

European Commission gives green light for German rescue aid to Condor



On 14 October 2019, the European Commission (“Commission”) approved the German rescue aid to charter airline Condor under the EU State Aid rules.

Condor is going through a difficult financial situation following the entry into liquidation of the Thomas Cook Group, its parent company. The charter airline is currently facing an acute liquidity shortage but also a loss of important claims against other member companies that it will not be able to collect.

For this reason, on 25 September 2019 the German State notified the Commission of its intention to grant a EUR 380 million rescue loan to Condor in accordance with its Guidelines on State Aid for rescuing and restructuring troubled non-financial undertakings in difficulty. These Guidelines, adopted in 2014, allow Member States to grant rescue and/or restructuring aid to companies in difficulty, provided certain strict conditions are met and their prior notification to the Commission.

Rescue aid is an aid in the form of a loan or guarantee that is granted for a period of up to six months, to fund the company’s cash-flow in order to avoid bankruptcy and to prepare a restructuring plan.

Restructuring aid can take various forms (such as a long-term loan, conversion of a loan into capital, capital injection, a guarantee, etc.) that aim at covering the restructuring costs of the company to achieve its long-term viability.

A company can benefit from rescue and/or restructuring aid that has been formally authorized by the Commission unless, in the case of a general scheme of rescue and restructuring aid to SME, that was priorly authorized by the Commission.

Which factors were relevant for the Commission in its approval of the rescue aid to Condor?

In its press release, the Commission highlighted two important elements in favour of the notified rescue aid, namely :

- Germany will issue the loan in instalments under stringent conditions, which include the requirement for Condor to prove its liquidity needs on a weekly basis and for the State to pay new instalments only when all the existing liquidity has been used.
- Germany will ensure that the loan is fully repaid within six months or that Condor will, within

the same period, carry out a comprehensive restructuring aimed at making the business viable again in the long term, which will have to be assessed and approved by the Commission itself.

In addition, other factors have played a key role in ensuring the measure complies with State Aid rules, including protecting the interest of air passengers as the measure will help Condor to continue providing flight services.

However, other important conditions have to be met to allow Member States to support companies throughout rescue aid.

The next step in this case will depend on German authorities' strategy: they can either turn the loan granted into a restructuring aid (loan for a longer term or conversion into capital) or confirm the airline's liquidation, in which case the German authorities will have to ensure that the aid is not transferred to the acquirer of Condor's assets. The Commission will verify that the selection procedure is respected. This option was retained for instance in the Air Berlin case in 2017.

The full text of the decision with more information on the relevant criteria will soon be available on the Commission's website under case number SA.55394. In the meantime you can already access its official Press Release.

Which factors should be considered by a Member State willing to grant rescue aid according to the Guidelines?

Public support measures must comply with the general EU State Aid rules and be compatible with the internal market, including the following conditions:

- an objective of common interest;
- the need for State intervention;
- the appropriateness of the measure;
- an incentive effect;
- the proportionality of the aid;
- avoiding negative effects on competition; and
- the transparency of the aid.

But they must also meet specific requirements regarding such rescue aid, including the following:

- The aid must be granted to an undertaking in difficulty, meaning that, without State intervention, it will almost certainly go out of business in the short or medium term. The financial conditions that need to be met to fall under this definition depend on the undertaking's legal form. However, a newly created undertaking will not be eligible to benefit from such aid.
- The rescue aid can be granted for a maximum of six months as this should give the

company time to seek solutions in an emergency situation.

- The rescue aid must consist of temporary liquidity support in the form of loan guarantees or loans; the interest rate must be in line with the Commission's reference rate; the loan must be repaid within the six-month period or a restructuring or liquidation plan setting out the steps for liquidation must have been submitted to the Commission; and the aid cannot be used to finance structural measures.

However, it is important to remember that the European Commission's assessment is made on a case-by-case basis and that an analysis of the specific circumstances will have to be carried out in order to grant such aid.

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