

Lexxion Verlagsgesellschaft mbH

---

MaltaAuthor(s): Yana Haber

Source: *European State Aid Law Quarterly*, Vol. 11, No. 1 (2012), pp. 15-17

Published by: Lexxion Verlagsgesellschaft mbH

Stable URL: <https://www.jstor.org/stable/10.2307/26686700>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



Lexxion Verlagsgesellschaft mbH is collaborating with JSTOR to digitize, preserve and extend access to *European State Aid Law Quarterly*

JSTOR

Moreover, under EU Law the granting of State aid to firms active in the RES sector might be excused due to reasons concerning the protection of the environment as well as the financial viability of the relevant investments. Within this framework, the Directive 2009/28/U leaves it to the Member States' discretion to choose the suitable financial means that will guarantee the financial viability of RES in the national energy system. The financial means to support RES could include direct support of the investments, tax exemptions, green certificates or feed in tariff systems. Consequently, EU law itself accepts that RES development entails state intervention, both regulatory and financially. RES contribution in the protection of the environment could, therefore, legitimize advantageous state interventions to the extent that they are directly related to serving the above-mentioned purpose and they follow the proportionality principle.

The Greek feed in tariff system is structured in a way that the FIT rate does not derive from the state's budget. More specifically, when the difference between the system mar-

ginal price, reflecting the energy production cost, and the RES production cost is negative, thus constituting a deficit, this difference is being divided among the energy consumers and is paid through their electricity bill, where it appears as "RES special fee".

Therefore, it is highly questionable if a potential premium feed in tariff for the user of photovoltaic equipment produced in Greece could be considered as *a priori* incompatible State aid, or even as "State aid" according to Article 107 para. 1 TFEU in the first place, pursuant to the aforementioned case law.

Additionally, what also needs to be stressed is that the direct beneficiaries of the said premium would be the RES producers, whereas manufacturing companies producing in Greece will be the indirect beneficiaries. This means that no discrimination regarding the origins of RES producers is imposed. On the contrary, any RES producer implementing a photovoltaic park in Greece would be entitled to this premium, to the extent that he has used equipment manufactured in Greece.

Alternatively, also in case one would categorize the proposed measure as State aid, it is highly possible that a legal argumentation can be formulated establishing an exceptional compatibility of the proposed measure with EU State aid provisions due to the current crucial disorder and recession of the Greek economy.

More specifically, under Article 107 para. 3 b TFEU, the Commission can conclude that a State aid measure is compatible with the common market, if it aims to renounce a severe financial disorder of a Member State<sup>5</sup>.

Finally, it would be perhaps interesting to highlight the existence of other international examples of implementation of the so-called "local content requirement" in order to support the photovoltaic equipment production of particular origins, such as Italy and Ontario (Canada).

Currently, the Greek Government is in the process of evaluating all the relevant parameters of the proposed measures in order to define its policy.

*Christina Sarantidou, LL.M.*  
(Northwestern University,  
Chicago-IL), Law Firm  
Metaxas & Associates,  
Athens

5 Cases T-443/08 and T-455/08 of 24 March 2011.

---

## Malta

---

### *Commission approves Rescue Aid for Air Malta plc.*

The Maltese Authorities notified the European Commission in November 2010 of an emergency support for Air Malta plc., the national airline. Air Malta plc. is an independent limited liability

company established in 1974 and operates 12 passenger aircraft and currently serves 43 scheduled destinations in Europe, North Africa and the Eastern Mediterranean.

The financial situation of Air Malta plc. worsened in the past years reflecting mainly the fuel price increase and the economic crisis. Similar to the problems faced by other national carriers in Europe, Malta's national airline is facing major financial problems, also due to increased competition from low-cost airlines and lack of restructuring. This led the Maltese authorities

to notify to the European Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), their intention to grant rescue aid to Air Malta plc. This assistance, consisting of a short-term € 52 million State loan to tackle the liquidity problems faced by the company, was intended to prevent the collapse of Air Malta plc., which would have disrupted the economy of the small island.

The Commission noted that the Maltese economy relies heavily on tourism as this sector represents approximately 25 % of Malta's GDP and the share of tourists carried by Air Malta plc. presently exceeds 50 % of total passengers. Out of approximately 133 destinations served from the Malta International Airport, more than half are only operated by Air Malta plc. The airline which is considered a small carrier, operates its 12 aircrafts mainly to European destinations and carries well below 1 % of intra-EU air traffic of passengers. The Commission also noted that potential insolvency of the company would result in significant social issues in Malta to both those employed directly and indirectly by Air Malta plc., including suppliers and external services, as well as to the citizens.

The company employs 1,512 staff and should it collapse it could affect a further 2,672 workers employed in other sectors of the economy. Malta is in fact heavily reliant on the HORECA (hotel, restaurant and catering) sector and according to the EU Labour Force Survey, 8.6 % of the employed population (the highest for any EU-27 country) works in the HORECA sector, compared to 4.3 % for EU-27. Furthermore, tourism, business and

freight to the island, mainly driven by air travel, would also be seriously compromised as a significant proportion, make use of the services of Air Malta plc. The airline provides a strategic link that keeps the island connected with the rest of Europe and the Mediterranean. The importance of the legacy carrier however does not stop there. Air Malta plc. is also the principal carrier which transports patients for treatment abroad with the possibility of carrying incubators and also stretchers. It is also the principal mail carrier in and out of Malta and provides a vital role in servicing mail. Any interruption of the airlines activities would greatly affect trade and communications in general to Malta.

In line with the provisions of Article 107(1) of the TFEU the Commission concluded that the short term liquidity to be granted to Air Malta plc. by the Maltese authorities amounts to State aid. The Commission applied Article 107(3)(c) TFEU which provides that State 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".

The Guidelines on State aid for the rescue and restructuring of firms in difficulty was the applicable Union framework on the basis of which the compatibility of this assistance was assessed. The Commission can authorise a rescue aid as compatible with the internal market pursuant to Article 107(3)(c) TFEU if it complies with the criteria of the Guidelines which set out the rules as to the eligibility of the firm for the aid and the conditions for authorising rescue aid. Air Malta plc. was deemed a company in difficulty in line with para-

graph 9 of the Guidelines which state 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".

In November 2010 the Commission proceeded to authorize the short-term loan facility. It granted approval as the measure was deemed to meet the conditions set out the EU's guidelines on rescue and restructuring of companies in difficulty, and that the measure in question, which would allow the maintenance of the activity of Air Malta plc., was not prejudicial to the common interest. In particular it was noted that the aid would not only be limited in time and scope but also limited to what was needed to keep the company in business over the following six months.

The Commission approved the measure until it would take a position on the restructuring plan to be submitted by Malta as a follow up to the rescue aid package. Joaquín Almunia, Commission Vice-President in charge of competition policy stated that "The approval of the State support to Air Malta plc. is only temporary to avoid a sudden disappearance of the airline which would lead to serious disturbances in the Maltese economy," and added that he had also taken into account "the very limited impact the measure will have on other Member States".

The Maltese authorities have committed to submit a restructuring plan within six months guaranteeing future viability of the services currently provided by Air Malta

plc., an obligation which was met on 16 May 2011. The Maltese authorities believe that Air Malta needs to adapt to a new market scenario and that it can only survive if the restructuring plan prepared is bold enough to overhaul the airline. It is believed that tough and painful action is needed if the airline is to be saved including a substantial decrease in the work force. A review of the company's operations and contracts, its management structure and staffing levels is necessary to ensure that the airline would remain competitive in future. It has been acknowledged by all involved that important and difficult decisions had to be taken about Air Malta plc. While Government has publicly declared that it would remain sensitive to the realities of the employees and their fam-

ilies, it is a reality that the airline's workforce and business model must reflect the airline's needs in the context of unprecedented competition. Government has committed itself to provide decisions that would have the least social impact

The Maltese authorities were originally expecting that a final decision on the proposed restructuring plan that would include the repayment of the rescue loan would be issued by the Commission by the end of 2011. It is not however envisaged that such decision is issued before the end of March 2012. Two important factors have delayed the process, the first being the need to make clarifications and changes to the originally submitted plan which involved the gathering of new data; and second-

ly the Commission decided to publish its preliminary assessment and invite comments from all interested parties.

Parallel to the discussions at EU level, Air Malta plc. has embarked on an implementation plan that would see it restructuring its operations and spearhead a substantial number of projects covering areas that span from cargo, finance, corporate and financial restructuring, contracts management, ground handling, human resources, information technology and revenue enhancement. A much awaited final decision on the proposed restructuring plan to see Malta's national carrier get back on the right financial track and secure its long-term future now rests with the European Commission.

*Yana Haber*

---

## EFTA States and EFTA Community: Norway

---

### *The legality of preferential tax regimes for cooperatives*

EFTA Surveillance Authority Decision of 23 July 2009 on the notified scheme concerning tax benefits for certain cooperatives (Norway)<sup>1</sup>

#### I. Introduction

In June 2007 the Norwegian authorities notified an amendment to the rules on taxation of cooperative companies to the EFTA Surveillance Authority (hereinafter re-

ferred to as "the Authority").<sup>2</sup> The proposed measure was to a large extent a reintroduction of a scheme running from 1992 until 2005. The aim of the notified scheme was to grant fiscal advantages to certain cooperatives within the agricultural, forestry and fisheries sectors as well as consumer cooperatives and cooperative building societies by entitling them to tax deductions on the basis of allocations to equity capital.

There are approximately 4000 cooperatives in Norway with more than 2 million members altogether. They operate within a wide range of sectors, including agriculture, fisheries, housing, insurance, transport, energy supply, health care, media etc. The cooperatives are important market players in various markets in Norway. For instance, the agricultural cooperatives are owners of some of the most well-known brands in the sector, the cooperative sales organisations within the fisheries sector have exclusive right to take care of all first-hand marketing of fish and shellfish, except farmed fish and the consumer cooperative Coop is a grocery chain with a market share of 24 %.

In Section 1.1 of the Commission Communication on the promotion of cooperative societies in

1 OJ L 158 of 16 June 2011, p. 39.

2 The Authority monitors compliance with European Economic Area rules, i.a. State aid rules, in Iceland, Liechtenstein and Norway, enabling them to participate in the European internal market.