (2012)	Profitability margin (2012)	Capacity given up in ASK (% compared to total capacity pre-restructuring)
Hannover (HAJ)	66	82	– 18	– 67	2
Helsinki (HEL)	54	60	– 64	– 126	1
Joensuu (JOE)	60	77	– 35	– 111	0
Jyväskylä (JYV)	53	76	– 40	– 117	0
Kajaani (KAJ)	42	75	– 82	– 168	0
Riga (RIX)	45	59	– 143	– 310	1
London Gatwick (LGW)	80	85	– 1	– 36	5
Tartu (TAY)	42	62	– 100	– 183	1
Tbilisi (TBS)	76	84	– 27	– 89	4
Kuressaare (URE)	33	86	8	– 36	0
Venice (VCE)	87	84	10	– 35	1
Vienna (VIE)	71	84	– 13	– 59	3

[1] Level 1 contribution margin is defined as total revenue less passenger-related variable costs over total revenue.
[2] The plan defines DOC contribution as total revenue less passenger, round trip and fuel-related costs over total revenue.

4.6.4. *Own contribution*

(55) According to the restructuring plan the own contribution would consist of EUR 27,8 million from the planned sale of three aircraft in 2015, EUR 7,5 million from the sale of property, EUR 2 million from the sale of other non-core assets, and EUR 0,7 million from a new loan to be provided by […]. Given the total restructuring costs of EUR 78,7 million, the own contribution (totalling EUR 38 million) would correspond to 48,3 % of the restructuring costs. The remaining part of the restructuring costs would be funded by restructuring aid granted by Estonia in the amount of EUR 40,7 million in the form of equity, part of which would be used to repay the rescue loan.

4.6.5. *Risk and scenario analysis*

(56) The restructuring plan provides a scenario analysis including, beside the base case on which the restructuring plan is based, a best case ('high case') and a worst case ('low case') scenario. On the one hand, the high case assumes an annual GDP growth in Europe of 5 %, a growth in ancillary revenues of EUR 7 million resulting from improved product positioning and a 5 % average passenger increase. According to the restructuring plan, the high case would result in positive EBT already in 2014. On the other hand, the low case is based on the assumption that GDP growth in Europe will continue to be low until 2017 which will lead to a 12 % decrease in the number of passengers. The negative consequences of the fall in the number of passengers would however be mitigated by a number of management actions, namely a 10 % roundtrip frequency reduction, a 1 % increase in the price of tickets, an increase in the number of ancillary revenues from EUR 4,5 per passenger in 2015 to EUR 6,5 per passenger in 2017, a 10 % reduction in consulting costs and other department costs, and further reduction of crew (5 pilots and 5 cabin crew members between 2014 and 2016). Taking into consideration the mitigating management actions, the low case would result in slightly positive EBT in 2017 but still lead to negative net cash before financing. The restructuring plan claims that in none of the cases additional funding would be needed.

Table 4

Scenario analysis 2013-2017

(in EUR million)

		2013	2014	2015	2016	2017
High case	EBT	[(8)-(7)]	[0-1]	[3-4]	[6-7]	[9-10]
	Net cash before financing	[(10)-(9)]	[7-8]	[6-7]	[5-6]	[8-9]
Low case	EBT	[(8)-(7)]	[(4)-(3)]	[(3)-(2)]	[(1)-0]	[0-1]
	Net cash before financing	[(10)-(9)]	[2-3]	[1-2]	[(1)-0]	[(1)-0]

(57) The restructuring plan also provides a sensitivity analysis upon the base case which covers selected factors: 5 % or 10 % decrease in yield targets, 5 % decrease in the number of passengers, 5 % or 10 % increase in fuel costs, 5 % or 10 % decrease in the target sale price for the aircraft to be sold in 2015 (see recital 55 above) and 5 % appreciation and depreciation in the USD/EUR exchange rate. The restructuring plan considers the impact that each factor individually considered would have on the recovery of the airline and concludes that additional funding between EUR [1-10] million and EUR [30-40] million would be needed in all cases (except in case there is a 5 % USD/EUR exchange rate appreciation). In addition, in most of the cases, break-even would not be reached by the end of the planned restructuring period, namely 2017.

4.7. **The modified restructuring plan of 31 October 2014**

(58) On 31 October 2014, the Estonian authorities submitted a substantially modified restructuring plan. The modifications of the plan relate in particular to the following:

(1) Planned acquisition of Estonian Air by a private investor, the Estonian investment group Infortar ([25]), which is envisaged to acquire […] % shares from Estonia by […] 2015;

(2) Extension of the restructuring period from five to more than six years, with the start date moved backwards from 2013 to November 2010 and the end date moved from end 2017 to November 2016;

(3) A modified business plan, taking into account privatisation and envisaged synergies with the ferry operator Tallink, partly owned by Infortar, as well as additional adjustments due to recent developments (Ukraine crisis, lower than expected passenger numbers on some lines due to competition, etc.).

(59) By moving backwards the start date of the restructuring period to November 2010, the modified restructuring plan also captures as restructuring aid the capital injections of 2010 (measure 3) and 2011/2012 (measure 4). The total restructuring aid amount would thus increase from EUR 40,7 million as per the original restructuring plan to EUR 84,7 million.

(60) As a result of the extension of the restructuring period and the planned entry of a private investor in 2015, the modified restructuring plan covers three distinct business strategies based on separate contemporaneous business plans:

(1) 2011-April 2012: Strategy to expand and develop a regional hub-and-spoke operator (financed to a large part by the two State capital injections under measures 3 and 4 and based on a business plan prepared by the new management appointed after the State had acquired 90 % of Estonian Air shares in November 2010), involving among others:

([25]) Infortar is one of the largest private investment groups in Estonia with interests in shipping (including a 36 % stake in Tallink, a large passenger and cargo shipping company active in the Baltic Sea region), real estate, financial services, etc. In 2013, the Infortar group made a net profit of EUR 20 million and held assets worth EUR 432 million.

(a) expansion of the fleet from 8 to 11 aircraft (plus 2 additional on order);

(b) developing Tallinn into a regional hub with significantly increased number of routes operated (from 13 in March 2011 to 24 in September 2012);

(c) increased number of staff from 255 to 337.

(2) April 2012-2014: Strategy to reduce capacity and change business model to a point-to-point regional network carrier, focusing on a limited number of core routes. The measures included among others:

(a) reduction of the fleet from 11 to 7 aircraft;

(b) reduction of routes operated from 24 to 12 routes;

(c) reduction of the number of staff from 337 to 164;

(d) replacement of the previous CEO and the management team.

(3) 2015-2016: Strategy providing for the entry of a private investor, synergies with the ferry operator Tallink and additional adjustments taking into account weaker performance in 2014:

(a) continue focusing on [5-15] core routes but increase the number of seasonal routes from [1-5] to [5-10] by 2016;

(b) supplement the current 7 aircraft with […] small regional aircraft ATR42s (wet-leased) to service the additional seasonal routes;

(c) utilise revenue and cost synergies with the private investor and its subsidiaries (Tallink ferry, hotels, taxi services, etc.).

(61) The Estonian authorities argue that despite changing strategies, the restructuring period from November 2010 to November 2016, namely from the acquisition by the State of 90 % of the shares of Estonian Air until the airline returns to profitability according to the modified restructuring plan, can be considered as part of one 'restructuring continuum' with the single goal of making the airline profitable and economically sustainable. They claim that it is one long-term process with changing tactics of how to achieve the desired outcome — once it was found that the hub-and-spoke strategy did not function, it was abandoned and replaced by a different strategy but with the same desired goal of profitability and sustainability.

(62) The modified restructuring plan envisages return to viability by 2016, at the end of the 6-year restructuring period as shown in Table 5.

Table 5

Profit and loss 2011-2016

(in EUR million)

	2011	2012	2013	2014(f)	2015(f)	2016(f)
Revenues	76,514	91,508	72,123	68,463	81,244	97,098
EBITDA	(6,830)	(10,037)	6,943	5,735	11,907	21,715
EBT	(17,325)	(49,218)	(8,124)	(11,417)	(3,316)	3,874
EBT margin	(23 %)	(54 %)	(11 %)	(17 %)	(4 %)	4 %
Total equity	36,838	(14,683)	(22,808)	(32,406)	6,548	10,423

(63) Compared to the original restructuring plan, the airline should increase its focus on non-core routes and businesses (for example, adding further seasonal routes or expanding its wet-lease business). Further, the airline should take advantage of a number of synergies that it can develop both on revenue and costs side with Tallink. Therefore, the modified restructuring plan envisages much stronger revenue growth in 2015 and 2016 than the original restructuring plan.

(64) As regards own contribution, the modified restructuring plan envisages a total own contribution of EUR [100-150] million, representing [50-60] % of the restructuring costs. That amount includes — apart from the revenues from asset sales and a new [loan, already accounted for in the originally notified restructuring plan — financing provided in 2010 in equity and loans by SAS (EUR […] million), financing for the purchase of aircraft obtained in 2011 from Export Development Canada (EDC) and […] (EUR […] million), a planned equity contribution by Infortar in 2015 (EUR […] million) and an intra-group credit line to be provided by Infortar in 2015 (EUR […] million).

(65) The compensatory measures proposed in the modified restructuring plan include fleet downsizing, discontinuation of routes and resulting market share reduction. Between 2010 and 2016, the airline would have reduced its permanent fleet by one aircraft (from eight to seven). Compared to 2012, the reduction in 2016 would be down to four aircraft. Further, between 2010 and 2016, the modified restructuring plan envisages an overall reduction of routes from [20-25] to [15-20]. While the airline has given up eight routes (Athens, Barcelona, Dublin, Rome, Hamburg, London, Berlin and Kuressaare), three routes would be added (Gothenburg, Split and Trondheim). Overall, the capacity flown would remain stable with [1 000-1 200] million ASKs in 2016 compared to [1 000-1 200] million ASKs in 2011. As regards market share, the Estonian authorities argue that Estonian Air's market share dropped from 40,2 % in 2012 to 26,3 % in 2014.

(66) As regards the entry of a private investor, the modified restructuring plan envisages that Infortar would not pay anything to the State for its stake in Estonian Air. Instead, it would provide a capital injection of EUR […] million into Estonian Air (thereby acquiring by April 2015 between […] of its shares) plus an additional intra-group credit line of EUR […] million. Estonia would provide the remaining part of the rescue loan (up to EUR […] million) and then write-off a majority of its loans (up to EUR […] million […]) and give up its shareholding by agreeing to a reduction of the share capital to zero and then waiving its right to subscribe for the new capital increase, while possibly retaining up to […] % of Estonian Air shares.

(67) Infortar was not chosen on the basis of an open, transparent and unconditional tender but rather through direct negotiations with Estonia. The Estonian authorities argue that there was no time to organise a long tender process and that it actively approached a number of potential investors while others also had an opportunity to express their interests. Infortar was the only one to express a real interest backed by a contribution to the modified restructuring plan. In addition, the Estonian authorities argue that the value of Estonian Air was determined by an independent and reputed expert which concluded that the total equity value of Estonian Air as of 31 March 2015 from the perspective of a potential private investor would fall within a range of EUR […] million.

5. THE OPENING DECISIONS

5.1. The rescue aid opening decisions

(68) On 20 February 2013, the Commission decided to initiate the formal investigation procedure in respect of the measures granted in the past (measures 1 to 4) and the rescue loan facility. On 4 March 2013, the Commission extended the formal investigation procedure to the increase of the rescue loan facility.

(69) In the rescue aid opening decisions, the Commission highlighted that Estonian Air has continuously registered significant losses since 2006. In addition, the Commission noted that the airline showed some of the usual signs of a firm being in difficulty in the sense of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([26]) ('the 2004 R&R Guidelines') and that more than half of the airline's equity disappeared between 2010 and 2011. Also, by the end of July 2012, Estonian Air had reached a state of technical bankruptcy under Estonian law. On this basis, the Commission's preliminary view was that Estonian Air qualified as a firm in difficulty between 2009 and 2012.

([26]) OJ C 244, 1.10.2004, p. 2.

(70) The Commission also expressed doubts as regards the measures under assessment and came to the preliminary conclusion that they entailed incompatible State aid. In relation to **measure 1**, although it appeared that it had been carried out on *pari passu* terms by the three shareholders of the airline at the time, the Commission observed that the new shares were paid in cash and through loan-to-equity conversion. Since the Commission had no detailed information on which shareholders had injected fresh money and which had accepted a loan-to-equity conversion, the Commission could not exclude the presence of an undue advantage to Estonian Air and thus took the preliminary view that measure 1 entailed unlawful State aid. As regards its compatibility with the internal market, the Commission noted that given the difficulties of the airline, only Article 107(3)(c) of the Treaty seemed applicable. However, the Commission came to the preliminary view that this was not the case since measure 1 did not meet several of the criteria of the 2004 R&R Guidelines.

(71) As regards **measure 2**, the Commission observed that, at the time of the sale, Tallinn Airport was 100 % owned by Estonia and that it lied within the jurisdiction of the Ministry of Economic Affairs and Communications, which seemed to indicate that the actions of Tallinn Airport could be deemed imputable to the State. In addition, since no open, transparent and unconditional tender had taken place, the Commission could not automatically exclude the presence of an undue advantage to Estonian Air and came to the preliminary view that measure 2 entailed unlawful State aid. It also preliminarily concluded that that aid was incompatible since the criteria of the 2004 R&R Guidelines were not met, including a possible breach of the 'one time, last time' principle.

(72) In relation to **measure 3**, the Commission first noted that it was not carried out on *pari passu* terms. It also highlighted that — as was the case for measure 2 — the contributions of the State and SAS had a different nature (fresh money from the State v conversion of debt from SAS) and were not of comparable amounts. As regards the 2010 business plan, the Commission doubted whether it could be regarded as sufficiently sound to conclude that a prudent private investor would have entered into the transaction in question on the same terms and also noted that Cresco had apparently disagreed with the plan and refused to inject additional money in the airline. Also, the Commission observed that Estonia had stated that the decision to increase capital in 2010 was taken in order to ensure the long-term flight connections to the most important business destinations and to gain control of the airline. On that basis, the Commission preliminarily concluded that measure 3 entailed unlawful State aid, which would be not be compatible with the internal market since it did not seem to respect the legal requirements of the 2004 R&R Guidelines, including a possible breach of the 'one time, last time' principle.

(73) The Commission also assessed whether **measure 4** would be in accordance with the market economy investor principle ('MEIP'). It first raised doubts as to whether the 2011 business plan was reliable and whether it was realistic to consider that only a bigger network and more frequencies, implying a capacity increase in terms of connections, fleet and staff, would improve the airline's competitiveness. The Commission also observed that the forecast growth prospect of the 2011 business plan seemed overoptimistic and the proposed hub-and-spoke strategy appeared extremely risky, something which appeared to be confirmed by the fact that neither the remaining private shareholder (SAS) nor any private creditor ([…]) was willing to participate in the transaction. In view of those considerations, the Commission came to the preliminary view that measure 4 entailed unlawful State aid and that it did not meet the criteria set out for rescue or restructuring aid under the 2004 R&R Guidelines.

(74) Finally, as regards the rescue loan facility (**measure 5**), the presence of aid was not disputed by Estonia. The Commission preliminarily noted that the aid seemed to fulfil most of the criteria of Section 3.1 of the 2004 R&R Guidelines concerning rescue aid. However, the Commission had doubts as to whether the 'one time, last time' principle had been respected in view of the fact that measures 1 to 4 could have entailed unlawful and incompatible aid. Since the Estonian authorities did not provide any justification allowing for an exception to the 'one time, last time' principle, the Commission came to the preliminary view that measure 5 could be regarded as unlawful and incompatible aid.

(75) For the part of the rescue loan not been disbursed at the time, namely EUR 12,1 million (see recitals 42 and 43 above), the Commission reminded Estonia of the suspensory effect of Article 108(3) of the Treaty. It added that Estonia should refrain from providing that amount to Estonian Air until the Commission had reached a final decision.

5.2. **The restructuring aid opening decision**

(76) On 20 June 2013, Estonia notified restructuring aid to Estonian Air of EUR 40,7 million in the form of equity on the basis of the restructuring plan (**measure 6**). The State-aid character of the measure was not disputed by Estonia, inter alia, given that the planned capital injection would come directly from the State budget and would exclusively benefit Estonian Air at conditions that a prudent market economy investor would normally not accept.

(77) The Commission then assessed the compatibility of measure 6 on the basis of the restructuring aid provisions of the 2004 R&R Guidelines. The Commission came to the preliminary opinion that Estonian Air would be eligible for restructuring aid since it would qualify as a firm in difficulty (see recital 69).

(78) The Commission then looked at whether the restructuring plan would allow Estonian Air to restore its long-term viability. The Commission observed that the scenario analysis and the sensitivity analysis of the restructuring plan showed significant weaknesses. In particular, it noted that in the low case scenario, Estonian Air would reach a slightly positive EBT in 2017. However, the net cash before financing would remain negative even after additional restructuring measures are adopted by the management of the airline (see Table 4). Moreover, the sensitivity analysis showed that relative minor changes in the assumptions would result, on a stand-alone basis, in the need for additional funding except in one case. On that basis, the Commission doubted whether the original restructuring plan provided a sound basis for restoring the long-term viability of Estonian Air.

(79) As regards compensatory measures, the Commission expressed doubts concerning the acceptability of the release of slots in a number of coordinated airports. Additional information on the capacity-constrained nature of the airports and economic value of the slots was necessary in order to assess whether these slots could be accepted as compensatory measures. As regards the discontinuation of 12 routes considered as compensatory measures (see recital 54 above), it was unclear to the Commission how the 'Level 1 contribution', 'DOC contribution' and the profitability margin of those routes had been calculated. The Commission noted that the difference between those profitability indicators was very pronounced and that it was unclear whether Estonian Air would have had to give up the routes in any event in order to return to viability. In particular, the Commission noted that all routes had a negative profitability margin. Also, if the Commission were to use the DOC contribution level to assess route profitability, only two routes — corresponding to a capacity decrease of around 1 % in terms of ASK — would have a DOC contribution level above 0 and would be acceptable.

(80) In relation to the proposed own contribution of Estonian Air of EUR 38 million (or 48,3 % of the total restructuring costs of EUR 78,7 million), the Commission noted that it appeared in principle acceptable. However, the Commission expressed doubts on the sale of three aircraft CRJ900 in 2015, the sale of AS Estonian Air Regional and the sale of Estonian Air's 51 % stake in Eesti Aviokütuse Teenuste AS. The Commission nonetheless considered that the sale of property, a new loan from […] and the sale of Estonian Air's 60 % stake in AS Amadeus Eesti could be accepted as own contribution.

(81) Finally, the Commission recalled its doubts in the rescue aid opening decisions as regards the compatibility of measures 1 to 5, which could lead to a breach of the 'one time, last time' principle.

(82) On that basis, the Commission doubted whether the notified restructuring measure complied with the 2004 R&R Guidelines and would be compatible with the internal market. It requested Estonia to submit comments and to provide all information as may help to assess the capital injection notified as restructuring aid.

(83) As regards the complaint received on 23 May 2013 regarding a sale-and-lease-back agreement between Estonian Air and Tallinn Airport (see recital 10 above), the Commission concluded that it did not entail an undue advantage to Estonian Air and thus excluded the presence of State aid.

6. **COMMENTS ON THE OPENING DECISIONS**

6.1. **Comments from Estonia**

(84) Estonia provided comments on the Commission's rescue aid opening decisions by letters of 9 April and 17 May 2013. As regards **measure 1**, Estonia is of the view that the investment was completed on the basis of a credible business plan and a positive valuation of the airline. Estonia indicates that SAS's contribution (which partly took

the form of a loan-to-equity conversion) is to be seen in a broader context in which SAS had provided loans to Estonian Air of USD […] million in 2008 and of EUR […] million in 2009. As regards the State's participation, Estonia explains that it based its decision on a valuation report produced by the Ministry of Economic Affairs and Communications according to which the value of the airline post-investment would exceed its pre-investment value. In addition, Estonia highlights that each shareholder carried out its own analysis of the operation and that they all decided to inject capital in proportion to their shareholdings, which would render measure 1 *pari passu*.

(85) Estonia first notes in relation to **measure 2** that the absence of a tender is in no way conclusive that State aid is present and that in any event the sale was based on a transaction value that reflected the true market price of the ground handling business of Estonian Air, which was moreover profit-making. According to Estonia, measure 2 consisted of the sale of the ground handling assets of the airline without employees or liabilities and the book value of the assets represented a floor price. In addition, Estonia is of the opinion that the transaction was comparable to similar ones. Estonia moreover emphasises that Tallinn Airport is an independent entity with no State interference and that all members of the management and supervisory boards are independent business people and not representatives or appointees of the State.

(86) Moreover, Estonia provides clarifications as regards the exact structure of **measure 3**, which it also considers aid-free. Estonia also claims that the participation of SAS amounts to EUR […] million, namely the EUR 2 million injected in cash plus the acquisition of Cresco's stake for EUR […] million. As regards the 2010 business plan, Estonia is of the opinion that that plan was based on sustainable growth and was based on positive expectations for the recovery and growth of the Estonian economy and of the international Air Transport Association's (IATA) expectations at the time for international traffic growth. According to Estonia, the 2010 business plan included all the drivers necessary for a prudent and credible investment decision. As regards the fact that the State took into account macroeconomic considerations, Estonia argues that these considerations were not the sole drivers of the State's investment decision. Estonia also provides a valuation of the airline by a senior economics analyst of the Ministry of Economic Affairs and Communications indicating the total value of equity of Estonian Air after the additional investment (on the basis of discounted forecasted cash flows) as EUR [0-10] million.

(87) As regards the State's decision to invest EUR 30 million in 2011/2012 (**measure 4**), Estonia first observes that in 2011 the Eastern European market was relatively stable in its growth prospects and that in the summer of 2011 the European aviation market was not yet in turmoil. Estonia moreover argues that SAS did not participate to measure 4 because it was facing severe financial difficulties at the time. As regards […] loan, which was supposed to be granted to the airline but which was not in the end, Estonia considers that it has to be seen separately from its equity investment. Estonia also highlights that the 2011 business plan was robust and credible, and that it included an expansionary strategy based on a solid and elaborate economic analysis of the aviation market of the region and the envisaged economic development of the surrounding countries. Estonia also claims that in 2011 the airline's equity was valuable both *pre* and *post* the capital injection. Although Estonia acknowledges that the 2011 business plan was not viable and was abandoned in mid-2012, it claims that at the time of deciding whether to carry out measure 4 the State believed that the airline would be able to restore its viability.

(88) In relation to the rescue loan facility (**measure 5**), Estonia is of the view that all the conditions of rescue aid of the 2004 R&R Guidelines were met. Estonia however considers that Estonian Air could be considered to be in difficulty only as of June/July 2012. Since it concludes that measures 1 to 4 did not entail State aid, the 'one time, last time' principle of the 2004 R&R Guidelines is not breached. Estonia nonetheless adds that if the Commission were to find a breach of the 'one time, last time' principle, it should take into account that Estonian Air serves only 0,17 % of the intra-European traffic and that there are no adverse spill-over effects on other Member States or any undue distortions of competition as a result of the aid.

(89) In its comments of 19 March 2014 on the restructuring aid opening decision (**measure 6**), Estonia reiterates the arguments in relation to the 'one time, last time' principle. As regards the restoration of Estonian Air's long-term viability, Estonia considers that the Commission should allow for the inclusion of mitigation actions by the management in the sensitivity analysis, since this is how normal businesses work.

(90) Estonia also provides some clarifications on how the Level 1 and DOC contributions and the profitability margin of the routes offered as compensatory measures were calculated (see recital 79). According to Estonia, Level 1 contribution defines the marginal revenue each passenger brings, not counting flying costs, while the DOC contribution defines the contribution a passenger brings including all the variable costs of flying but not aircraft-related costs or any other overheads. Estonia moreover claims that the routes are to be considered acceptable compensatory measures because they all had a positive contribution at Level 1 and refuses the Commission's argument that the abandoned routes would not be profitable under the new business model.

(91) In relation to own contribution, Estonia explains that the valuation report for the sale of the aircraft is realistic and provides details on the sale price of AS Estonian Air Regional and of Estonian Air's stake in AS Amadeus Eesti.

6.2. **Comments from interested parties**

(92) As regards the rescue aid opening decisions, the Commission received comments from IAG and Ryanair.

(93) IAG claims to be affected by the rescue aid to Estonian Air through its investment in FlyBe and its relationship with Finnair. IAG also notes that, in its view, the connectivity of Estonia would not be hampered if Estonian Air were to exit the market. IAG expressed concerns regarding the alleged breach of the 'one tine, last time' principle.

(94) Ryanair welcomes the Commission's formal investigation into the recue aid for Estonian Air, in particular in view of Estonian Air's inefficiency when compared to Ryanair. In relation to measures 1 to 5, Ryanair first notes that Cresco decided to give up its stake which is to be seen as a strong indication that the capital injections were not MEIP-compliant. Ryanair notes that low-cost carriers are a better alternative to national flag carriers such as Estonian Air and that EU law does not recognize the right of each Member State to have a flag carrier. Finally, Ryanair claims that its market position is directly and substantially affected by the State aid to Estonian Air and that this aid strongly distorts competition.

(95) Regarding the restructuring aid opening decision, two interested parties provided comments: an interested party who does not wish its identity to be disclosed and Ryanair.

(96) The interested party who does not wish its identity to be disclosed considers that Estonian Air's restructuring plan is neither credible nor achievable in view of the fact that its losses in 2012 were extraordinarily high, leading to a net margin below −50 %. As regards the restructuring of the fleet and the operations, the interested party is of the view that Estonian Air's plans to use two aircraft for charter flights are not viable in view of the very competitive nature of that market and criticises the mix of aircraft of the new fleet. The interested party also notes that the calculation of the profitability of the routes offered as compensatory measures shows that they are not acceptable and comes to the view that, overall, the restructuring aid should not be authorised. Finally, the interested party provides a case study of Hungary's connectivity after the collapse of Malév and comes to the conclusion that the market can compensate adequately for the loss of a flag carrier.

(97) Ryanair first notes that the Commission should assess whether Estonia had other options available (such as liquidation) rather than providing State aid. Ryanair also claims that the assumptions of the restructuring plan are extremely optimistic and that the plan is doomed to fail. For instance, Ryanair believes that it is unrealistic that Estonian Air will be able to sell some of its aircraft to raise capital. Ryanair also considers that the 12 routes cancelled by Estonian Air are non-profitable and cannot be deemed compensatory measures. Moreover, it notes that the conditions of the 2004 R&R Guidelines are not met, in particular the 'one time, last time' principle. Finally, Ryanair reiterates that the aid to Estonia Air harms its market position substantially.

6.3. **Observations from Estonia on the comments of interested third parties**

(98) Estonia addressed in detail the arguments raised by the interested parties. As regards the comments of IAG on the rescue aid opening decisions, Estonia notes that Estonian Air and FlyBe do not fly to the same airports and thus are not competing. As regards the connectivity of the country, Estonia considers that it would be affected if Estonian Air exits the market and argues that low-cost carriers do not provide the type of connectivity that is important to Estonia.

(99) In relation to Ryanair's comments on the rescue aid opening decisions, Estonia observes that the efficiency of low-cost carriers cannot be compared to that of regional carriers. As regards the rationale of the State to invest into the airline, Estonia observes that a profitable and sustainable airline is highly important as it provides Estonia with regular and dependable links to a number of countries that constitute Estonia's key economic trading partners, a role that is not fulfilled by the airline's main competitors. Finally, Estonia claims that low-cost carriers have failed in Estonia because of the small size of the market, not because of Estonian Air's presence and excludes competition between Ryanair and Estonian Air since they target different customer segments.

(100) Estonia also addressed the comments received in the context of the restructuring aid opening decision. As regards the comments of the interested party who does not wish its identity to be disclosed, Estonia does not provide observations on some of them arguing that it would submit a new restructuring plan and therefore that those comments were no longer relevant. Estonia nonetheless indicates that there is no overcapacity on the routes to and from Estonia and that there is no risk of undermining the internal market by shifting an unfair share of structural adjustments to other Member States. As regards the comparison with the case study of Hungary's connectivity, Estonia argues that Estonia is a small and isolated market and that the demise of Estonian Air would mean a loss on the quantity and quality of air connections, and claims its case to be more similar to that of Lithuania after the bankruptcy of its flag carrier FlyLAL, which — according to Estonia — lost 26 % of its mobility factor ([27]) compared to 4 % for Hungary.

(101) In relation to Ryanair's comments, Estonia reiterates that Ryanair's position would not be affected by the State aid granted to Estonian Air. In addition, Estonia considers that Ryanair's claim that Estonian Air should be liquidated is not supported by data. Finally, Estonia reiterates that there is no breach of the 'one time, last time' principle in relation to measures 1 to 3.

7. **ASSESSMENT OF THE MEASURES AND THE RESTRUCTURING PLAN**

(102) By virtue of Article 107(1) of the Treaty, 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. The concept of State aid thus applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it.

(103) To be State aid, a measure must stem from State resources and be imputable to the State. In principle, State resources are the resources of a Member State and of its public authorities as well as the resources of public undertakings on which the public authorities can exercise, directly or indirectly, a controlling influence.

(104) In order to determine whether the different measures assessed conferred an economic advantage to Estonian Air and therefore whether the measures involve State aid, the Commission will assess whether the airline received an economic advantage which it would not have obtained under normal market conditions.

(105) The Commission applies the MEIP test in its assessment. According to the MEIP test, no State aid would be involved where, in similar circumstances, a private investor of a comparable size to that of the bodies concerned in the public sector, operating in normal market conditions in a market economy, could have been prompted to provide to the beneficiary the measures in question. The Commission therefore has to assess whether a private investor would have entered into the transactions under assessment on the same terms. The attitude of the hypothetical private investor is that of a prudent investor whose goal of profit maximisation is tempered with caution about the level of risk acceptable for a given rate of return. In principle, a contribution from public funds does not involve State aid if it is *pari passu*, namely if it takes place at the same time as a significant capital contribution on the part of a private investor made in comparable circumstances and on comparable terms.

(106) Finally, the measures in question must distort or threaten to distort competition and be liable to affect trade between Member States.

(107) Inasmuch as the measures under assessment entail State aid within the meaning of Article 107(1) of the Treaty, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.

7.1. **Existence of State aid**

7.1.1. *Measure 1*

(108) The Commission will first assess the presence of aid in respect of the EUR 2,48 million capital injection of 2009 (measure 1). As explained in recital 105, it is considered that a contribution from public funds does not entail an undue advantage — and does not constitute aid — if it is carried out in *pari passu* terms.

([27]) Mobility factor is the number of air transport passengers divided by the country's population.

(109) In that respect, the Commission notes that measure 1 was carried out by the shareholders of Estonian Air at the time in proportion to their stakes, namely 34 % by Estonia (EUR 2,48 million), 49 % by SAS (EUR 3,57 million) and 17 % by Cresco (EUR 1,23 million). Estonia was confirmed that the State and Cresco injected cash only while SAS provided EUR 1,21 million in cash and EUR 2,36 million in the form of a loan-to-equity conversion. In addition, Estonia explained that SAS provided loans to Estonian Air of USD […] million in 2008 and of EUR […] million in 2009 (see recital 84).

(110) In the rescue aid opening decisions the Commission noted that the different nature of the contributions (fresh money increase v conversion of debt by SAS) was sufficient to create reasonable doubts about whether measure 1 was *pari passu*. However, the information provided by Estonia has allayed the doubts of the Commission, given that the capital contribution was carried out on clear *pari passu* terms at least with Cresco. Both the State and Cresco contributed rather significant amount of fresh money in cash in proportion to their shareholding. In addition, the overall contributions of Cresco and SAS in cash are significant and comparable to that of the State. Moreover, the loan-to-equity conversion of SAS is to be seen in the broader context of its previous loans to Estonian Air in 2008 and 2009, which demonstrate that SAS believed in the viability of the airline.

(111) A private participation of 66 % is clearly not negligible by comparison to the public intervention according to settled case-law ([28]). Moreover, nothing suggests that the decision of SAS and Cresco to invest into Estonian Air could have been influenced by the conduct of the State.

(112) In addition, the Commission observes that according to the 1994 Aviation guidelines ([29]) '[c]apital injections do not involve State aid when the public holding in a company is to be increased, provided the capital injected is proportionated to the number of shares held by the authorities and goes together with the injection of capital by a private shareholder; the private investor's holding must have real economic significance'. Therefore, it results that this is the case for measure 1.

(113) On that basis, the Commission considers that the decision Cresco to invest in Estonian Air was made *pari passu* with that of the State and that the investment of both Cresco and SAS was significant. In addition, the Commission has no reasons to doubt that SAS and Cresco decided to invest in Estonian Air for profit-seeking motives. The Commission therefore concludes that financing of Estonian Air through the EUR 2,48 million capital injection (measure 1) did not entail an undue advantage to Estonian Air and therefore excludes the presence of State aid, without it being necessary to assess further whether the rest of the cumulative conditions of Article 107(1) of the Treaty would be met.

7.1.2. *Measure 2*

(114) In June 2009, Estonian Air sold its ground handling business to the 100 % State-owned Tallinn Airport for EUR 2,4 million (measure 2). In order to determine the price, no open, transparent and unconditional tender took place and no valuation was carried out by independent valuators. Instead, the price was fixed through direct negotiations between Tallinn Airport and Estonian Air.

(115) The Commission observes that in the absence of a tender or an independent valuation it cannot exclude the presence of aid. Therefore, the Commission needs to assess the transaction and its context in detail to determine whether it provided Estonian Air with any undue advantage.

(116) Estonia clarified in the course of the formal investigation procedure that the ground handling business was profitable between 2005 and 2008, namely the years preceding the sale. In addition, the transaction took the form of an asset sale excluding liabilities and employees and other 'legacy costs'. In order to determine the price, the book value of the assets was established as a floor price. Furthermore, the Estonian authorities submitted their internal analysis demonstrating that the enterprise value-to-sales multiple (EV/sales) ([30]) for the transaction corresponds to multiples observed in several other transactions where a target company was a ground handling business. That would seem to suggest that the transaction took place on market terms.

([28]) Judgment of 12 December 1996, *Air France* v *Commission*, T-358/94, ECR, EU:T:1996:194, paragraphs 148 and 149.

([29]) Guidelines 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).

([30]) EV/sales multiple is valuation measure that compares the enterprise value of a company to the company's sales, giving investors an idea of how much it costs to purchase the company's sales.

(117) Moreover, Estonia claims that Tallinn Airport, despite being 100 % State-owned, is independent from the State and that the members of the management and supervisory boards are independent business people and not representatives of the State. In the rescue aid opening decisions, the Commission raised doubts as to whether the actions of Tallinn Airport could be deemed imputable to the State in view of the fact that the Ministry of Economic Affairs and Communications was the only shareholder of Tallinn Airport and that it came within the Ministry's jurisdiction.

(118) However, the Court of Justice of the European Union has consistently held that measures taken by public undertakings under State control are not *per se* attributable to the State. Indeed, the Court of Justice explained in *Stardust Marine* and subsequent case-law that in order to conclude on imputability it is necessary to 'examine whether the public authorities must be regarded as having been involved, in one way or another, in the adoption of [the] measures' ([31]). In relation to measure 2, the Commission cannot conclude that the decision of Tallinn Airport to invest in Estonian Air was imputable to the State. Also, the Commission did not find either any indirect evidence in this respect in the sense of the *Stardust Marine* case-law. For those reasons, the Commission considers that Tallinn Airport's decision to participate to measure 2 is not imputable to Estonia.

(119) Since Tallinn Airport's decision to participate to measure 2 was not imputable to the State and since the transaction seemingly took place on market terms, the Commission excludes the presence of State aid in relation to measure 2, without it being necessary to assess further whether the rest of the cumulative conditions of Article 107(1) of the Treaty are met.

7.1.3. *Measure 3*

(120) In relation to the 2010 capital injection (**measure 3**), Estonia explained in the course of the formal investigation procedure that the State injected EUR 17,9 million in cash while SAS converted into equity a EUR 2 million loan. At the same time, SAS acquired Cresco's stake in Estonian Air for EUR […] million (in exchange for a EUR […] million loan write-off that Cresco held with SAS). As a result, Cresco ceased to be a shareholder, the State's participation increased to 90 % and SAS's participation was diluted to 10 %. Estonia argues that its decision to invest again in Estonian Air was based on the 2010 business plan.

(121) The Commission first notes that the injections of the State and SAS took place under different forms and in amounts not in proportion to the shareholdings. An injection of EUR 17,9 million of fresh money by the State is not comparable to SAS' debt-to-equity swap of EUR 2 million, in particular since Estonia has not provided evidence that the loan was fully collateralised and thus that SAS would have assumed new risk by converting the loan into equity. As regards the debt write-off by SAS of a EUR […] million that Cresco held with SAS in exchange for Cresco's shares in Estonian Air, the Commission observes that this operation did not entail fresh money for Estonian Air. Moreover, it is uncertain whether SAS run new risk by accepting the debt write-off in exchange for Cresco's shares in Estonian Air. These elements are sufficient to allow the Commission to conclude that measure 3 was not carried out on *pari passu* terms.

(122) The Estonian authorities argue that measure 3 was MEIP-conform since it was adopted on the basis of the 2010 business plan, which they consider robust and credible. According to the plan, Estonian Air would break even already in 2013 if it changed the fleet in accordance with the plan, and would remain significantly profitable thereafter until at least 2020.

(123) The Commission acknowledges that the 2010 business plan analyses the situation of the airline, but it nonetheless has shortcomings that do not make it a reliable basis for a market-oriented investment decision. For instance, the financial forecasts are based on overly ambitious passenger growth numbers (average annual growth above 6 % for the period 2010-2020). Such growth prospects seem very much optimistic in view of the 2009 global economic and financial crisis. The 2010 business plan refers to IATA estimations of more than 5 % average growth for the next four years. However, IATA also indicates that this recovery will be very unevenly divided geographically and that a rapid recovery is not to be expected in Europe ([32]).

(124) Another shortcoming is that the sensitivity analysis of the 2010 business plan appears insufficient. As regards the risk of lower passenger numbers, the plan states that a 10 % decrease in the number of passengers would reduce by approximately EUR 6,4 million the net result for the first two years, which would more than double the negative net results expected for those two years. However, the 2010 business plan does not indicate the consequences for the overall period analysed and specific corrective actions to be taken.

([31]) Judgment in *France v Commission (Stardust Marine)*, C-482/99, EU:C:2002:294, paragraph 52.
([32]) See 2010 business plan, pages 16 and 17.

(125) The Commission also highlights that Cresco decided not to invest further in Estonian Air and instead decided to sell its stake to SAS. While Cresco may have had various reasons for doing so, it appears logical to consider that the 2010 business plan was not sufficient to reassure the private investor about its return on investment. A similar argument can be applied to SAS, who decided to participate in the 2010 capital injection but not in proportion to its stake and therefore was diluted to just 10 % from its previous 49 % stake.

(126) The Estonian authorities also argue that a valuation undertaken by the State in 2010 came to the conclusion that the airline would have positive value following the investment. This valuation calculated the value of equity based on discounted cash flow analysis taking into account expected cash flows in the years 2010-2019 plus a terminal value after 2019 of EUR [0-10] million (discounted) and deducting net debt of EUR [0-10] million. On this basis, the resulting total value of equity in a post-investment scenario would amount to EUR [0-10] million. Based on an alternative valuation method, it valued the airline by comparison with financial indicators for five smaller publicly-traded companies, resulting in a value of Estonian Air of around EUR [5-15] million.

(127) However, the Commission cannot consider this valuation as a valid basis for accepting the investment by a hypothetical private investor. First, the valuation itself points out substantial risks, uncertainties and sensitivity to the assumptions used and states that its forecasts should be regarded with caution ([33]). Further, some crucial assumptions underlying the valuation are not substantiated. In particular, the basis for establishing the substantial terminal value (representing more than 60 % of the resulting total discounted cash flow) is not indicated. Choosing a lower terminal value could even lead to a negative total value of equity. Secondly, the valuation states that the measures of the 2010 business plan may not be sufficient to solve some of the sustainability problems of Estonian Air (e.g. the loss-making operation of the turboprop aircraft Saab 340). Therefore, the cash-flow-based calculation assumes additional changes and thus deviates from the 2010 business plan which represents the basis for the investment. Thirdly, the valuation based on comparison with other airlines is extremely fragile. It compares Estonian Air with only five airlines, of which three have capacities several times bigger than Estonian Air's. Further, due to the bad financial situation of Estonian Air, the only reference basis that could realistically be used is the price-to-sales-revenue ratio whereas ratios based on other indicators give very different results. Fourthly, even accepting its results, the valuation does not explain why a private investor would have agreed to inject EUR 17,9 million in fresh capital to hold 90 % of the shares of a company whose total value of equity is estimated at only EUR [0-10] million (or as a maximum EUR [5-15] million). Finally, the Estonian authorities did not analyse any counterfactual situation to the capital increase in order to compare the expected return on their investment with results of possible alternative scenarios. While it might make economic sense for an existing shareholder to invest additional capital into an ailing company to safeguard its investment, such an investor would normally compare such investment to the costs/revenues of possible alternative scenarios, possibly including the liquidation of the company.

(128) In addition, the submission of the Estonian authorities of 9 April 2014 suggests that the capital increase was not motivated solely by the economic attractiveness of the investment. Estonia acknowledges that the objective of the 2010 business plan to secure long-term flight connections to important business destinations 'coincided with the State's own macroeconomic policy goals'. Although Estonia argues that these considerations were not the sole drivers of the State's investment decision, this suggests that the State was not solely taking into consideration profit-seeking motives. In this respect, it appears that members of the Estonian Government at the time of measure 3 stated that '[the Government's] stance has been that Estonian Air is a strategic company for the country and we are prepared to take a majority stake' ([34]) and that 'it's very important to have flights from […] Tallinn to some other important cities' ([35]), which do not appear to be concerns that a prudent market investor would take into consideration at the time of making an investment decision. In this respect, the Commission recalls that in the *Boch* judgement the Court indicated that 'the test is, in particular, whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional policy and sectoral consideration would have subscribed the capital in question' ([36]).

(129) Overall, taking into account the absence of any private investor willing to invest fresh money into Estonian Air in a way similar to the State, the weaknesses of the 2010 business plan and the existence of macroeconomic objectives not relevant for any private investor, the Commission concludes that measure 3 was not MEIP-conform.

([33]) See internal valuation of Estonian Air prepared by the Estonian authorities 'Value assessment of AS Estonian Air', page 2.
([34]) See http://www.bloomberg.com/news/2010-04-22/estonia-government-nears-accord-on-buying-control-of-estonian-air-from-sas.html
([35]) See http://news.err.ee/v/economy/fe650a96-9daa-43e4-91eb-ab4396445593
([36]) Judgment *Belgium* v *Commission (Boch)*, C-40/85, EU:C:1986:305, paragraph 13. See also judgment of 21 January 1999, *Neue Maxhütte Stahlwerke GmbH* v *Commission*, T-129/95, T-2/96 and T-97/96, ECR, EU:T:1999:7, paragraph 132.

(130) In addition, for a measure to constitute State aid, it must stem from State resources and be imputable to the State. This criterion is not disputed in relation to the 2010 capital injection, given that it was the Ministry of Economic Affairs and Communication of Estonia, as shareholder of the airline, who injected the cash from the State budget.

(131) Finally, the Commission observes that the measure affects trade and threatens to distort competition between Member States as Estonian Air is in competition with other airlines of the European Union, in particular since the entry into force of the third stage of liberalisation of air transport ('third package') on 1 January 1993 ([37]). Measure 3 thus enabled Estonian Air to continue operating so that it would not have to face, as other competitors, the consequences normally deriving from its poor financial results.

(132) The Commission therefore concludes that measure 3 entailed State aid in favour of Estonian Air.

7.1.4. *Measure 4*

(133) As regards the EUR 30 million cash injection decided by Estonia in December 2011 (measure 4), Estonia is of the opinion that it did not entail State aid. No other investor participated in this capital injection, as a result of which SAS's stake was diluted from 10 % to 2,66 %, while the State's stake increased from 90 % to 97,34 %.

(134) The Commission remains unconvinced by the arguments provided by the Estonian authorities in the course of the formal investigation procedure. In the first place, the decision to invest was made by the State alone without any private intervention: SAS decided not to participate in this capital injection and the private bank […], who initially considered granting a loan to Estonian Air, refused to provide it in the end. Therefore, the investment cannot be deemed *pari passu*.

(135) In addition, the 2011 business plan, on the basis of which the investment decision was taken, foresees an expansionary strategy and a radical change of business model from point-to-point to hub-and-spoke on the basis of a regional network. Estonia has provided a presentation of the plan according to which the airline would acquire new aircraft (passing from seven planes in 2011 to 13 in 2013 and 2014) and make Tallinn a hub for Europe-Asia flights. According to this presentation, Estonian Air would require EUR 30 million from its shareholder and EUR […] million from a […] loan. Despite the fact that […] decided not to provide the loan in the end, the Commission highlights that Estonia granted EUR 30 million, without giving any kind of consideration to the impact that […] decision would have for the outcome of the 2011 business plan. This cannot be seen as the rational behaviour of an informed market operator.

(136) It also appears unrealistic to consider that Estonian Air would be able to almost triple its revenue in just 4 years and pass from EBT of EUR −15,45 million in 2011 to EUR 4,2 million in 2014, in particular in a context of economic and financial crisis. In this respect, the Commission recalls that according to the December 2011 financial forecast of IATA ([38]), profit margins in the airline industry in 2011 were squeezed as oil and fuel prices surged. For 2012, IATA foresaw that the European airline industry would face pressure due to the economic turmoil that would result from a failure of governments to resolve the euro area sovereign debt crisis. Considering that the European airlines were likely to be hit badly by recession in their home markets, IATA's 2012 forecast for European airlines was an earnings before interest and taxes (EBIT) margin of 0,3 %, with net losses after tax of USD 0,6 billion (namely EUR 0,46 billion).

(137) It also appears unrealistic to consider that Estonian Air would increase the number of seats from 1 million in 2011 to 2,45 million in 2014 while substantially increasing the load factor from 59,2 % to 72,3 % in the same period. The key risks also appear undervalued and the mitigation measures do not seem sufficiently assessed. The hub-and-spoke model was abandoned very rapidly by mid-2012 in view of the extremely negative results of the airline.

(138) In addition, the 2011 business plan explicitly takes into account various macroeconomic and political benefits to the State which are irrelevant from the perspective of a private investor. For instance, the plan indicates that the

([37]) The 'third package' included three legislative measures: (i) Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992, p. 1); (ii) 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); and (iii) Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.8.1992, p. 15).

([38]) See http://www.iata.org/whatwedo/Documents/economics/Industry-Outlook-December2011.pdf

benefits of the investment for Estonia are significant and explicitly states that 'the chosen network model is preferred taking into account current needs of business people and government directives'. In addition, the plan indicates that as a result of the investment, 2 000 jobs would be created and that Estonia would improve its position in global competitiveness rankings. Moreover, the Estonian authorities state that the proposed strategy fed into the Government Action Plan for 2011-2015 to develop direct air links to all major European business centres and to turn Tallinn Airport into a hub for Asia-Europe flights. For the reasons explained in recital 128, such considerations would not have been taken into account by a prudent market investor.

(139) Therefore, the Commission considers that measure 4 entailed a selective undue advantage to Estonian Air. For the same reasons stated in recitals 130 and 131, the Commission considers that measure 4 stems from State resources and is imputable to the State and that it affects trade and threatens to distort competition between Member States.

(140) The Commission therefore concludes that measure 4 entailed State aid in favour of Estonian Air.

7.1.5. *Measure 5*

(141) The Commission comes to the conclusion that the rescue loan facility should be considered State aid within the meaning of Article 107(1) of the Treaty since the loan, stemming from State resources, entails a selective advantage for Estonian Air which affects trade between the Member States and threatens to distort competition (see recital 131). In view of the financial situation of Estonian Air (it had been loss-making since 2006 and, by the end of July 2012, it had reached a state of technical bankruptcy under Estonian law — see details in Section 7.4.1), it was highly unlikely that a private creditor would be willing to provide any additional loans to cover the severe liquidity problems of Estonian Air. The Estonian authorities themselves regard this measure as State aid within the meaning of Article 107(1) of the Treaty since they claimed the fulfilment of rescue aid conditions of the 2004 R&R Guidelines.

7.1.6. *Measure 6*

(142) The decision of the Estonian authorities to inject EUR 40,7 million into Estonian Air in the form of equity should be considered State aid. The capital injection comes directly from the State budget and thus from State resources. Moreover, since it exclusively benefits one undertaking (namely Estonian Air) and is provided subject to conditions that a prudent market economy investor would normally not accept (financial difficulties of Estonian Air, investment not based on an appropriate analysis of return on the investment but on public interest considerations such as connectivity of Estonia and strategic importance of Estonian Air for the Estonian economy), the planned capital injection entails a selective advantage to Estonian Air. Moreover, the measure affects trade between Member States and threatens to distort competition (see recital 131). The measure in question thus enables Estonian Air to continue operating so that it does not have to face, as other competitors, the consequences normally deriving from its poor financial results. The Estonian authorities themselves regard this measure as State aid within the meaning of Article 107(1) of the Treaty since they claimed the fulfilment of restructuring aid conditions of the 2004 R&R Guidelines.

(143) The Commission therefore concludes that the notified restructuring measure constitutes State aid within the meaning of Article 107(1) of the Treaty. This is not disputed by the Estonian authorities.

7.1.7. *Conclusion as regards the existence of aid*

(144) For the reasons stated in recitals 108-119, the Commission concludes that measures 1 and 2 did not entail State aid to Estonian Air within the meaning of Article 107(1) of the Treaty.

(145) However, for the reasons stated in recitals 120-143 the Commission considers that measures 3, 4, 5 and 6 constitute State aid within the meaning of Article 107(1) of the Treaty and will therefore assess their lawfulness and compatibility with the internal market.

7.2. **Legality of the aid**

(146) Article 108(3) of the Treaty states that a Member State shall not put an aid measure into effect before the Commission has adopted a decision authorising the measure.

(147) The Commission first observes that Estonia implemented measures 3, 4 and 5 without notifying them previously to the Commission for approval. The Commission regrets that Estonia did not comply with the stand-still obligation and has therefore violated its obligation according to Article 108(3) of the Treaty.

(148) As regards measure 6, the Commission understands that the EUR 40,7 million capital injection has not yet been carried out. Thus, Article 108(3) of the Treaty has been respected in relation to the notified restructuring measure.

7.3. **Acceptability of the modified restructuring plan of 31 October 2014**

(149) Before analysing the compatibility of the aid measures identified described in Section 7.1, the Commission needs to establish on which of the submitted restructuring plans such analysis should be conducted. Since the modified restructuring plan of October 2014 significantly extends the restructuring period from 5 years to 6 years and one month, moves backwards its start date by more than two years and includes additional aid measures, it cannot be considered as a simple development of the notified restructuring plan of June 2013.

(150) As described in Section 4.7, the extension of the restructuring period effectively means that three distinct and opposing business strategies would be combined into a single restructuring plan. The strategy of Estonian Air in 2011 and at the beginning of 2012 was to expand operations (additional aircraft, routes, staff, etc.) with the aim of becoming a regional hub-and-spoke operator, while the strategy in 2012-2014 (developed by a newly appointed management team) was exactly the opposite — reduction of capacities and focus on point-to-point operations on a limited number of core routes. Further, the last part of the restructuring plan for 2015-2016, taking into account the entry of Infortar, envisages again a limited expansion. The restructuring plan would thus combine several radically different business strategies based on different business plans and prepared by different management teams with totally different business objectives.

(151) It is evident that originally (in November 2010 when the third measure was granted) the strategies described in Section 4.7 were not considered as one continuous restructuring plan. Further, their differences are such that they cannot be considered as mere adaptations to the original plan notified in June 2013 reacting to developments during its implementation. Their combination into one plan is made *ex post* with the sole apparent aim of including within restructuring aid the measures of the State in the period 2010-2012 (namely measures 3 and 4), in an attempt to avoid a breach of the 'one time, last time' principle for the originally notified restructuring aid. In addition, accepting the modified restructuring plan would lead to an absurd situation where part of the assessed restructuring aid was used in 2011/2012 to expand Estonian Air's capacity and operations while another part of the restructuring aid was subsequently used to reduce its capacities and operations as of 2013. No single restructuring plan would have included both of these mutually incompatible strategies.

(152) Moreover, the Commission notes that if Estonia had notified — and the Commission had authorised — measures 3 and 4 as restructuring aid, the fact that new aid in 2013 would have been in breach of the 'one time, last time' principle would be undisputable. Thus, if the Commission accepted the modified restructuring plan, which — due to the backward extension of the restructuring period — includes measures 3 and 4, Estonia would be better off by not notifying the aid than if it had notified it.

(153) In the past, the Commission has accepted the existence of restructuring continuums based on a single restructuring strategy, with some amendments and developments over time but never with totally opposing business strategies as in this case. For instance in the Varvaressos case ([39]), the Commission considered that the measures granted to this firm between 2006 and 2009 were to be assessed as part of a restructuring continuum on the basis of a restructuring plan dated 2009 (covering the period 2006-2011). The 2009 restructuring plan of Varvaressos was considered as an evolution of a 'strategic and business plan' dating from 2006 and was based on the same business strategy with basically the same restructuring measures which started as of 2006 and continued to be implemented till 2009 and beyond. The facts in the Varvaressos case were thus significantly different from the current case where the business model has radically changed twice throughout the extended restructuring period.

([39]) Commission Decision 2011/414/EU of 14 December 2010 on the State aid C-8/10 (ex N21/09 and NN 15/10) implemented by Greece in favour of Varvaressos S.A. (OJ L 184, 14.7.2011, p. 9). See as well Commission Decision (EU) 2015/1091 of 9 July 2014 on the measures SA.34191 (2012/C) (ex 2012/NN) (ex 2012/CP) implemented by Latvia for A/S Air Baltic Corporation (airBaltic) (OJ L 183, 10.7.2015, p. 1).

(154) For those reasons, the Commission considers that the modified restructuring plan of October 2014 cannot be accepted as a basis for assessing the notified restructuring aid. The assessment of the aid will thus be based on the originally notified restructuring plan of June 2013.

(155) The Commission also notes that even if, hypothetically, it were to accept the modified restructuring plan as a basis for assessment of the restructuring aid (*quid non*), significant compatibility issues would remain (such as the unusually long restructuring period of more than six years ([40]), the apparent lack of adequate compensatory measures which, despite an increase in the total amount of aid, are even less significant than in the June 2013 restructuring plan).

(156) Finally, the privatisation of Estonian Air through the sale by the State of […] % of its shares to Infortar for a negative price without any tendering procedure could lead to additional concerns about possible aid to Infortar. Despite an independent expert study provided by the Estonian authorities indicating the total equity value of Estonian Air at the time of Infortar's acquisition of those shares within a range of EUR […] million, Infortar would not actually pay anything to the State for that shareholding.

7.4. **Compatibility of the aid**

(157) Insofar as measures 3, 4, 5 and 6 constitute State aid within the meaning of Article 107(1) of the Treaty, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article. According to the case-law of the Court of Justice, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met ([41]).

(158) The Estonian authorities are of the view that measures 5 and 6 entail State aid and have therefore provided arguments for assessing their compatibility Article 107(3)(c) of the Treaty, and in particular with the 2004 R&R Guidelines.

(159) However, on the basis of the originally notified restructuring plan, the Estonian authorities consider that measures 3 and 4 do not entail State aid and have not provided any possible grounds for compatibility. The Commission has nonetheless assessed whether any of the possible compatibility grounds laid down in the Treaty would be applicable to those measures.

(160) As stated in the rescue aid opening decisions, the Commission considers that the exceptions laid down in Article 107(2) of the Treaty are not applicable in view of the nature of measures 3 and 4. The same conclusion would apply to the exceptions provided for in Article 107(3), points (d) and (e), of the Treaty.

(161) In view of the difficult financial situation of Estonian Air at the time when measures 3 and 4 were provided (see recitals 24 to 26 above), it does not appear that the exception relating to the development of certain areas or of certain sectors laid down in Article 107(3)(a) of the Treaty could be applicable. This is so despite the fact that Estonian Air is located in an assisted area and could be eligible for regional aid. Also, as regards the crisis rules laid down in the Temporary Framework ([42]), the Commission notes that measures 3 and 4 do not fulfil the conditions for its applicability.

([40]) A restructuring period of 5 years and 6 months was considered as unreasonably long in case of restructuring aid to Cyprus Airways — see 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 (OJ L 179, 8.7.2015, p. 83, recitals 144 and 157). The restructuring period in previous positive decisions concerning restructuring aid to airlines normally did not exceed 5 years, see Decision (EU) 2015/1091, recital 179; Commission Decision (EU) 2015/494 of 9 July 2014 on the measures SA.32715 (2012/C) (ex 2012/NN) (ex 2011/CP) implemented by Slovenia for Adria Airways d.d. (OJ L 78, 24.3.2015, p. 18, 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 (EU) 2015/119 of 29 July 2014 on the State aid SA.36874 (2013/N) which Poland is planning to implement for LOT Polish Airlines SA and on the measure SA.36752 (2014/NN) (ex 2013/CP) implemented by Poland for LOT Polish Airlines SA (OJ L 25, 30.1.2015, p. 1, recital 241).

([41]) Judgment in *Italy* v *Commission*, C-364/90, EU:C:1993:157, paragraph 20.

([42]) Commission communication — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 16, 22.1.2009, p. 1), as modified by the communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 303, 15.12.2009, p. 6). The Temporary Framework expired in December 2011.

(162) Therefore, it appears that the compatibility of measures 3 and 4 can only be assessed under Article 107(3)(c) of the Treaty, which states that aid can be authorised where it is granted to promote the development of certain economic sectors and where this aid does not adversely affect trading conditions to an extent contrary to the common interest. In particular, the compatibility of measures 3 and 4 should be assessed in the light of the 2004 R&R Guidelines ([43]), also bearing in mind the provisions of the 1994 Aviation guidelines. In view of the disbursement of the remaining part of the rescue loan facility on 28 November 2014, measure 5 needs to be assessed under Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014 R&R Guidelines) ([44]).

(163) The Commission will in turn assess whether at the time of measures 3, 4, 5 and 6 Estonian Air was eligible for rescue and/or restructuring aid under the 2004 R&R Guidelines (measures 3,4, and 6) and 2014 R&R Guidelines (measure 5).

7.4.1. *Difficulties of Estonian Air*

(164) Recital 9 of the 2004 R&R Guidelines states that the Commission regards a firm as being in difficulty when it is unable, whether through its own resources or with the funds it is able to obtain from its owners/shareholders or creditors, to stem losses which without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

(165) Recital 10 of the 2004 R&R Guidelines clarifies that a limited liability company is regarded as being in difficulty where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months, or where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

(166) Recital 11 of the 2004 R&R Guidelines adds that, even if the conditions in recital 10 are not satisfied, a firm may be considered to be in difficulty in particular where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value.

(167) The Commission first notes that Estonian Air has continuously registered significant losses since 2006:

Table 6

Net results of Estonian Air since 2006

(in EUR thousands)

2006	– 3 767
2007	– 3 324
2008	– 10 895
2009	– 4 744
2010	– 3 856
2011	– 17 120
2012	– 51 521
2013	– 8 124
2014	– 10 405

Source: Annual reports of Estonian Air, available at http://estonian-air.ee/en/info/about-the-company/financial-reports/. From 2006 to 2010 the annual reports of Estonian Air are expressed EEK. The conversion rate used is EUR 1 = EEK 15,65.

([43]) On 1 August 2014, the 2004 R&R Guidelines were replaced by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1, '2014 R&R Guidelines'). According to recital 136 of the 2014 R&R Guidelines, notifications registered by the Commission prior to 1 August 2014 will be examined in the light of the criteria in force at the time of notification. Since measure 6 was notified on 20 June 2013, that measure will be assessed under the 2004 R&R Guidelines. Also, in line with recitals 137 and 138 of the 2014 R&R Guidelines, the Commission will assess the compatibility of measures 3 and 4 on the basis of the 2004 R&R Guidelines.

([44]) OJ C 249, 31.7.2014, p. 1.

(168) The significant losses of Estonian Air constitute a first indication of the airline's difficulties. In addition, it appears that some of the usual signs of a firm being in difficulty were also present. For instance, it appears that Estonian Air's interest expenses have been constantly increasing since 2008:

Table 7

Interest expenses of Estonian Air since 2006

(in EUR)

2006	– 94 523
2007	– 99 764
2008	– 94 842
2009	– 212 309
2010	– 337 325
2011	– 2 010 000
2012	– 2 436 000
2013	– 4 212 000
2014	– 3 474 000

Source: Annual reports of Estonian Air, available at http://estonian-air.ee/en/info/about-the-company/financial-reports/. From 2006 to 2010 the annual reports of Estonian Air are expressed EEK. The conversion rate used is EUR 1 = EEK 15,65.

(169) Estonian Air's return on assets and return on equity have consistently been negative since 2006, while the debt-to-equity ratio constantly increased between 2006 and 2008, when it reached [80-90] %. The reason why this ratio went down in 2009 and 2010 is due to the capital increases that took place in those years and not because Estonian Air's debt was reduced. In addition, between 2010 and 2011, the net debt of Estonian Air exploded, passing from EUR [5-10] million to EUR [40-50] million. The net debt continued to grow further in 2012 (EUR [50-60] million), 2013 (EUR [50-60] million) and 2014 (EUR [60-70] million).

(170) In addition, the Estonian authorities explained that at the end of November 2011, the airline had only EUR 3,1 million in cash, and was set to breach a cash covenant to […] at the end of the year, meaning the airline would have been in default of its loans to […]. Also, Estonian Air stopped paying some major suppliers in November 2011 and by the end of that month the working capital was not in balance: the accounts receivable were EUR 5,5 million, while the accounts payable were EUR 10,6 million. Without measure 4, the airline would have been in default of its loans to […]. Default of payment is a typical sign of a firm in difficulty.

(171) The Commission also notes that more than half of the airline's equity disappeared between 2010 and 2011. In that period, the airline lost more than one quarter of its capital. Therefore, the criterion of recital 10(a) of the 2004 R&R Guidelines also seems to be fulfilled.

(172) Despite the capital injections in December 2011 and March 2012 (measure 4), the airline's financial situation deteriorated in 2012 and by the end of July 2012, Estonian Air had reached a state of technical bankruptcy under Estonian law (see recital 25 above). Therefore, as from this point in time, Estonian Air could also be considered a firm in difficulty on the basis of recital 10(c) of the 2004 R&R Guidelines.

(173) Therefore, the Commission concludes that Estonian Air would qualify as a firm in difficulty under recital 11 of the 2004 R&R Guidelines since at least 2009. In addition, Estonian Air would also fulfil the requirements of recitals 10(a) and 10(c) of the 2004 R&R Guidelines at later points in time.

(174) In addition, Estonian Air would be regarded as a firm in difficulty under the 2014 R&R Guidelines since its total equity in 2014 was significantly negative amounting to EUR −31,393 million. Therefore, Estonian Air fulfils the requirements of recital 20(a) of the 2014 R&R Guidelines.

(175) Recital 12 of the 2004 R&R Guidelines as well as recital 21 of the 2014 R&R Guidelines states that a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is unsecure. A firm is in principle considered as newly created for the first three years following the start of operations in the relevant field of activity. Estonian Air was founded in 1991 and cannot be regarded as a newly created firm. In addition, Estonian Air does not belong to a business group in the sense of recital 13 of the 2004 R&R Guidelines and recital 22 of the 2014 R&R Guidelines.

(176) The Commission therefore concludes that Estonian Air was a firm in difficulty at the time when measures 3, 4, 5 and 6 were provided and that it meets the rest of requirements of the 2004 and 2014 R&R Guidelines to be eligible for rescue and/or restructuring aid.

7.4.2. *Compatibility of measure 3*

(177) The Commission first observes that the cumulative conditions for rescue aid laid down in point 25 of the 2004 R&R Guidelines are not met:

(a) measure 3 is a capital injection in the form of cash (EUR 17,9 million) and therefore does not consist of liquidity support in the form of loan guarantees or loans;

(b) Estonia has provided no justification allowing the Commission to consider that measure 3 was provided on the grounds of serious social difficulties;

(c) Estonia did not communicate to the Commission a restructuring plan or a liquidation plan six months after the first implementation of the measure;

(d) measure 3 was not restricted to the amount needed to keep the Estonian Air in business for the period during which the aid is authorised.

(178) The Commission also assessed whether the compatibility criteria for restructuring aid are met. Recital 34 of the 2004 R&R Guidelines requires that the granting of the aid is conditional on implementation of a restructuring plan, which must be endorsed by the Commission in all cases of individual aid, and which must aim at restoring the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. However, the Commission observes that Estonia granted measure 3 to Estonian Air in the absence of a credible restructuring plan satisfying the conditions laid down in the 2004 R&R Guidelines. Even though the 2010 business plan contained some elements of a restructuring plan under the 2004 R&R Guidelines (analysis of the market, restructuring measures, financial forecasts etc.), it cannot be considered as sufficiently robust and credible, ensuring a long-term viability of the company. As explained in recitals 123 and 124, the 2010 business plan was based on overly ambitious passenger growth forecasts and its sensitivity analysis was insufficient. That circumstance would in itself be sufficient to exclude the measure's compatibility with the internal market ([45]).

(179) Moreover, the Estonian authorities have not put forward any possible measures to avoid undue distortions of competition (compensatory measures) and have not provided any contribution from Estonian Air to its own restructuring. Those are essential elements for finding a measure compatible with the internal market as restructuring aid on the basis of the 2004 R&R Guidelines.

(180) Measure 3 therefore amounts to State aid incompatible with the internal market.

7.4.3. *Compatibility of measure 4*

(181) In relation to measure 4, the same conclusions as regards measure 3, described in recitals 177 to 180, apply *mutatis mutandis*.

(182) In particular, the capital increase of EUR 30 million does not meet the requirements of point 15 of 2004 R&R Guidelines for a rescue aid since (a) it does not consist of liquidity support in the form of loan guarantees or loans; (b) Estonia has provided no justification allowing the Commission to consider that measure 3 was provided on the grounds of serious social difficulties; (c) Estonia did not communicate to the Commission a restructuring plan or a liquidation plan six months after the first implementation of the measure; and (d) Measure 3 was not restricted to the amount needed to keep the Estonian Air in business for the period during which the aid is authorised.

([45]) See in this sense the judgment of the EFTA Court in joined cases E-10/11 and E-11/11 *Hurtigruten ASA, Norway* v *EFTA Surveillance Authority*, EFTA Ct. Rep [2012], p. 758, paragraphs 228 and 234-240.

(183) Further, the capital increase of EUR 30 million does not meet the compatibility conditions for restructuring aid under 2004 R&R Guidelines. The 2011 business plan cannot be considered as a credible restructuring plan since its forecasts were not realistic (see recitals 135 to 137) and it was in fact abandoned very rapidly by mid-2012 in view of the extremely negative results of the airline. In addition, the Estonian authorities have proposed neither appropriate own contribution by Estonian Air nor adequate compensatory measures. On the contrary, the capital increase was used to expand Estonian Air's operations and enter new routes.

(184) In addition, the Commission observes that according to the 'one time, last time' principle of Section 3.3 of the 2004 R&R Guidelines, 'where less than 10 years have elapsed since the rescue aid was granted or the restructuring period came to an end or implementation of the restructuring plan has been halted (whichever is the latest), the Commission will not allow further rescue or restructuring aid'. Insofar as measure 3 (unlawful and incompatible rescue aid) was granted to Estonian Air in November 2010, granting of capital injection (measure 4) would breach the 'one time, last time' principle. Of the possible exceptions to this principle according to point 73 of the 2004 R&R Guidelines, only exception (c) ('exceptional and unforeseeable circumstances for which the company is not responsible') could be applicable. However, Estonia has not put forward any argument that would allow the Commission to conclude that measure 4 was provided to Estonian Air on the basis of exceptional and unforeseeable circumstances.

(185) Therefore, the Commission concludes that measure 4 also amounts to State aid incompatible with the internal market.

7.4.4. *Compatibility of measure 5*

(186) In the rescue aid opening decisions, the Commission stated that measure 5 fulfilled most of the criteria in Section 3.1 of the 2004 R&R Guidelines concerning rescue aid but expressed doubts on whether the 'one time, last time' principle was met.

(187) The Commission notes that the 'one time, last time' principle of the 2014 R&R Guidelines essentially corresponds to the requirements of the previous 2004 R&R Guidelines. Given that Estonian Air received the rescue aid in November 2010 (capital injection of EUR 17,9 million — measure 3) and in December 2011 and March 2012 (capital injections of 15 million EUR each — measure 4), the Commission concludes that the 'one time, last time' principle has not been observed. In view of the fact that measures 3 and 4 amount to incompatible and unlawful rescue aid, the Commission concludes that the 'one time, last time' principle as set out in recital 70 of the 2014 R&R Guidelines has also been breached in relation to measure 5. Therefore, it is not necessary to examine whether other criteria of the 2014 R&R Guidelines would also have been met.

(188) On this basis, the Commission concludes that measure 5 also amounts to rescue aid incompatible with the internal market.

7.4.5. *Compatibility of measure 6*

(189) As regards the planned restructuring aid of EUR 40,7 million (measure 6), the Commission's doubts in relation to the restructuring aid opening decision have not been dispelled in the course of the formal investigation procedure.

(190) According to point 34 of the 2004 R&R Guidelines, the grant of restructuring aid must be conditional on implementation of a restructuring plan which must be endorsed by the Commission in all cases of individual aid. Point 35 explains that the restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions.

(191) Pursuant to point 36 of the 2004 R&R Guidelines, the restructuring plan must describe the circumstances that led to the company's difficulties and take account of the present state and future market prospects with best-case, worst-case and base-case scenarios.

(192) The restructuring plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital must be high enough to enable the restructured firm to compete in the marketplace on its own merits (point 37 of the 2004 R&R Guidelines).

(193) As indicated in the opening decision, the Commission had doubts as to whether the restructuring plan of June 2013 was sufficiently solid in order to restore the long-term viability of Estonian Air. Estonia has provided few additional arguments to clarify the doubts of the Commission. Indeed, the Commission reiterates that the scenarios and sensitivity analysis of the restructuring plan may lead, under certain circumstances, to additional funding needs. The low (pessimistic) case assumes a 12 % decrease of passengers due to the assumption that GDP growth in Europe will continue to be low until 2017. In this pessimistic case, Estonian Air would reach slightly positive earnings before taxes in 2017 but still have a negative net cash position. Moreover, the sensitivity analysis shows that relatively minor changes in the assumptions would result, on a stand-alone basis, in the need for additional funding. This seriously questions the main aim of the plan to restore the long-term viability of Estonian Air. The fact that Estonian Air's performance in 2013 was broadly in line with the forecasts is irrelevant for the *ex ante* assessment of the restructuring plan. In addition, this was no longer the case in 2014 with revenues as well as profits below the forecasts in the restructuring plan.

(194) As regards the measures to limit undue distortions of competition (compensatory measures), the restructuring plan foresees the release of slots at three coordinated airports (London Gatwick, Helsinki and Vienna) and the discontinuation of 12 routes, which would account for 18 % of Estonian Air's capacity before restructuring. In order for those routes to be counted as compensatory measures, they must be profitable because otherwise they would have been cancelled in any event for viability reasons.

(195) The Estonian authorities have provided profitability figures for the 12 routes cancelled based on three different indicators, namely 'DOC contribution level', 'contribution margin level 1' and 'profitability margin'. According to Estonia's submissions, the 'DOC contribution level' covers all variable costs (passenger-related, roundtrip-related and fuel costs) but not payroll, fleet, maintenance and department costs. The 'contribution margin level 1' is defined as the total revenue less the passenger-related variable costs over total revenue, while the 'profitability margin' includes fixed costs (fixed maintenance costs, crew costs and fleet-related costs) but not overheads.

(196) According to the Commission's practice in a number of restructuring aid cases in the aviation sector, routes are considered profitable if they had a positive C1 contribution margin in the year preceding their surrender ([46]). The C1 contribution takes account of flight, passenger and distribution costs (namely variable costs) attributable to each individual route. The C1 contribution is the appropriate figure since it takes into account all costs which are directly linked to the route in question. Routes with a positive C1 contribution not only cover the variable costs of a route, but also contribute to covering the fixed costs of the company.

(197) The Commission's observes that the 'DOC contribution level' is largely equivalent to the C1 contribution. On this basis, the Commission notes that only two routes (Venice and Kuressaare) — representing together only around 1 % of the company's capacity in terms of ASK — would actually be profitable and could be counted as proper compensatory measures.

(198) Estonia argues that given the increase in yields under the new strategy foreseen in the restructuring plan, these routes could have been profitable in the new network and that these routes would be beneficial to other airlines to the extent they would get the marginal return from passengers who formerly flew with Estonian Air. However, Estonia does not provide any specific calculations as to the possible level of profitability under the new business model. On the contrary, the restructuring plan clearly indicates that these routes 'cannot be operated at a profit at this point in time, nor can they contribute to the cost of the aircraft'. Therefore, in line with the Commission's established case practice, 10 out of the 12 proposed routes cannot be accepted as compensatory measures.

(199) The Commission concludes that in order to outweigh the adverse effect of the restructuring aid for Estonian Air, it is not sufficient to release slots in three coordinated airports and to cancel two profitable routes representing around 1 % of the airline's capacity.

(200) The proposed own contribution of Estonian Air according to the restructuring plan consists of EUR 27,8 million from the planned sale of three aircraft in 2015; EUR 7,5 million from the sale of an office building to Tallinn Airport; EUR 2 million from the sale of other non-core assets; and EUR 0,7 million from a new loan provided

([46]) See Decision 2013/151/EU, recitals 130 and 131; Decision (EU) 2015/1091, recital 194; and Decision (EU) 2015/494, recital 143.

by […]. The main part of the own contribution (the planned sale of three aircraft) should take place in 2015 and there is no binding agreement to sell the aircraft. However, Estonia provided a *prima facie* credible valuation by a consultancy company estimating a possible sale price for the type of the aircraft concerned. Further, Estonia has indicated that the airline is now holding discussions with potential partners for a sale-and-lease-back transaction. On this basis, and bearing in mind previous airline cases, the Commission considers that the proposed own contribution reaching EUR 36,44 million — out of the total restructuring costs of EUR 78,7 million (see recital 55) or 46,3 % of the restructuring costs — is acceptable in view of the fact that Estonia is an assisted area.

(201) Although the own contribution appears acceptable, the Commission's doubts on the return to long-term viability and compensatory measures have not been dispelled.

(202) Finally, as in case of measures 4 and 5, the Commission concludes that for the same reasons the 'one time, last time' principle has also been breached in relation to measure 6. Several aid measures (measures 3, 4 and 5) had been granted to Estonian Air in difficulty over the years 2010-2014. In addition, the exceptions in point 73 of the 2004 R&R Guidelines are not applicable. Given the non-acceptability of the modified restructuring plan of 31 October 2014, the restructuring aid cannot be considered as following the rescue aid as part of a single restructuring operation (condition (a) of point 73). In addition, the Estonian authorities have not put forward any exceptional or unforeseeable circumstances under condition (c) of point 73.

(203) Therefore, the restructuring aid (measure 6) foreseen in the restructuring plan of June 2013 does not fulfil the criteria of the 2004 R&R Guidelines and amounts to incompatible State aid.

8. **RECOVERY**

(204) According to the Treaty and the Court of Justice's established case law, the Commission is competent to decide that the Member State concerned must abolish or alter aid ([47]) when it has found that it is incompatible with the internal market. The Court has also consistently held that the obligation of a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([48]). In this context, the Court has established that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ([49]).

(205) Following that case-law, Article 16 of Council Regulation (EU) 2015/1589 ([50]) states that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'. Given that the measures at hand are to be considered incompatible aid, the aid has to be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. Recovery shall take effect from the time when the advantage occurred to the beneficiary, namely when the aid was put at the disposal of the beneficiary and shall bear recovery interest until effective recovery.

(206) With regard to the 2010 capital increase (**measure 3**), the Commission considers that, given the lack of any realistic possibility for the State to recover its investment, the totality of the EUR 17,9 million injected by the State in cash is the aid element. The same conclusion applies to the 2011/2012 capital increase (**measure 4**), for which the aid element amounts to the totality of the EUR 30 million injected by the State in cash.

(207) In relation to **measure 5**, the Commission considers that in view of the financial situation of Estonian Air at the moment of the granting the rescue loan facility loans, the State had no valid reason to expect repayment. Since the Commission considers that the conditions for rescue aid of the 2015 R&R Guidelines are not met, Estonia must ensure that Estonian Air reimburses the rescue loan provided to Estonian Air for the total amount of EUR 37 million. In case there is due and not paid interest, it should be included in the aid element.

(208) Finally, as regards the notified restructuring aid (**measure 6**), it has not been yet provided to Estonian Air and there is therefore no need to order recovery.

([47]) Judgment *Commission* v *Germany*, C-70/72, EU:C:1973:87, paragraph 13.
([48]) Judgment *Spain* v *Commission*, C-278/92, C-279/92 and C-280/92, EU:C:1994:325, paragraph 75.
([49]) Case *Belgium* v *Commission*, C-75/97, EU:C:1999:311, paragraphs 64-65.
([50]) 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).

9. **CONCLUSION**

(209) The Commission finds that Estonia has unlawfully implemented measures 3, 4 and 5 in breach of Article 108(3) of the Treaty. In addition, those measures are incompatible with the internal market.

(210) The incompatible aid should be recovered from Estonian Air as set out in Section 8. in order to re-establish the situation that existed on the market prior to the granting of the aid.

(211) In addition, the Commission finds that the notified restructuring aid of EUR 40,7 million (measure 6) constitutes incompatible aid. Therefore, that measure should not be implemented,

HAS ADOPTED THIS DECISION

Article 1

1. The financing of AS Estonian Air through the EUR 2,48 million capital injection which Estonia implemented in February 2009 does not constitute aid within the meaning of Article 107(1) of the Treaty.

2. The sale of the ground handling section of AS Estonian Air to Tallinn Airport for EUR 2,4 million in June 2009 does not constitute aid within the meaning of Article 107(1) of the Treaty.

Article 2

1. The State aid amounting to EUR 17,9 million unlawfully granted in favour of AS Estonian Air by Estonia on 10 November 2010, in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

2. The State aid amounting to EUR 30 million unlawfully granted in favour of AS Estonian Air by Estonia on 20 December 2011 and 6 March 2012, in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

3. The State aid for rescue purposes amounting to EUR 37 million unlawfully granted in favour of AS Estonian Air by Estonia between 2012 and 2014, in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

Article 3

1. Estonia shall recover the aid referred to in Article 2 from the beneficiary.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([51]).

Article 4

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.

2. Estonia shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 5

1. The State aid for restructuring purposes which Estonia is planning to implement for AS Estonian Air, amounting to EUR 40,7 million, is incompatible with the internal market.

2. The aid shall accordingly not be implemented.

([51]) 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)

Article 6

1. Within two months following notification of this Decision, Estonia shall submit the following information to the Commission:

(a) the total amount (principal and recovery interests) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken and planned to comply with this Decision;

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Estonia shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 2 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 7

This Decision is addressed to the Republic of Estonia.

Done at Brussels, 6 November 2015.

For the Commission
Margrethe VESTAGER
Member of the Commission