COMMUNICATION FROM THE COMMISSION

DRAFT

EU Guidelines on State aid to airports and airlines

(Text with EEA relevance)
1. **INTRODUCTION: STATE AID POLICY IN THE AVIATION SECTOR**

1. Linking people and regions, air transport plays a vital role in the integration and the competitiveness of Europe, as well as its interaction with the world. Air transport contributes significantly to the European economy, with more than 15 million annual commercial movements, 822 million passengers transported to and from European airports in 2011, 150 scheduled airlines, a network of over 460 airports, and 60 air navigation service providers. The European Union ("EU") profits from its position as a global aviation hub, with airlines and airports alone contributing more than €140 billion to the EU's Gross Domestic Product each year. The aviation sector employs some 2.3 million people in the EU.

2. The Europe 2020 Strategy ("EU 2020") underlines the importance of transport infrastructure as part of the EU's sustainable growth strategy for the coming decade. In particular, the Commission has emphasised in its White Paper "Roadmap to a Single Transport Area" that the internalisation of externalities, the elimination of unjustified subsidies as well as free and undistorted competition are an essential part of the effort to align market choices with sustainability needs.

3. The gradual completion of the Internal Market has led to the removal of all commercial restrictions for airlines flying within the EU, such as restrictions on routes, number of flights or the setting of fares. Since the liberalisation of air transport in 1997, the industry has expanded as never before, and this has contributed to economic growth and job creation. This has also paved the way for the emergence of low-cost carriers ("LCC"), operating a new business model based on quick turn-around times and very efficient fleet use. This development has generated a tremendous increase in traffic, with LCC traffic growing at a fast pace since 2005. In 2011 for the first time, low-cost airlines (42.4%) exceeded the market share of incumbent air carriers (42.2%). The trend continues in 2012 (44.8% for low-cost and 42.4% for incumbent).

4. While still predominantly publicly owned and managed, airports across the EU are currently witnessing growing involvement of private undertakings. New markets have been created in the last decade through partial privatisation of certain airports, as well as through competition for the management of publicly owned airports, including regional airports.

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5. According to Airport Council International Europe, 77% of airports were fully publicly owned in 2010, while 9% were fully privately owned, see Airport Council International Europe: The Ownership of Europe's Airports 2010.
6. See Annex I for exact definitions of terms used in the present guidelines.
5. Smaller airports display the greatest proportion of public ownership and most often rely on public support to finance their operations. Indeed, the profitability prospects of commercial airports remain highly dependent on the level of throughput, with airports that have fewer than 1 million passengers per annum typically struggling to cover their operating costs. Consequently, the vast majority of regional airports are subsidised by public authorities on a regular basis.

6. Certain regions are still hampered by poor accessibility from the rest of the EU, and major hubs are facing increasing levels of congestion. Nevertheless, the density of regional airports in certain regions of the EU has led to substantial overcapacity of airport infrastructure relative to passenger demand and airline needs.

7. The pricing system in most European airports has traditionally been designed as a publicly available scheme of airport charges based on passenger numbers and aircraft weight. However, the evolution of the market and the intrinsic symbiosis between airports and airlines have gradually paved the way for a wide variety of commercial practices, including long-term contracts with differentiated tariffs and sometimes substantial amounts of incentives and marketing support paid by airports and/or local authorities to airlines. In particular, public funds earmarked for supporting airport operations may be channelled to airlines in order to attract more commercial traffic, thereby distorting air transport markets.

8. In its Communication on State Aid Modernisation (SAM), the Commission points out that State aid policy should focus on facilitating well-designed aid targeted at market failures and objectives of common European interest, and avoiding waste of public resources. State aid measures can indeed, under certain conditions, correct market failures, thereby contributing to the efficient functioning of markets and enhancing competitiveness. Furthermore, where markets provide efficient outcomes but these are deemed unsatisfactory from a cohesion policy point of view, State aid may be used to obtain a more desirable, equitable market outcome. However, State aid may have negative effects, such as distort competition between undertakings and affect trade between Member States to an extent contrary to EU interest. State aid control in the airport and air transport sectors should therefore promote sound use of

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7. This is exemplified by the fact that, although in 2010 their share of the overall number of airports amounted to 77%, publicly owned airports accounted for only 52% of total passenger traffic.

8. As evidenced in 2002 by the ‘Study on competition between airports and the application of State aid rules’ — Cranfield University, June 2002, and subsequently confirmed by industry reports.

9. As recalled in the 2011 Communication on Airport policy in the European Union, 13 EU airports are forecasted to be operating at full capacity eight hours a day every day of the year in 2030, compared to 2007 when only 5 airports were operating at or near capacity 10% of the time. See Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Airport policy in the European Union - addressing capacity and quality to promote growth, connectivity and sustainable mobility of 1 December 2011, COM(2011) 823.

10. As evidenced by the International Civil Aviation Organization's policies on charges for airports and navigations services (Document 9082), last revised in April 2012.

11. In particular where aid is determined on the basis of ex post calculations (making good for any deficits as they arise), airports may not have much incentive to contain costs and charge airport charges that are sufficient to cover costs.

public resources for growth-oriented policies, while limiting competition distortions that would undermine a level playing field in the internal market, in particular by avoiding duplication of unprofitable airports and creation of overcapacities.

9. The application of State aid rules to the airport and air transport sectors constitutes part of the Commission's efforts aimed at improving the competitiveness and growth potential of the EU airport and airline industries. A level-playing field among EU airlines and airports is of paramount importance for these objectives, as well as for the entire internal market. At the same time, regional airports can prove important both for local development and for the accessibility of certain regions, in particular against the backdrop of positive traffic forecasts for EU air transport.

10. As part of the general plan to create a single European airspace and taking account of market developments, in 2005 the Commission adopted Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (the "2005 Aviation guidelines"). These guidelines specified the conditions under which certain categories of State aid to airports and airlines could be declared compatible. They supplemented earlier Aviation guidelines of 1994, which mainly contained provisions with regard to the restructuring of flag carriers and social aid for the benefit of European citizens.

11. In 2011, the Commission launched a public consultation on the application of these guidelines aiming in particular to determine whether a revision would be necessary in view of recent market developments. Three main conclusions can be drawn from this public consultation:
   - It is widely considered necessary to revisit the existing guidelines in view of the development of the markets. Stakeholders emphasise the need for more clarity and active enforcement of the applicable rules.
   - There is also a clear desire for more transparent and predictable rules for the financing of airports. Stakeholders consider that most regional airports cannot be profitable and should benefit from special State aid rules.
   - Stakeholders are seeking more guidance on the application of State aid rules to rebates or other advantages granted by regional airports to certain airlines and consider that rules concerning start-up aid should be simplified.

12. These new guidelines take stock of the new legal and economic situation concerning the public financing of airports and airlines and specify the conditions under which such public financing may constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"), and when it does constitute State aid, the conditions under which it can be declared compatible with the internal market. The Commission's assessment is based on its experience and decision-making practice, as well as on its analysis of current market conditions in the airport and air transport sectors; it is therefore without prejudice to its approach in respect of other infrastructures or sectors. In particular, the Commission considers

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13 See e.g. the aforementioned 2011 Communication on Airport policy in the European Union.
that the mere fact that an airport operator receives or has received State aid does not automatically imply that its customer airlines are also aid beneficiaries. If the conditions offered to an airline at a given airport would have been offered by a profit-driven airport operator whose incentives are not distorted by public support, i.e. if the airport manager's profitability is thus incrementally increased, the airline cannot be deemed to receive an advantage within the meaning of State aid rules.

13. When public support constitutes State aid, the Commission considers that under certain conditions, certain categories of aid to regional airports and airlines using these airports can be justified in particular to develop new services and contribute to local accessibility and economic development. Nevertheless, distortions of competition on all markets concerned should be taken into consideration and only State aid which is necessary to contribute to an objective of common interest can be acceptable.

14. In this context, it should be underlined that operating aid constitutes in principle a very distortive form of aid and can only be authorised under exceptional circumstances. The Commission considers that airports and airlines should normally bear their operating costs. Nevertheless, the gradual shift to a new market reality, as described in points 3 to 7 above, can justify the fact of regional airport managers having been given widespread operating support by public authorities prior to the adoption of these guidelines. Against this backdrop, also for a transitional period, and to enable the aviation industry to adapt to the new market situation, certain categories of operating aid to airports and airlines might still be justified under certain conditions. As explained in point 5 above, available data and industry consensus point to a link between an airport's financial situation and its traffic levels, with financing needs normally being greater for smaller airports. In light of their contribution to economic development and territorial cohesion in the EU, managers of smaller regional airports should therefore be given time to adjust, e.g. by gradually increasing airport charges to airlines, by introducing rationalisation measures, by differentiating their business models or by attracting new airlines and customers to fill their idle capacity.

15. At the end of this transitional period, airports should not be granted operating aid any longer and they should finance their operations from their own resources. Development of new air traffic should, in principle, be based on a sound business case. Whilst the provision of compensation for uncovered operating costs of services of general economic interest (SGEI) would remain possible for small airports to allow for connectivity of all regions, against the background of the new rules, financial markets should allow coverage of operating losses as in any other industry.

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16 See section 3.5 of these Guidelines.
17 ‘Operating costs’ of an airport means the underlying costs of the provision of airport services. These include cost categories such as cost of personnel, contracted services, communications, waste, energy, maintenance, rent, administration, etc., but exclude, for the purpose of these guidelines, the capital costs, marketing support or any other incentive granted to airlines by the airport manager, and costs falling within a public policy remit. Marketing support or any other incentive granted to airlines by the airport manager shall be taken into account, when calculating the revenue of the airport manager by subtracting them from the revenue generated by airport charges.
Under strict conditions, airlines can be granted start-up aid during and after the transitional period.

16. The allocation of airport capacity to airlines should therefore gradually become more efficient (i.e. demand-oriented), and there should be less need for public funding of airports as private investment becomes more widespread. If a genuine transport need and positive externalities for a region can be established, investment aid to airports should nevertheless continue to be accepted after the transitional period, with maximum aid intensities ensuring a level-playing field across the EU.

17. Against this backdrop the present Aviation guidelines introduce a new approach to the assessment of compatibility of aid to airports and airlines:

(a) Whereas the 2005 Aviation guidelines left open the issue of investment aid, these revised guidelines define maximum permissible aid intensities depending on the size of the airport. However, for large airports with a passenger volume of over 5 million per annum, investment aid should not be declared compatible with the internal market.

(b) For a transitional period of 10 years, operating aid to regional airports can be declared compatible.

(c) The compatibility conditions for start-up aid to airlines have been streamlined and adapted to recent market developments.

18. The Commission proposes a balanced approach which is neutral vis-à-vis the various business models of airports and airlines, and takes into account the growth prospects of air traffic, the need for regional development and accessibility and the positive contribution of the LCC model to the development of some regional airports. But at the same time, a gradual move towards a market-oriented approach is undoubtedly warranted; except in duly justified and limited cases, airports should be able to cover their operating costs and public investment should be used to finance the construction of viable airports; distortions of competition between airports and between airlines, as well as duplication of non-viable airports should be avoided. This balanced approach should be transparent, easily understood and straightforward to apply.

2. SCOPE OF APPLICATION

19. These guidelines apply to State aid to airports and airlines. They will be applied in accordance with other EU policies on State aid, other provisions of the TFEU and legislation adopted pursuant to the TFEU.

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18 These Guidelines do not apply to aid for the provision of ground handling services regardless whether they are provided by the airport itself, by an airline or by a supplier of ground handling services to third parties; such aid will be assessed on the basis of the relevant general rules. Pursuant to Directive 96/67/EC, or any subsequent legislation, airports that carry out ground handling are required to keep separate accounts of its ground handling activities from its other activities. Moreover, an airport may not subsidise its ground handling activities from the revenue it derives from its role as an airport manager. These guidelines do not also apply to undertakings which, though active on an airport, are engage in non-aeronautical activities.
20. Some airports and airlines are specialised in freight transport. The Commission does not yet have sufficient experience in assessing the compatibility of aid to airports and airlines specialising in freight transport to summarise its practice in the form of specific compatibility criteria. For these categories of undertakings, the Commission will apply the common principles of compatibility as set out in section 5 of the present guidelines through a case-by-case analysis.

21. Unlike other EU legislation and guidelines, the Guidelines on national regional aid for 2007–2013 or any future guidelines on regional aid are not to be applicable to State aid granted to airport infrastructure.

22. These guidelines repeal the 1994 and 2005 Aviation guidelines.

3. PRESENCE OF STATE AID WITHIN THE MEANING OF ARTICLE 107(1) OF THE TFEU

3.1. Notion of undertaking and economic activity

23. According to Article 107(1) of the TFEU, State aid rules apply only where the recipient is an ‘undertaking’. The Court of Justice of the European Union ("the Court") has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status or ownership and the way in which they are financed. Any activity consisting in offering goods and services on a market is an economic activity. The economic nature of an activity as such does not depend on whether the activity generates profits.

24. Across the EU, the activity of airlines which consists in providing transport services to passengers and/or undertakings constitutes an economic activity. In its "Aéroports de Paris" judgment, the Court ruled that also the operation of an airport consisting in the provision of airport services to airlines and to the various service providers constitutes an economic activity. In its "Leipzig-Halle airport" judgment, the General Court confirmed that the operation of an airport is an economic activity, of which the construction of airport infrastructure is an inseparable part.

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25. As far as past financing measures are concerned, the gradual development of market forces in the airport sector\(^{26}\) does not allow for a precise date to be determined, from which the operation of an airport should have been undoubtedly considered as an economic activity. However, the case law of the General Court has reflected the changing nature of airport operations. In its "Leipzig/Halle airport" judgment, the General Court held that as of 2000 the application of State aid rules to the financing of airport infrastructure could no longer be excluded.\(^{27}\) Consequently, as of the date of the "Aéroports de Paris" judgment (12 December 2000), it has not been possible to consider the operation and construction of airport infrastructure as a task falling outside the ambit of State aid control.

26. Conversely, before the "Aéroports de Paris" judgment, public authorities could legitimately consider that the financing of airport infrastructure did not constitute State aid, and accordingly such measures did not need to be notified to the Commission. It follows that the Commission cannot now bring into question on the basis of State aid rules such financing measures granted\(^{28}\) before the "Aéroports de Paris" judgment.\(^{29}\)

27. Nevertheless, measures that were granted before any competition developed in the airport sector, did not constitute State aid when adopted, but could be considered as existing aid pursuant to Article 1 (b) (v) of Regulation 659/1999\(^{30}\) if the conditions of Article 107(1) of the TFEU are met.

28. The entity or group of entities performing the economic activity of providing airport services to airlines, i.e. to ensure the handling of aircrafts, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services,\(^{31}\) will be referred to as the "airport manager".\(^{32}\) An airport manager provides a range of services ("airport services") to airlines, in exchange for payment ("airport charges"\(^{33}\)). While the exact extent of the services provided by airport managers, as well as the labelling of charges as "fees" or "taxes" varies across the EU, the provision of airport services to airlines in exchange for airport charges constitutes an economic activity.

29. The legal and regulatory framework within which individual airports are owned and operated varies from airport to airport across the EU. In particular, regional airports

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\(^{26}\) See point 3 above, and above-mentioned "Leipzig-Halle airport" judgment, paragraph 105.

\(^{27}\) See above-mentioned "Leipzig-Halle airport" judgment, paragraph 106.

\(^{28}\) The relevant criterion for the date at which a possible aid measure is deemed to have been granted is the date of the legally binding act by which public authorities undertake to award the measure at stake to its beneficiary. See Case T-358/94 Compagnie Nationale Air France [1996] ECR II-2109, paragraph 79, Case T-109/01, Fleuren Compost BV [2004] ECR II-127, paragraph 74 and Joined Cases T-362/05 and T-363/05 Nuova Agricast v Commission [2008] ECR II-297 paragraph 80, and Joined Cases T-427/04 and T-17/05, France and France Télécom v Commission, judgment [2009] ECR II-4315 paragraph 321.

\(^{29}\) Decision C 38/2008 of 3.10.2012 on Munich airport Terminal 2, not yet published in OJ, paragraphs 74 to 81.


\(^{32}\) The airport manager may or may not be the same entity that owns the airport.

\(^{33}\) See definition of the term "airport charge" in the Annex 1 of these Guidelines.
are often managed in close cooperation with public authorities. In this respect, the Court has ruled that several entities can be deemed to perform together an economic activity, thereby constituting an economic unit, under specific conditions. In the field of aviation, the Commission considers that significant involvement in an airport's commercial strategy, such as through the direct conclusion of agreements with airlines or the setting of airport charges, would constitute a strong indication that the relevant entity indeed performs, alone or jointly, the economic activity of operating the airport.

Apart from the airport services described above, an airport manager may also provide other commercial services to airlines or other users of the airport, such as ancillary services to passengers, freight forwarders or other service providers (e.g. through the rental of premises to shop and restaurant managers, parking operators, etc.). These economic activities will be collectively referred to as "non-aeronautical activities".

However, not all the activities of an airport manager are necessarily of an economic nature. Since the classification of an entity as an undertaking is always relative to a specific activity, it is necessary to distinguish between the activities of a given airport manager and to establish to what extent these activities are of an economic nature. If an airport manager carries out both economic and non-economic activities, it is to be regarded as an undertaking only with regard to the former.

The Court has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. At an airport, activities such as air traffic control, police, customs and activities necessary to safeguard civil aviation against acts of unlawful interference are considered to be of a non-economic nature.

The public funding of such non-economic activities does not constitute State aid, but should be strictly limited to compensation of the costs to which they give rise and may not be used instead to finance other activities. Any possible overcompensation by public authorities of costs incurred in relation to non-economic activities may constitute State aid. Moreover, if an airport manager is, alongside its economic activities, engaged in non-economic activities, separated cost accounting is required.

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36 Case T-455/08 "Leipzig-Halle airport", paragraph 98.

37 Case C-118/85 Commission v Italy, paragraphs 7 and 8, and Case C-30/87 Bodson/Pompes funèbres des régions libérées [1988] ECR I-2479, paragraph 18.


in order to avoid any transfer of public funds between the non-economic and economic activities.

34. Public financing of non-economic activities must not lead to undue discrimination between airlines and airport managers. Indeed, it is established case law that there is an advantage when public authorities relieve undertakings of the costs inherent to their economic activities. Therefore, if certain airlines or airport managers do not have to bear the costs of certain services, whereas other airlines or airport managers providing the same services on behalf of the same public authorities have to bear those costs, the former might be granted an advantage even if the provision of those services is considered non-economic.

3.2. Use of State resources and imputability to the State

35. The transfer of State resources may take many forms such as direct grants, tax rebates, soft loans or other types of preferential financing conditions. State resources will also be involved if the State provides a benefit in kind or in the form of subsidized services, such as airport services. State resources can be used at national, regional or local level. Funding from European funds will likewise constitute State resources, when these funds are allocated at a Member State's discretion.

36. The Court has also ruled that even if the State is in a position to control a public undertaking and to exercise a dominant influence over its operations, actual exercise of that control in a particular case cannot be automatically presumed. It will therefore further need to be assessed whether measures granted by public undertakings are imputable to the State. The Court indicated that the imputability to the State of a measure taken by a public undertaking may be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken.

37. Against this background, the resources of a public airport manager constitute public resources. Consequently, a public airport manager can grant aid to an airline using the airport when the measure is imputable to the State and the other conditions of Article 107(1) of the TFEU are met. The Court has also ruled that whether a measure

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41 See Decision N 324/2006 of 24.10.2006 – Aide pour l'afîrètement d'un ATR 72-500 par la compagnie Air Caraïbes.
43 Resources of a public undertaking constitute State resources within the meaning of Article 107(1) TFEU because the public authorities control these resources. See Case C-482/99 France v Commission, [2002] ECR I-4397 ("Stardust Marine").
44 The Court has confirmed that once financial means remain constantly under public control and are therefore available to the competent national authorities, this is sufficient for them to be categorized as State aid, see Case C-83/98 P France v Ladbroke Racing Ltd and Commission [2000] ECR I-3271, paragraph 50.
45 See above-mentioned "Stardust Marine" judgment, paragraph 52.
46 Ibid., paragraphs 55 and 56.
is granted directly by the State or by public or private bodies established or appointed by it to administer the aid is irrelevant to its qualification as State aid. 47

3.3. Distortion of competition and effect on trade

38. According to the case law of the Court, financial support distorts competition in so far as it strengthens the position of an undertaking compared with other undertakings. 48

39. In general, when an advantage granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in a given European market, trade between Member States must be regarded as affected by that advantage. 49

40. Competition between airports and airport managers can be assessed in the light of airlines’ criteria of choice, and in particular by comparing factors such as the type of airport services provided and the clients concerned, population or economic activity, congestion, whether there is access by land, and also the level of charges and overall commercial conditions for use of airport infrastructure and services. The charge level is a key factor, since public funding granted to an airport manager could be used to maintain airport charges at an artificially low level in order to attract traffic and may thus significantly distort competition.

41. The Commission further notes that airport managers are in competition for the management of airport infrastructure, including at local and regional airports. The public funding of an airport manager may therefore distort competition in the markets for airport infrastructure operation. Moreover, public funding to both airport managers and to airlines can distort competition and have an effect on trade in air transport markets across the EU. Finally, intermodal competition may also be adversely affected by public funding to airport managers or airlines.

42. The Court held in the Altmark judgment 50 that even public funding granted to an undertaking which provides only local or regional transport services may have an effect on trade between Member States, as the supply of transport services by that undertaking may thereby be maintained or increased with the result that undertakings established in other Member States have less chance of providing their transport services. Even a small amount of aid or relatively small size of the undertaking which receives public funding does not as such exclude the possibility that trade between Member States might be affected. Consequently, the public financing of airports or airlines operating services from these airports might affect trade between Member States.

50 See aforementioned Altmark case-law, paragraphs 77 to 82.
3.4. Public funding of airports and the application of the Market Economy Operator Principle

43. Article 345 of the TFEU states that the Treaty in no way prejudices the rules in Member States governing the system of property ownership. Member States can accordingly own and manage undertakings, and can purchase shares or other interests in public or private undertakings.

44. Consequently, these guidelines make no distinction between the different types of beneficiaries in terms of their legal structure or whether they belong to the public or private sector, and all references to airlines and airports or the companies which manage them encompass all types of legal entity.

45. In order to assess whether an undertaking benefited from an economic advantage the so-called Market Economy Operator test ("MEO test") is applied. This assessment should be based on available information and foreseeable developments at the time when the public funding was granted and it should not rely on any analysis based on a later situation.51

46. Consequently, when an airport manager benefits from public funding, the Commission will assess whether such funding constitutes aid by considering whether in similar circumstances a private operator, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations,52 would have granted the same funding. Public funding granted in circumstances which correspond to normal market conditions is not regarded as State aid.53

47. The Court has also ruled that the conduct of a public investor may be compared with that of a private investor guided by prospects of profitability in the longer term,54 over the lifetime of the investment. These considerations are particularly pertinent to investment in infrastructure. Any profitability assessment of the airport manager shall take into account airport revenues as defined in Annex I.

48. Consequently, as regards public financing in airports, the analysis of conformity with the MEO test should be based on sound ex ante profitability prospects for the entity granting the financing.55 The absence of a business plan constitutes an indication that the MEO test might not be met. In the absence of a business plan, Member States can provide analysis or internal documents from the public authorities or from the airport concerned showing clearly that an analysis conducted before the granting of the public financing demonstrates that the MEO test is met.

51 "Stardust Marine" judgment, paragraph 71.
52 Cases T-129/95, T-2/96 and T-97/96 Neue Maxhütte stahlwerke and Lech Stahlwerke v Commission [1999], ECR II-17, paragraph 120. See also case C-40/85, Kingdom of Belgium v Commission, [1986], ECR 02321, paragraph 13.
49. Airports can play a role in fostering local development or accessibility. Nevertheless, regional or policy considerations cannot be taken into account when assessing the MEO test. Such considerations can however, under certain conditions, be taken into account when assessing the compatibility of aid.

3.5. **Financial relationships between airports and airlines**

50. When an airport manager has public resources at its disposal, aid to an airline using the airport can in principle be excluded when the relationship between the airport manager and that airline complies with the MEO test. This is normally the case if:

(1) the price charged for the airport services corresponds to the market price (see section 3.5.1), or

(2) the price charged for the airport services is shown, through an *ex ante* analysis, to lead to a reasonable return on capital for the airport manager (see section 3.5.2).

3.5.1. **Comparison with the market price**

51. A possible approach to the assessment of the presence of aid to airlines involves establishing whether the price charged by an airport manager to a particular airline corresponds to the market price. On the basis of available and relevant market prices, an appropriate benchmark can be identified, taking into account the elements set out below.

52. The identification of a benchmark requires first that comparable airports providing comparable services under normal market conditions be selected.

53. In this respect the Commission notes that for the moment, a large majority of EU airports are benefiting from public funding to cover investment and operating costs. Most of these airports can only remain on the market with public support.

54. Publicly owned airports have been traditionally considered by public authorities as infrastructures for facilitating local development and not as undertakings operating in accordance with market rules. These airports' prices consequently tend not to be determined with regard to market considerations and in particular sound *ex ante* profitability prospects, but essentially having regard to social or regional considerations.

55. Even if some airports are privately owned or managed without social or regional considerations, the prices charged by these airports might be strongly influenced by the prices charged by the majority of publicly subsidised airport managers as these latter prices are taken into account by airlines during their negotiations with the privately owned or managed airports.

56. In these circumstances, the Commission has strong doubts that at the present time, an appropriate benchmark can be identified to establish a true market price for services provided by airport managers. This situation can change or evolve in the future, in particular with full application of State aid rules to public financing of airports.

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56 Cases T-129/95, T-2/96 and T-97/96 Neue Maxhütte stahlwerke and Lech Stahlwerke v Commission [1999], ECR II-17, paragraph 120. See also case C-40/85, Kingdom of Belgium v Commission, [1986], ECR 02321, paragraph 13.
57. In any event, the Commission considers that a benchmarking exercise should be based on a comparison of airport charges across a suitable number of "comparator airports", whose managers behave as market economy operators. In particular, the following indicators should be used:

(a) Traffic volume;
(b) Type of traffic (business or leisure or outbound destination) and relative importance of freight;
(c) Proximity of the airport to a large city;
(d) Number of inhabitants in the catchment area of the airport;
(e) Prosperity of the surrounding area (GDP per capita);
(f) Different geographical areas for which passengers could be attracted.

3.5.2. Ex ante profitability analysis

58. As, at the present time and during the whole transitional period, an appropriate benchmark cannot easily be identified to establish a true market price for services provided by airport managers, the Commission considers ex ante profitability prospects to be the most relevant criterion for the assessment of measures granted by airport managers to individual airlines.

59. In this respect, the Commission considers that price differentiation is a standard business practice, as long as it complies with all other relevant competition and sectoral legislation. Nevertheless, such differentiated pricing policies should be commercially justified to satisfy the MEO test. In order to assess whether a measure granted by an airport manager to an airline complies with the MEO test, non-aeronautical revenues stemming from the airline's activity should be taken into consideration together with airport charges. Similarly, all costs incurred by the airport manager in relation to the airline’s activity at the airport should be taken into account. Such incremental costs should encompass all categories of expenses or investments, such as incremental personnel and equipment costs, as well as, depending on the circumstances of the measure, rebates, marketing support or incentive schemes.

60. The Commission considers that measures granted to airlines by an airport manager can be deemed in line with the MEO test when they incrementally contribute, from an ex ante standpoint, to the profitability of the airport manager. The airport manager should demonstrate that it is capable of covering costs stemming from the

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57 Relevant provisions include Articles 101 and 102 of the TFEU, as well as the above-mentioned Directive No 2009/12 on airport charges or any subsequent legislation.
59 Non-aeronautical revenues are notably parking fees, shop rental fees, etc. See point 30 above.
60 "Charleroi" judgment, paragraph 59.
61 Any public support designed to offset part of the normal costs incurred by the airport manager in relation to the measure at stake will likewise be taken into account. This is irrespective of whether such support is directly granted to the airline concerned, or channelled through the airport manager or another entity (see point 37 above).
arrangement with an airline (e.g. an individual contract or an overall scheme of airport charges) with a reasonable profit margin on the basis of sound medium-term prospects when setting up the arrangement. On the contrary, costs which the airport manager would have to incur anyway independently from the arrangement with the airline do not need to be taken into account in the MEOP assessment.

4. **PUBLIC FUNDING OF SERVICES OF GENERAL ECONOMIC INTEREST**

   61. In some cases, public authorities may define certain economic activities carried out by airport managers or airlines as services of general economic interest ("SGEI") within the meaning of Article 106(2) of the TFEU and the Altmark case-law, and provide compensation for discharging such services. In such cases, the Commission Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest and the Commission Regulation of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest provide guidance on the conditions under which the public financing of an SGEI constitutes State aid within the meaning of Article 107(1) of the TFEU. Aid in the form of public service compensation will be assessed under the Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation to certain undertakings entrusted with the operation of services of general economic interest and the Commission Communication on a European Union framework for State aid in the form of public service compensation (2011). These Commission documents (referred to as the ‘SGEI package’) also apply to compensation granted to airport managers and airlines. What follows will only illustrate the application of some of the principles set out in the SGEI package in light of certain sectoral specificities.

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62 A reasonable profit margin is a ‘normal’ rate of return on capital, i.e. a rate of return that would be required by a typical company for an investment of similar risk. The return is measured as an Internal Rate of Return ("IRR") over the envisaged cash flows induced by the measure or agreement with the airline.

63 This does not preclude foreseeing that future benefits may offset initial losses.

64 See op. cit. case C-280/00, paragraphs 86 to 93. Public funding for the provision of an SGEI does not entail a selective advantage within the meaning of Article 107(1) of the TFEU if the following four conditions are met: (a) the beneficiary of a State funding mechanism for an SGEI must be formally entrusted with the provision and discharge of an SGEI, the obligations of which must be clearly defined (b) the parameters for calculating the compensation must be established beforehand in an objective and transparent manner; (c) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the SGEI, taking into account the relevant receipts and a reasonable profit for discharging those obligations and (d) where the beneficiary is not chosen pursuant to a public procurement procedure, that allows for the provision of the service at the least cost to the community, the level of compensation granted must be determined on the basis of an analysis of the costs which a typical undertaking, well run, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit.

65 OJ C 8, 11.01.2012, p. 4-14, referred to as the "SGEI Communication".


67 OJ L7, 11.1.2012, p.3-10, referred to as the "SGEI decision".

68 OJ C8, 11.1.2012, p.15 -22, referred to the "SGEI framework".
4.1. **Definition of a Service of General Economic Interest in the airport and air transport sectors**

62. The first *Altmark* criterion requires a clear definition of an SGEI task. This requirement coincides with that of Article 106(2) of the TFEU. According to case law, undertakings entrusted with the operation of an SGEI must have received that task by an act of a public authority. The Commission has also clarified that, for an activity to be considered as an SGEI, it should exhibit special characteristics as compared with ordinary economic activities, and that the general interest objective pursued by public authorities cannot simply be that of development of certain economic activities or economic areas provided for in Article 107(3)(c) of the TFEU.

63. As regards air transport services, public service obligations can only be granted according to the conditions of Regulation (EC) No 1008/2008. In particular, it should be noted that such obligations can only be imposed on a specific route or group of routes, and not on any generic route originating from a given airport, city or region. Moreover, public service obligations can only be imposed on a route to fulfil transport needs which cannot be adequately met by an existing air route or by other means of transport.

64. In this respect, it should be stressed that compliance with the substantive and procedural requirements of Regulation No 1008/2008 does not take away the need for the Member State(s) concerned to assess compliance with Article 107(1) of the TFEU.

65. As far as airports are concerned, the Commission considers that it is possible for the overall management of an airport, in well-justified cases, to be considered an SGEI. In light of the principles outlined in point 62 above, the Commission considers that this can only be the case if part of the area potentially served by the airport would be, without the airport, isolated from the rest of the EU to an extent that would prejudge its social and economic development. Such an assessment should take due account of other modes of transport, and in particular of high-speed rail services or maritime links served by ferries. In such cases, public authorities may impose as a public

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69 Case T-289/03 British United Provident Association Ltd (BUPA) v Commission [2008], ECR II-81, paragraphs 171 and 224.


71 See SGEI Communication, paragraph 45.

72 See decision N 381/04 —France, Projet de réseau de télécommunications haut débit des Pyrénées-Atlantiques, paragraph 53, and Commission Decision N 382/04 — France, Mise en place d'une infrastructure haut débit sur le territoire de la région Limousin (DORSAL).


74 Both origin and destination airports must be clearly identified see Article 16(1) of Regulation No 1008/2008.

75 In particular, the Commission considers that it would be difficult to justify PSOs on a route to a given airport if there are already adequate services to another airport serving the same catchment area. See Annex I for a definition of the term „catchment area“.
The Commission notes, in particular, that certain airports have an important role to play in terms of regional connectivity of isolated, remote or peripheral regions of the EU. Such a situation may in particular occur in respect of the outermost regions referred to in Article 349 of the TFEU, as well as for islands or other areas of the EU. Subject to a case-by-case assessment and depending on the particular characteristics of each airport and of the region which it serves, it may be particularly justified to define SGEI in these airports.

66. In light of the specific requirements attached to public service obligations for air transport services, and in view of the complete liberalisation of air transport markets, the Commission considers that the scope of public service obligations imposed on airport managers should not encompass the development of commercial air transport services. In particular, public service compensation granted to an airport manager for the costs incurred in discharging an SGEI should not alter its incentives to enter into commercial relationships with airlines.

4.2. Compatibility of aid in the form of public service compensation

67. If one of the cumulative criteria of the Altmark judgment is not fulfilled, public service compensation provides an economic advantage to its beneficiary, and might constitute State aid within the meaning of Article 107(1) of the TFEU. Such State aid in the form of public service compensation granted to undertakings entrusted with the operation of SGEI (in accordance with points 63 to 66 above) may be regarded as compatible with the internal market, if the compatibility criteria developed for the application of Article 106(2) TFEU are met.

68. State aid in form of public service compensation is exempted from the notification obligation provided for in Article 108(3) of the TFEU if the requirements set out in the SGEI decision are met. The scope of the SGEI Decision covers public service compensation granted to:

(1) Airport managers as regards airports where the average annual traffic does not exceed 200 000 passengers over the duration of the SGEI entrustment, and

(2) Airlines as regards air links to islands where the average annual traffic does not exceed 300 000 passengers.

69. State aid not covered by the SGEI Decision can be declared compatible under Article 106(2) TFEU, if the conditions of the SGEI Framework are met. However, it should be noted that for assessment under both the SGEI Decision and Framework, the above considerations on the definition of public service obligations imposed on airport managers or airlines (see points 63 to 66 above) will apply, in line with the existing rules.

76 See point 64 above and Regulation 1008/2008, recital 12 and articles 16 to 18.
77 This threshold refers to a one-way count, i.e. a passenger flying from the airport and back to the airport would be counted twice.
78 This threshold refers to a one-way count, i.e. a passenger flying to the island and back would be counted twice. It applies to individual routes between an airport on the island and an airport on the mainland.
5. **Compatibility of Aid under Article 107(3)(c) of the TFEU**

70. If public funding granted to airports and/or airlines constitutes aid, this aid can be considered compatible with the internal market within the meaning of Article 107(3)(c) of the TFEU provided that it complies with the compatibility criteria for airports mentioned in section 5.1 and airlines mentioned in section 5.2. State Aid measures granted to airlines which incrementally decrease the profitability of the airport manager (see point 61 above) shall be deemed incompatible with the internal market, unless the compatibility conditions for start-up aid are met.

71. In making the assessment under Article 107(3)(c) of the TFEU, the Commission ensures that the positive impact of the aid measure in reaching an objective of common interest outweighs its potential negative side effects, such as distortions of trade and competition. This exercise is conducted in two steps.

72. First, every aid measure has to comply with seven necessary conditions. Failure to comply with any one of the following conditions will result in the aid being declared incompatible with the internal market:

    (1) Contribution to a well-defined objective of common interest and the absence of market delivery of that objective
    (2) Appropriateness of State Aid as a policy instrument
    (3) Existence of incentive effect
    (4) Proportionality/Aid limited to the minimum necessary
    (5) Avoidance of undue negative effects
    (6) Transparency as described in section 8.2.

73. Second, if all necessary conditions are met, the Commission normally balances the positive effects of the aid measure in reaching an objective of common interest against the potential negative effects.

74. As regards the aviation market, the Commission considers that the expected positive effects of aid outweigh its potential negative effects if all the conditions as outlined in sections 5.1 and 5.2 are met cumulatively. Therefore, compliance with these conditions implies compatibility of the aid under Article 107(3)(c) of the TFEU.

75. Wherever possible, Member States are encouraged to design national schemes that reflect the main principles underlying public financing and to indicate the most relevant features of the planned public funding of airports. Framework schemes ensure coherence in the use of public funds, reduce administrative burden on smaller granting authorities and accelerate the implementation of individual aid measures. Further, Member States are encouraged to give clear guidance for the implementation of State Aid financing for regional airports and airlines using these airports.

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79 In this context and in section 5 the term ‘airport’ is used for an ‘airport manager’ and/or an ‘airport owner’ or the ‘airport infrastructure’ respectively. Airport manager and airport owner must not be necessarily the same entity.
5.1. Aid to airports

5.1.1. Investment aid to airports

76. Investment aid granted to airports either as individual aid or as aid under an aid scheme shall be considered compatible with the internal market within the meaning of Article 107(3)(c) of the TFEU provided that the following cumulative requirements are met:

(a) Contribution to a well-defined objective of common interest and the absence of market delivery of that objective;

77. Investment aid to airports shall be considered to contribute to the achievement of an objective of common interest, if it:

(1) increases the mobility of European citizens by establishing access points for intra-European flights; or

(2) combats air traffic congestion at major European hub airports; or

(3) facilitates regional development.

78. In order to assess whether State Aid is effective in achieving an objective of common interest, it is necessary to have first a diagnosis of the problem to be addressed. State Aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver.

79. The conditions that smaller airports face when developing their services and in attracting private financing of their infrastructure investments are often less favourable than those faced by the major European airports. Also, airlines are not always prepared, without appropriate incentives, to run the risk of opening new routes from unknown and untested airports. For these reasons, under present market conditions, smaller airports may have difficulties in ensuring the financing of their investments and operations without public funding.

80. The need for public funding of new infrastructure or replacement and maintenance of existing infrastructure will, due to high fixed costs, vary according to the size of an airport and will normally be greater for smaller airports. The Commission considers that, under current market conditions, the following categories of airports, and their relative financial viabilities, can be identified:

(1) Airports with up to 200 000 passengers per annum might not be able to cover to a large extent their capital costs and their operating costs;

(2) Airports with annual passenger traffic of between 200 000 and 1 million are usually not able to cover to a large extent their capital costs, but should in general be able to cover partially their operating costs;

80 Between 70% and 90% of the airport’s costs are fixed.
81 The categories of airports for the purposes of these guidelines are based on the available industry data.
(3) Airports with annual passenger traffic of 1-3 million should, on average, be able to cover the majority of their operating costs, and to cover partially their capital costs;

(4) Airports with annual passenger traffic of 3-5 million should, in principle, be able to cover to a large extent all their costs (including operating costs and capital costs), but under certain case-specific circumstances public support might be necessary to finance part of their capital costs;

(5) Airports with annual passenger traffic above 5 million are usually profitable and are able to cover all of their costs.

81. Nevertheless, the duplication of unprofitable airports or the creation of additional unused capacity does not contribute to an objective of common interest. If an investment project is primarily aimed at increasing capacity of an airport, the new infrastructure must, in the medium-term, meet the forecasted demand of the airlines, passengers and freight forwarders in the catchment area of the airport\(^8\). Any initial investment, which does not have satisfactory medium-term prospects for use or deteriorates the medium-term prospects for use of existing infrastructure in the catchment area, cannot be considered to serve an objective of common interest.

82. Accordingly, the Commission will have doubts as to the medium-term prospects for use of airport infrastructure at an airport located in the catchment area\(^8\) of an existing airport in case the existing airport is not operating at or near full capacity. The medium-term prospects for use should be demonstrated on the basis of sound passenger and freight traffic forecasts incorporated in an ex ante business plan and must identify the likely effect of the investment on the use of already existing infrastructure, such as another airport or other modes of transport, in particular high-speed train connections.

(b) Appropiateness of State Aid as a policy instrument:

83. An aid measure will not be considered compatible if other less distortive policy instruments or aid instruments allow the same objective to be reached.

84. The Member States can make different choices with regard to the use of different policy instruments and forms of aid. In general, where a Member State has considered other policy options and the use of a selective instrument such as State Aid in form of a direct grant has been compared with less distortive forms of aid (such as loans, guarantees or repayable advances), the measures concerned are considered to constitute an appropriate instrument.

(c) Existence of incentive effect:

85. An investment project at an airport may be economically attractive in its own right. Therefore, it needs to be verified that the investment would not have been undertaken or would not have been undertaken to the same extent without any State Aid. If this is confirmed, the Commission will consider that the aid measure has an incentive effect.

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\(^8\) See Annex I for a definition of the term "catchment area".

\(^8\) See Annex I for a definition of the term ‘catchment area’.
86. The incentive effect is identified through counterfactual analysis, comparing the levels of intended activity with aid and without aid.

87. Where no specific counterfactual is known, the incentive effect can be assumed when there is a funding gap ("capital cost funding gap"), i.e. when the investment costs exceed the net present value (NPV) of the expected operating profits of the investment on the basis of an ex ante business plan.\(^84\)

\(d\) \textit{Eligible costs:}

88. The maximum allowed amount of State Aid is expressed as a percentage (%) of eligible costs (the maximum aid intensity). Eligible costs are the costs relating to the initial investments in airport infrastructure, including planning costs, ground handling infrastructure and airport equipment. Investment costs relating to non-aeronautical activities (in particular parking, hotels, restaurants, and offices) are ineligible.\(^85\)

89. The investment costs relating to the provision of ground handling services by the airport itself are ineligible.\(^86\)

\(e\) \textit{Proportionality / Aid limited to the minimum necessary and maximum permissible aid intensities:}

90. For investment aid to airports, the proportionate amount of State aid must be limited to the extra costs (net of extra revenues) which result from undertaking the aided project/activity instead of the alternative project/activity that the beneficiary would have undertaken in the counterfactual scenario, i.e. if it had not received the aid. Where no specific counterfactual is known, the proportionate amount of State aid must be limited to the funding gap of the investment project (so-called ‘capital cost funding gap’), which is determined on the basis of an ex ante business plan as the difference between the investment costs and the net present value (NPV) of the expected operating profits of the investment. For investment aid this business plan should cover the period of the economic utilisation of the asset.

91. As the funding gap will vary according to the size of an airport and is normally wider for smaller airports, the Commission will use a range of permissible maximum aid intensities to ensure overall proportionality. The aid intensity will not be allowed to exceed the maximum permissible investment aid intensity and should, in any case, not go beyond the actual funding gap of the investment project.

92. The following table summarises the maximum permissible aid intensity depending on the size of an airport as measured by the number of passengers per annum.\(^87\)

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\(^84\) This does not preclude foreseeing that future benefits may offset initial losses.

\(^85\) Financing of such activities is not covered by these guidelines, as they are of a non-transport character, and will thus be assessed on the basis of the relevant sectoral and general rules.

\(^86\) These Guidelines do not apply to aid for the provision of ground handling services regardless whether they are provided by the airport itself, by an airline or by a supplier of ground handling services to third parties; such aid will be assessed on the basis of the relevant general rules.

\(^87\) Actual average annual passenger traffic during the two financial years preceding that in which the aid is notified or actually granted or paid in the case of non-notified aid. In case of a newly created passenger airport the forecasted average annual passenger traffic during the two financial years after the beginning of the operation of commercial passenger air traffic should be considered. These thresholds refer to a
<table>
<thead>
<tr>
<th>Size of airport based on average passenger traffic (passengers per annum)</th>
<th>Maximum investment aid intensity</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 5 million</td>
<td>0% (no aid allowed)</td>
</tr>
<tr>
<td>3-5 million</td>
<td>up to 25% (Repayable advance only)</td>
</tr>
<tr>
<td>1-3 million</td>
<td>up to 50%</td>
</tr>
<tr>
<td>&lt;1 million</td>
<td>up to 75%</td>
</tr>
</tbody>
</table>

(f) **Negative effects:**

93. Some aid instruments are more distortive than others. In particular, the duplication of unprofitable airports or the creation of additional unused capacity in the catchment area of existing infrastructure might have particularly distortive effects. Accordingly, the Commission will, in principle, have doubts as to the compatibility of initial investment into airport infrastructure at an airport located in the catchment area of an existing airport in case the existing airport is not operating at or near full capacity.

94. Further, in order to avoid the negative effects of aid that may arise where airports face soft budget constraints, investment aid granted for the financing of initial investments at airports with passenger traffic of up to 3 million passengers can be granted either as an upfront fixed amount to cover eligible investment costs or in annual instalments to compensate for capital costs.

95. Investment aid granted for the financing of initial investments at airports with passenger traffic exceeding 3 million shall be granted only as a repayable advance. The repayable advance is expressed as a percentage of the eligible costs and may not exceed the relevant maximum aid intensity as specified herein. The underlying contract for the repayable advance must make detailed provision for repayment in the case of successful project outcome. Such outcome must be clearly defined in advance.

96. The level of successful project outcome can be evaluated by reference to an internal rate of return (IRR) of the project, which must be defined in advance. An investment project can be considered as successful, if its actual IRR exceeds the IRR defined in advance. In the case of a successful project outcome, the aid measure must provide that the advance will be repaid in proportion to the degree of success achieved at an interest rate at least equal to the reference rate for the airport in question resulting from the application of the Communication from the Commission one-way count. This means a passenger flying for example to the airport and back would be counted twice; it applies to individual routes.

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88 See Section 5.1.1. a) further above.
89 In case the aid were to be determined on the basis of ex post calculations (making good for any deficits as they arise), airports may not have much incentive to contain costs and charge airport charges that are adequate to cover costs.
90 The IRR can be set on the basis of benchmark rates commonly observes by the airport industry or on the basis of cost of capital of the company as a whole.
on the revision of the method for setting the reference and discount rates, or any successor Communication. Where the project fails, the advance does not have to be repaid.

(g) Access to the airport:

97. Where the project fails, the advance does not have to be repaid.

98. The airport, including any initial investment for which aid is given, is open to all potential users and is not dedicated to one specific user. In case of physical limitation of capacity, the allocation should be done on the basis of pertinent, objective, transparent and non-discriminatory criteria.

Notification requirements for aid schemes and individual aid measures:

98. The Commission will accept notifications of schemes for investment aid for the financing of airports with average annual traffic below 3 million passengers.

99. When assessing an aid scheme, the conditions relating to the necessity of the aid, the incentive effect and the proportionality of the aid will be considered as satisfied if the Member State has committed itself to granting individual aid under the approved aid scheme only after it has verified that the cumulative conditions a) to g) of Section 5.1.1 are met. In addition, for aid which is awarded on the basis of a scheme, works on the project must not start before the decision by the public authorities to award the aid has been adopted.

100. Due to a higher risk of distortion of competition, the following aid measures should always be notified individually:

   a) investment aid to airports with average annual traffic above 3 million passengers;
   b) investment aid financing a mixed passenger/freight airport handling more than 200,000 tonnes of freight during the two financial years preceding that in which the aid is notified;
   c) investment aid aimed at the creation of a new passenger airport (including the conversion of an existing airfield into a passenger airport);
   d) investment aid aimed at the creation or development of an airport located in the same catchment area within 100 kilometres distance or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport.

5.1.2. Operating aid to airports

101. Operating aid granted to airports either as individual aid or as aid under an aid scheme shall be considered compatible with the internal market within the meaning of Article 107(3)(c) of the TFEU for a transitional period provided that the following cumulative requirements are met:

(a) Airport size:

102. The annual traffic of the airport does not exceed 3 million passengers.\textsuperscript{92}

\textsuperscript{91} OJ C 14, 19.1.2008, p. 6.

\textsuperscript{92}
(b) **Existence of incentive effect:**

103. The incentive effect for operating aid is present if it is likely that, in the absence of aid, the level of economic activity of the airport concerned would be significantly reduced.

(c) **Aid limited to the minimum necessary and calculation of the aid amount:**

104. In order to provide proper incentives for efficient management of the airport, the aid amount is, in principle, to be established *ex ante* as a fixed lump sum covering the expected funding gap of the operating costs (determined on the basis of an *ex ante* business plan) during a transitional period up to 10 years. For these reasons no ex post increase of the aid amount will be considered compatible.

105. The business plan of the airport shall pave the way towards full operating cost coverage at the end of the transitional period. The path towards full operating cost coverage will be different for every airport and depend on the financial situation of the airport at the beginning of the transitional period. The transitional period shall start on [beginning of the transitional period].

106. The initial operating cost coverage shall be defined as the average of the three years that precede the beginning of the transitional period (i.e. 2011 to 2013). The airport shall progressively increase this initial operating cost coverage by at least an average of 10% per annum until full operating cost coverage is reached. For instance, if the initial operating cost coverage of an airport amounts to 60%, it shall be increased by at least 10% per annum over a period of 4 years. After this period, no more operating aid shall be paid to the airport.

107. By [10 years after the beginning of the transitional period] at the latest, all airports must have reached full coverage of their operating costs and no operating aid to airports will be allowed henceforward, with the exception of operating aid granted in line with general State aid rules.

(d) **Access to the airport:**

108. The airport is open to all potential users and is not dedicated to one specific user. In case of physical limitation of capacity, the allocation should be done on the basis of pertinent, objective, transparent and non-discriminatory criteria.

(e) **Phasing out:**

109. The Commission will approve operating aid to airports for a transitional period of no longer than 10 years beginning on [Begin of the transitional period].

**Notification requirements for aid schemes and individual aid measures:**

110. Member States are strongly encouraged to notify national schemes for operating aid for the financing of airports, rather than individual aid measures for each airport.

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92 Actual average annual passenger traffic during the two financial years preceding that in which the aid is notified or actually granted or paid in the case of non-notified aid. In case of a newly created passenger airport the forecasted average annual passenger traffic during the two financial years after the beginning of the operation of commercial passenger air traffic should be considered. These thresholds refer to a one-way count. This means a passenger flying for example to the airport and back would be counted twice; it applies to individual routes.
This is intended to reduce the administrative burden both for the Member States’ authorities and for the European Commission.

111. Due to a higher risk of distortion of competition, the following aid measures should always be notified individually:

(1) operating aid financing a mixed passenger/freight airport handling more than 200,000 tonnes of freight during the two financial years preceding that in which the aid is notified;

(2) operating aid to an airport, if other airports are located within 100 kilometres or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport.

Past operating aid (i. e. aid paid before the beginning of the transitional period):

112. For aid paid before the beginning of the transitional period (including the aid paid before the entry into force of these guidelines) the conditions a), e) and f) do not apply. Such operating aid may be declared compatible to the full extent of uncovered operating costs provided that conditions b) and d) are met.

5.2. Start-up aid to airlines

113. Public financing granted to airlines for launching a new route or a new schedule involving more frequent services, which increases the connectivity of a region, will be considered compatible with the internal market within the meaning of Article 107(3)(c) of the TFEU, if the following cumulative conditions are fulfilled:

(a) The aid is paid for routes linking an airport with fewer than 3 million passengers per annum to another airport within the Common European Aviation Area \(^{93}\). These restrictions do not apply to routes departing from airports located in outermost regions and bound for neighbouring third countries. Aid for routes between airports with more than 3 million passengers per annum \(^{94}\) can be considered only in duly substantiated exceptional cases, in particular where one of the airports is located in a remote region, such as for example in an outermost region, on an island or a sparsely populated area. When a connection (e.g. city-pair) which will be operated by the new air route or new schedule is already operated by a high-speed rail service or by another

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\(^{93}\) Council Decision 2006/682/EC on the signature and provisional application of the Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the Establishment of a European Common Aviation Area (ECAA), OJ L 285, 16.10.2006, p. 1.

\(^{94}\) Actual average annual passenger traffic during the two financial years preceding that in which the aid is notified or actually granted or paid in the case of non-notified aid. In case of a newly created passenger airport the forecasted average annual passenger traffic during the two financial years after the beginning of the operation of commercial passenger air traffic should be considered. These thresholds refer to a one-way count. This means a passenger flying for example to the airport and back would be counted twice; it applies to individual routes.
airport in the same catchment area under the same conditions, such air route shall not be eligible for start-up aid.

(b) Long-term viability: An ex ante business plan should establish that the route receiving the aid should become profitable for the airline without public funding after 24 months.

(c) Eligible costs and intensity: Aid may cover 50% of start-up costs of a new route or a new schedule involving more frequent services for a maximum period of 24 months. The eligible costs are the start-up costs of a new route or a new schedule involving more frequent services.

(d) Non-discriminatory allocation: Any public body which plans to grant start-up aid to an airline for a new route, whether or not via an airport, must make its plans public in good time and with adequate publicity to enable all interested airlines to offer their services.

(e) Cumulation: Start-up aid cannot be combined with other types of aid granted for the operation of a route, including aid paid in another State.

6. **AID OF A SOCIAL CHARACTER UNDER ARTICLE 107(2)(A) OF THE TFEU**

114. Aid of a social character in air transport services shall be considered compatible with the internal market within the meaning of Article 107(2)(a) of the TFEU, provided that the following cumulative requirements are met.

(a) The aid must effectively be for the benefit of final consumers.

(b) The aid must have a social character, that is, it must, in principle, only cover certain categories of passengers travelling on a route (for instance children, people with disabilities, people on low incomes). However, where the route concerned links remote areas, such as for example outermost regions, islands, and sparsely populated areas, the aid could cover the entire population of this region.

(c) The aid must be granted without discrimination as to the origin of the services, meaning whatever airlines are operating the services.

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95 See definition of the term 'catchment area' in Annex I.
The Commission will accept notification of schemes for aid of a social character.

7. **CUMULATION**

116. The maximum aid intensities applicable under these guidelines shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the European Union.

117. Aid authorised under these guidelines may not be combined with other State Aid, *de minimis* aid or other forms of EU financing, if such a combination results in aid intensity higher than that laid down in these guidelines.

8. **FINAL PROVISIONS**

8.1. **Annual reporting**


8.2. **Transparency**

119. The Commission considers that further measures are necessary to improve the transparency of State Aid in the European Union. In particular, steps must be taken to ensure that the Member States, economic operators, the interested public and the Commission have easy access to the full text of all applicable aid schemes in the aviation sector and to pertinent information about the individual aid measures granted thereunder.

120. Member States shall publish on a central website, or on a single website retrieving information from several websites, at least the following information on State Aid measures: the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, granting authority, name of the individual beneficiaries, aid amount, aid intensity, and expected benefits of the project for regional development and accessibility of the region. Such information shall be published after the granting decision has been taken, shall be kept for at least 10 years and shall be available to the general public without restrictions.

8.3. **Monitoring**

121. Member States must ensure that detailed records regarding all measures involving the granting of aid are maintained. Such records must contain all information necessary to establish that the conditions regarding, where applicable, eligible costs and maximum allowable aid intensity have been observed. These records must be maintained for 10 years from the date on which the aid was granted and be provided to the Commission upon request.

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8.4. **Appropriate measures**

122. Member States should, where necessary, amend their existing schemes in order to bring them into line with these guidelines within 12 months of their publication.

123. Member States are invited to give their explicit unconditional agreement to these proposed measures within two months from the date of publication of these guidelines in the Official Journal of the European Union. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

8.5. **Application**

124. These guidelines will be applied from the date of their publication in the Official Journal of the European Union and will replace the Community guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State Aid in the aviation sector,\(^9^9\) and the Community guidelines on financing of airports and start-up aid to airlines departing from regional airports.\(^1^0^0\)

125. In the light of the development of the aviation sector, and notably its liberalisation, the Commission considers that the provisions of its notice on the determination of the applicable rules for the assessment of unlawful State Aid\(^1^0^1\) should not apply to pending cases of illegal operating aid to airports and airlines granted prior to the entry into force of these guidelines. Instead, the Commission will apply these guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports and airlines even if the aid was granted before the entry into force of these guidelines and the beginning of the transitional period.

126. As regards the investment aid to airports, these guidelines will apply to investment aid notified or granted after the entry into force of these guidelines. Investment aid to airports granted before the entry into force of these guidelines will be assessed on the basis of the 2005 Aviation Guidelines.

8.6. **Review**

127. The Commission may undertake an evaluation of these guidelines at any time and at the latest seven years after the entry into force of these guidelines. That evaluation will be based on factual information and the results of wide-ranging consultations conducted by the Commission on the basis of data provided by Member States and stakeholders. The Commission will in particular analyse progress in the phasing out of operating aid to both airlines and airports.

128. After consulting Member States, the Commission may amend these guidelines on the basis of important competition policy or transport policy considerations.

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\(^1^0^0\) OJ C 312, 9.12. 2005, p. 1.
\(^1^0^1\) OJ C 119, 22.05.2002, p. 22.
ANNEX I — DEFINITIONS

For the purpose of these guidelines, the following definitions should apply. The definitions are without prejudice to further market, technological and regulatory changes.

‘Aid’ means any measure fulfilling all the criteria laid down in Article 107(1) of the TFEU.

‘Aid intensity’ means the total aid amount expressed as a percentage of eligible costs. All figures used must be taken before any deduction of tax or other charges. Where aid is awarded in a form other than a grant, the aid amount shall be the equivalent of the grant in terms of value. Aid payable in several instalments must be calculated at its total net present value at the moment of granting the first instalment, using the relevant Commission reference rate for discounting the value over time. Aid intensity is calculated per beneficiary.

‘Airline’ means any airline with a valid operating licence issued by a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services.

‘Airport charge’ means a price or a levy collected for the benefit of the airport manager and paid by the airport users for the use of facilities and services which are exclusively provided by the airport manager and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight. Airport charge for the purposes of these guidelines may include also charges or fees paid for ground handling services and fees for centralised ground handling infrastructure.

‘Airport infrastructure’ means infrastructure and equipment for the provision of airport services by the airport manager to airlines and the various service providers. It includes runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services. Airport infrastructure, however, excludes infrastructure and equipment, which is primarily necessary for pursuing non-aeronautical activities, such as car parks, shops and restaurants.

‘Airport manager’ means an entity or group of entities performing the economic activity of providing airport services to airlines.

‘Airport revenue’ consists of the revenue from airport charges net of marketing support or any incentives provided by the airport manager to the airlines., revenue stemming from non-aeronautical activities (free of any public support), excluding any public support and compensation for tasks falling within public policy remit, or services of general economic interest, and not taking into account any revenue for tasks falling within the public policy remit, etc.

‘Airport services’ mean services provided to airlines by the airport manager or any of its subsidiaries, i.e. to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services. For the purposes of these
guidelines airport services may include also the provision of ground handling services and the provision of centralised ground handling infrastructure.

‘Average annual passenger traffic’ will be determined on the basis of the inbound and outbound passenger traffic during the two financial years preceding that in which the aid is notified or granted in the case of non-notified aid. ‘Capital costs’ mean the depreciation of the eligible investment costs into airport infrastructure and equipment including the underlying costs of financing.

‘Capital costs funding gap’ is determined as a difference between the investment costs of the initial investment and the expected operating profits generated by the respective investment project, excluding any infrastructure costs for activities falling within a public policy remit. This does not preclude anticipating that future benefits may offset initial losses.

‘Catchment area of an airport’ in general represents a geographic market boundary that is normally set at around 100 kilometres or around 60 minutes travelling time by car, bus, train or high-speed train. However, the catchment area of a given airport may be different and needs to take into account the specificity of each particular airport. The size and shape of the catchment area varies from airport to airport, and depends on various characteristics of the airport, including its business model, location and the destinations it serves.

‘Costs of financing’ mean the costs related to debt and equity financing of the eligible investment costs of the initial investment. In other words, the costs of financing take into account the proportion of total interest and own capital remuneration that corresponds to the financing of eligible investment costs of the initial investment, excluding the financing of working capital, investments in non-aeronautical activities or other investment projects.

‘Date of award of the aid’ means the date when the Member State took a legally binding commitment to award the aid that can be invoked before the national judge.

‘Eligible investment costs’ are the costs relating to initial investments in airport infrastructure, including planning costs. Investment costs for non-aeronautical activities (in particular parking, hotels, restaurants, and offices) are not eligible. The investment costs in relation to ground handling equipment for ground handling services are not eligible. Equally, costs for tasks falling within the public policy remit should be excluded.

‘Ground handling services’ mean services provided to airport users at airports as described in the Annex to Council Directive 96/67/EC on access to the ground handling market at airports, or and any subsequent legislation.

‘Initial investment’ means:

i. an investment in airport infrastructure related to: 1) the construction of a new airport infrastructure; 2) the extension of the capacity of an existing airport infrastructure; 3) the diversification of the services provided by the airport into
services not previously provided by the airport; or 4) a fundamental change in the business model of an existing airport, or;

ii. an investment in airport infrastructure provided the airport has been closed or would have been closed, if the investment had not been pursued. The sole acquisition of the shares of an undertaking shall not qualify as initial investment.

‘Investment aid’ means aid to cover the ‘capital costs funding gap’ as defined above. It can relate both to an upfront aid amount (e.g. to cover upfront investment costs) and to aid in the form of periodic instalments to cover capital costs.

‘Non-aeronautical activities’ mean other commercial services to airlines or other users of the airport, such as ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking, hotels, etc.

‘Operating aid’ means aid to cover the ‘operating funding gap’ as defined below. It can relate both to aid in the form of periodic instalments to cover expected operating costs (periodic lump sum payments) and to aid to cover actual operating costs.

‘Operating costs’ of an airport means the underlying costs of the provision of airport services. These include cost categories such as cost of personnel, contracted services, communications, waste, energy, maintenance, rent, administration, etc., but exclude, for the purpose of these guidelines, the capital costs, marketing support or any other incentives granted to airlines by the airport manager, and costs falling within a public policy remit.

‘Operating funding gap’ equals the operating losses of the airport, i.e. the shortfall (in Net Present Value terms) between airport revenues and operating costs (as defined further above) of the airport manager.

‘Reasonable profit margin’ means a rate of return on capital, e.g. measured as an Internal Rate of Return (IRR), that the undertaking is normally expected to make on investments with a similar degree of risk.

‘Regional airport’ means an airport with annual passenger traffic volume of up to 3 million.

‘Repayable advance’ means a loan for an investment project which is paid in one or more instalments where the conditions for repaying it depend on the outcome of the investment project.

‘Start of works’ means either the start of construction works on the investment, or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Preparatory works, such as obtaining permits and conducting preliminary feasibility studies, are not considered as start of works.

‘Start-up costs’ mean costs incurred in launching a new route or frequency and which the air transport operator will not have to bear on a continuing basis. Examples of such costs are the
marketing and advertising costs incurred at the outset for publicising the new route; they may include the installation costs incurred by the airline at the regional airport in question in order to launch the route. Conversely, aid cannot be granted in relation to standard operating costs such as hire or depreciation of aircraft, fuel, crew salaries, etc.

‘Total costs’ of the airport include the airport’s capital and operating costs.
ANNEX II — OVERVIEW OF THE STATE AID POLICY APPROACH IN THE AVIATION SECTOR

Figure 1: Context and objectives of State Aid Modernisation (‘SAM’)

- Support growth
- Better-prioritised enforcement
- Streamlined rules and faster decisions

- Sound use of public resources for growth-oriented policies
- Limit competition distortions that would undermine a level playing field in the internal market
- Strengthen the quality of the Commission’s scrutiny

- Avoid financing overcapacities in airport infrastructure
- Limit operating aid to airports and airlines
- Clearer and more transparent rules

Figure 2: Overview of the State Aid policy approach in the aviation sector

- ’Transitional regime’ (for a period of up to 10 years)
- ’Steady state’ regime after expiry of a transitional period

- Investment aid to airports
  - Range of permissible maximum aid intensities depending on airport size

- Operating aid to airports
  - Operating aid can be declared compatible for airports with a passenger volume of less than 3 million per annum on the basis of a business plan establishing a path towards full operating cost coverage after the transitional period

- Operating aid to airlines
  - Start-up aid in form of start-up costs (50% aid intensity) for 24 months

No operating aid permissible
ANNEX III — SUMMARY OF THE COMPATIBILITY CONDITIONS

Figure 3: Overview of compatibility conditions for aid to the airport

<table>
<thead>
<tr>
<th>Compatibility conditions</th>
<th>Investment aid to the airport</th>
<th>Operating aid to the airport</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Common principles of compatibility</strong></td>
<td>• Contribution to a well-defined objective of common interest</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Absence of market delivery: in order to be effective, the aid should address a well-defined market failure or equity concern</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Appropriateness of State Aid as a policy instrument</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Existence of incentive effect</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Proportionality / Aid limited to the minimum necessary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Avoidance of undue negative effects</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Transparency</td>
<td></td>
</tr>
<tr>
<td><strong>Access to the infrastructure</strong></td>
<td>Open to all potential users and not dedicated to one specific user</td>
<td></td>
</tr>
<tr>
<td><strong>Eligible costs</strong></td>
<td>Costs relating to investments in airport infrastructure and equipment, except investment costs for non-aeronautical activities</td>
<td>Operating costs of the airport</td>
</tr>
<tr>
<td><strong>Airport size based on average passengers per annum and maximum aid intensities</strong></td>
<td>&gt; 5 million: 0% (no aid allowed) 3-5 million: up to 25% 1-3 million: up to 50% &lt;1 million: up to 75%</td>
<td>&lt; 3 million</td>
</tr>
<tr>
<td><strong>Aid instrument</strong></td>
<td>For airports &lt; 3 million passengers per annum: direct grant, repayable advance, soft loan, guarantee, etc. For airports &gt; 3 million passengers per annum: repayable advance</td>
<td>Ex ante as a fixed lump sum covering the expected funding gap of the operating costs (determined on the basis of an ex ante business plan) during a transitional period of up to 10 years. The business plan of the airport shall pave the way towards full operating cost coverage at the end of the transitional period.</td>
</tr>
<tr>
<td><strong>Phasing out:</strong></td>
<td>No phasing out</td>
<td>Transitional period of up to 10 years after the entry into force of these guidelines.</td>
</tr>
</tbody>
</table>

**Notification requirements for aid schemes and individual aid measures**

Aid schemes: • airports < 3 million passengers per annum

Individual notifications: • airports > 3 million passengers per annum • mixed passenger/freight airports > 200,000 tonnes of freight per annum • expansion of a passenger airport to a mixed or freight airport • aid to an airport, if other airports are located in the same catchment area

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102 See Annex I for definition of the term ‘catchment area’.
Figure 4: Overview of compatibility conditions for operating aid to airlines

<table>
<thead>
<tr>
<th>Compatibility conditions</th>
<th>Start-up aid to airlines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airport size</td>
<td></td>
</tr>
<tr>
<td>• &lt; 3 million passengers per annum</td>
<td></td>
</tr>
<tr>
<td>• In exceptional circumstances (e.g. remote areas, such as outermost regions) &gt; 3 million passengers per annum</td>
<td></td>
</tr>
<tr>
<td>Access to the infrastructure/ non-discrimination</td>
<td>Non-discriminatory allocation</td>
</tr>
<tr>
<td>Level of the airport charges/ aid intensity</td>
<td>50% of start-up costs</td>
</tr>
<tr>
<td>Eligible costs</td>
<td>Start-up costs</td>
</tr>
<tr>
<td>Cumulation</td>
<td>Non-cumulation rule with other types of aid</td>
</tr>
<tr>
<td>Other conditions</td>
<td>Long-term viability/profitability of the route for the airline without aid after 24 months.</td>
</tr>
<tr>
<td>Notification requirements for aid schemes</td>
<td>Aid schemes:</td>
</tr>
<tr>
<td>• airports &lt; 3 million passengers per annum</td>
<td></td>
</tr>
</tbody>
</table>