Ladies and Gentlemen,

the European Commission has presented its draft for new EU-guidelines on State aid to airports and airlines.

However, from a structural viewpoint it already shows how easily the goal and the means of the guidelines can currently be misconstrued. On the one hand, the Commission by all means formulates binding objectives and limits; however, due to the fact that these limits are too narrow, they will later on substantially restrict the executive parameters handed over to the Member States. Moreover, the Commission expects that this issue will be approached nationally. However, the national implementation will have to consider the political requirements of their parliaments and Government.

The guidelines with their partly contradictory, not concrete considerations and arbitrary definitions do not offer a sufficiently reliable scope of action in their present formulation.

Against the background of the guidelines' motivation – i.e. to virtually settle or at least regulate competition between the air transport companies "on the runways of the airports and airfields" – the guidelines almost question their own aim.

Therefore, politicians and member states should distinctly speak out against some of the voiced thoughts and considerations. We urgently request to reject the agreement of the Member State to the proposed procedures as mentioned in margin no. 123 and support this in a detailed statement.

Our statement is based on some key sentences, which we would like to mention here below:

1. The guideline does not differentiate between airports and airfields as opposed to air transport companies as members on the market and thus as competition in the
aviation sector, thereby overlooking the fact that the numerically predominant part of the aviation sector in terms of movements does not take place in the scheduled flights area, but in general and business aviation.

2. The guideline is trying to solve an evidently acute problem – i.e. competition between air transport companies – on the level on which this competition is taking place. However, in hardly any case the airports themselves are the regulating competitors. Hence, the discussion (in view of the long lasting discussion of et al. Lufthansa regarding the “air traffic initiative”) about the sense of regional airports is a noticeable pioneer of this guideline.

3. Nevertheless, the guideline views the – predominantly alleged – competition between the infrastructure providers in relation to competition policy and as a purely legal competitive problem. In doing so, it overlooks the considerably more important politico-economic as well as the transport policy-related meaning of such infrastructure facilities.

4. As far as the benchmark figures are concerned, the detailing of the guidelines seriously and unnecessarily strongly restricts the leeway of the Member States and eclipses the subsidiarity principle.

5. The examination of the infrastructures is carried out in an undifferentiated way, viz. according to mere economic cost and/or returns relevance. In doing so, it is being overlooked that the affected airports (have to!) run fundamental parts of their infrastructure not only according to economic aspects, but also in view of their public service obligation. This is sufficiently proven by political papers like the TEN-T, national air traffic laws and all necessary public-law licenses which have to be provided.

6. The competitive concept, on which the guidelines are mainly based, is being restricted to an alleged competition between the infrastructure facilities in the guideline itself. However, these facilities are preconditions for the competition amongst the regions themselves and an European economy which is competitive on a worldwide market. In turn, this competition is supported and promoted by the European idea. Promoting the latter whilst simultaneously regulating the former is a paradox.

The Commission’s draft in itself is not conclusive and even partly inconsequent. Moreover, it implements correct considerations wrongly and even in some cases not at all, whilst the differing functions of an airline (being a purely commercial company) and an airport (being a traffic infrastructure) are insufficiently taken into consideration. In fact, airlines and airports are mostly lumped together in an undifferentiated manner, which gives the strange impression that the State and its responsibilities should be abolished.

The vague boundary between the function of an airfield or airport (hereinafter uniformly called “airfield”) as a purely commercial company and its duty as a provider of state-owned services for the public is the main reason why the Commission’s draft is imbalanced and unqualified.

The current draft is at best an attempt to master the competitive problems of the airline industry, in which irreparable collateral damages to the infrastructures are being accepted.
This affects not only the minor airfields of <1 Mio. respectively 3 Mio. passengers, but all airfields with ultimate negative results for European economy, society, and at the end also for the airlines.

We do share the Commission’s objectives as far as the containment of the distortive competition is concerned. However, this always has to be done under proviso of traffic function and state-owned services for the public. To this extent the guideline offers many preparations, however, it reduces its deductions mainly to the problems of distortive competition. In order to achieve a more explicit guideline – as demanded by both Member States and air traffic organizations – following considerations should be made in particular:

Margin nos. 5, 6, and 7:
It is basically wrong to link the minor airfields with passenger numbers and to assess them accordingly. The assignment of minor airfields particularly does not consist of handling passengers for airlines; in fact, they are mainly infrastructures for the general aviation. According to European view, this implies any form of aviation which does not belong to scheduled flight, scheduled flight related or military air traffic, e.g. business and rescue flying, pilot training, individual travels (in particular complex, commercial, and non-commercial business aviation). This classification and the knowledge about the miscellaneous users of aviation infrastructures are all the more important because almost two thirds of all aircraft movement takes place on minor airfields.

Passengers in the scheduled flight, and scheduled flight related aviation provide the basis of the region’s connectivity and are often welcome cost-involved parties. They are part of the airfield’s assignment, not only its sole or main content.

Incidentally, major airfields with a high traffic volume and clearly less than 1 Mio. or also less than 200,000 passengers, list much less financial deficits than airfields with a higher passenger volume, but for regionally reasons much less aircraft movement figures.

Margin no. 8:
We share the Commission’s request as expressed in this margin – i.e. to implement an aid plan regarding market failure respectively concerning the objectives of the joint European interests. Explicit parts of these interests are the promotion of small- and medium-sized companies as well as overall growth – i.e. objectives that can only be achieved with flexible, reliable, and multifaceted traffic systems (also and especially in aviation). When assessing an infrastructure’s necessities, in no case the catchment area of air transport companies should be benchmarked, as contemplated by the Commission. The basis for every infrastructural decision is the community’s and the economy’s needs for mobility [cf. the TEN-T, the resolution of the conference of the Ministers of Economic Affairs in Kiel/Germany, December 2012 and other related national papers]. If these needs would be adequately considered, incorrect infrastructural decisions and dubious promotional practices would occur much more rarely. However, at the end of the day, the Commission’s debates are only about the airlines’ competitive issues instead of advising the Member States about precise targets for a sensible implementation concept.

Margin no. 9:
Although herein the Commission does mention the information stemming from 2011 regarding airfield politics in the EU, it then concerns itself only with the airlines’ competitive
issues instead of launching a requirements analysis which includes and evaluates all aspects of air traffic. The inevitable result is a faulty and inadequate understanding of the air traffic infrastructures, which should therefore be rejected.

Margin no. 11:
In this margin we assume that the consultation of the year 2011 is meant and that the year 2001 is only a misprint. In 2011 we had already pointed out and commented on several deficits in detail. Unfortunately our advice was not sufficiently paid attention to. Just like our reaction to the Commission’s interim report of June 2012 (see Attachment ),

Margin no. 12:
In this margin, the Commission rightly declares that “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.” During the further procedure, the Commission unfortunately pays too little attention to this important thought. At best and for information only, one should commend the fixed passenger- and percentage-values in terms of a tendency towards regulation purposes of the guideline and – instead – focus more clearly on the politico-economic meaning, as this should always be the motivation in matters of infrastructure and connectivity.

Margin no. 13:
This is also the consideration of margin no. 13, which we emphatically approve. The positive effects stemming from the development of infrastructures should also be the central element for the evaluation of any State aid. In all surveys which have been done e.g. in Switzerland and Germany for this purpose, the Return of Invest in the politico-economic sense is extremely positive.

Margin no. 14:
The links between infrastructural investments and politico-economic benefit have obviously not been understood correctly. How else would airfields and air transport companies be placed on the same level as operating costs in one and the same sentence? This contradicts the considerations as mentioned before.

Whereas the operating costs of an air transport company decide on profit and loss, large parts of the operating expenses of an airfield are owed to safety, operation and maintenance of the infrastructure’s availability. Also, it is important to acknowledge that a runway of e.g. 2km tarmac does not suffice on its own. In fact, the future aerodrome rules based on regulation 216/2008 show that a fully functional air traffic infrastructure takes considerably more than that; it includes rescue and fire fighting services, approach procedure, air traffic control (ATC), winter service, weather observation, FOD-detection and many more features.

We are not familiar with the “industry consensus” as also mentioned in margin no. 14; at least we were not involved in such a consensus. This is again a sign of the airlines’ focusing on competitively relevant procedures. If infrastructure is being negotiated, neither the aviation nor much less the air transport companies per se should take center, but instead overall society as well as the economy, which is dependent on optimal mobility. Rightly so, the Commission often describes this stipulated, integral observation as “common interests”. This cannot end in a branch of trade consensus of aviation, but should be worked out by means of political decision processes. Basically, this is the case already to date, as State aid is
fundamentally a domestic, parliamentary matter on the level of municipalities, regions and states. However, in no case the narrow framework deriving from the Commission’s insufficient approach should anticipate parliamentary decisions.

If the EC finds it helpful, we are able to coordinate an industry consensus, taking on board the effected parties such as aerodromes, regional airlines, general and business aviation, SME-aviation-industry and more.

Margin no. 15:
In due consideration of the above mentioned, especially the random, not by means of a survey verified agreement about a transition period is unsustainable. In many cases the airfields could maybe operate more efficiently – and this calls for the implementation of an incentive –, however, the basic decision of an infrastructure is always related to operational marginal cost. In this connection, creating a transition period is already ineffective in view of its structure, as it would solely be based on achieving a break-even-point. Such requirements only unduly boost the user fees and cause declining sales volumes. The final result would be to even shut down airfields - and to pursue this objective cannot be granted to a guideline.

Margin no. 18:
In this margin the Commission postulates a well-balanced approach. However, as basis for its considerations it uses the air transport companies as well as the airfields. If it thereby simultaneously ignores two thirds of the aviation and just mentions politico-economic effects instead of using these as a basis for requested governmental decisions, we can no longer discern a fair balance.

Margin no. 23:
The guideline gets especially difficult because— as in margin no. 23 – it does not differentiate between an airfield and an economically operated company. Although it is correct that an airfield also carries out economic operations – e.g. provision of hangars and fuel as well as other economic services, to the point of leasing space in terminal buildings and operation of parking decks. This sort of economic operations are rightly relevant for Art. 107 TFEU. In contrast, however, remuneration for the use of the runway, taxiways, ATC-facilities, and the operative expenses for rescue and fire fighting services, ATC-control services, snow-clearing services etc. are just the users’ fair and direct share in the expenses of the mere air traffic infrastructure.

The guidelines encourage the risk of undue stinting on safety-relevant facilities and/or user fees reaching exorbitant levels. Sufferers would be safety as well as the local regions; both have a smaller divider at their disposal for spreading the high fixed costs adequately. It is illusory to believe that after the transition period the high costs will be entirely settled by the user. Should this be required, this would result in a discriminating effect towards less populated regions. These would have to pay a great deal more for the same transport services than the areas of high population density.

Margin no. 24:
If one follows this margin’s train of thought, only airfields with frequent scheduled flight or scheduled flight related air traffic are relevant to the State aid discussions conducted here. The guideline does not aim at the business and general aviation, which indeed also transport passengers, but definitely do not add to the competitive distortion in the air transport
companies. For this reason, however, the number of dispatched passengers is already insubstantial by definition. The expense for an infrastructure and its services, which is established and operated without the disturbing scheduled flights (competition) are typical public services. The State aid requiring approval could depreciate the share of expenses equivalent to these so-called “anyway costs” also at airfields with scheduled flights.

Margin nos. 25 and 26:
As in margin nos. 25 and 26, court decisions are repeatedly quoted regarding airfields that – as far as traffic and competition are concerned – are established well above those airfields to which the new guidelines will apply. However fitting the fundamental considerations regarding competitive distortion may be, the more absurd are the flat-rate and random setting of limits for State aid as mentioned in the draft guidelines.

Margin no. 28:
In margin no. 28, interrelations of airfield services and airfield fees are drafted, which then only center on interests of the air transport companies. The differentiation between primary traffic purpose and economic objective is incomplete and needs a clearer distinction; there should be a clearer differentiation between the operations of an airfield with which or through which the air transport companies generate their turn-overs and operations on the one hand and the activities that are “necessary anyway” for operating an infrastructure on the other hand.

Margin no. 29:
According to margin no. 29, the charges of airfield fees automatically presumes the operator's economic activities. Bar some exceptions in a few European countries and at some – mostly highly frequented – airfields, this conclusion does not apply. Due to political stipulations in the TEN-T (trans-European transport network), in the German Federal Government's airfield concept, and several national and/or regional traffic concepts the airfields are obliged to demand appropriate fees for the use of the infrastructures. At the same time, and apart from purely economic aspects, completely different interests also play an important role. It is alarming how little the Commission has occupied itself with the realities and background of fees. For example, passenger discharging fees (that e.g. do not incur when the airfield user discharges himself, which is often the case at minor airfields) serve an economic purpose while landing fees assist the PSO.

Margin nos. 31 and 32:
In this margin it is rightly noted that not all operations are necessarily of an economic nature. Margin 32 mentions some examples. Thus, it is absolutely and obviously possible to differentiate. However, the list of sovereign respectively uncritical activities in the sense of the guideline is incomplete and partly insufficiently differentiated as far as the basic function of an infrastructure and competition distorting elements are concerned. In our opinion not only air traffic control (ATC), customs, and police rank among these elements, but also foreign object damage (FOD) observation, rescue and fire fighting services [RFF according to ICAO (International Civil Aviation Organization); however, additional expenses for air transport companies cause economic activities], snow-plowing service for the mandatory maintenance of operation, elements of aviation authority, noise abatement measures, safety management system, wildlife management, and a few other safety functions. Obviously there are examples of purely economic merchandizing, such as leasing of parking, office, and conference space or even at some locations particularly high-priced retail areas, the
provisioning of additional services for passengers (from luggage trolleys to carpool and/or support service) or highly service-oriented activities on the apron.

This is also confirmed by margin no. 42 of the Leipzig verdict (Revision C-288/11 P):
“….that certain costs affected by the capital inflow, viz. costs concerning security and police functions, measures of fire protection and the public security, the operational security, the German Weather Service (DWD) and the German ATC belonged to the area of public responsibility and could therefore not be classified as State aid.”

According to the considerations in margin no. 31, an exemption of an infrastructure’s basic function is possible and the approval of operational aid for a different subsidy than the intended, stringent operational aid limitation more sensible.

In a national (or European) implementation plan the non-economic operations should be defined and suitably stipulated, and allow access to air transport without discrimination. For that reason, the implementation plan should leave open the possibilities and offer sufficient flexibility. We will gladly support the preparing such a concept, be it on national or European level.

In relation to the turn-over, the targets for separate cost account are often not justifiable for minor airfields. Administration and overhead expenses can easily reach a two-digit percent range. This cannot be the purpose and requires further deficiency adjustment. For minor airfields it should be possible to apply simple methods of measurement for the assessment of feasible aid intensity and differentiations of non-economic activities.

It is self-understood that the classification of non-economic activities in terms of Art. 107 needs to be made; if these activities cannot be completely separated from the economic objective of the air transport companies, e.g. schedules of fees have to ascertain an equal treatment of all users (f.i. equal expenses for special opening hours for all users). This is the manner in which margin no. 34 should be understood. However, mixed processes cannot be excluded.

In the observations mentioned in chapter 3.3 regarding the competitive distortion and the effects on trade, the Commission commits a crucial error: the infrastructures do not compete with each other, but they rather enable competition with regard to air transport companies, economy and region. In some aspects there may be a certain competition amongst the airfields, however, the competition mainly exists between the air transport companies, resulting in reduced prices for the end-user. As soon as this competition does not function – e.g. on flights from Southern Germany to Brussels – consumer-hostile ticket prices occur.

Margin no. 41:
The statement in margin no. 41 local and regional airfields would be competing, is too generally phrased and only marginally in line with reality. Often the airfields have differing purposes, partly also a relief function for fully aligned major airports or as an airfield for business travel purposes.

Margin no. 42:
According the Altmark (Saxony Anhalt/Germany) case : “…. the second application requirement of Art. 92 (1) EC Treaty is relevant, according to which the aid should be qualified to impair trade between the Member States, does therefore neither depend on the
local or regional character of the transport services provided nor on the size of the field of activity." The now available valuation of the Commission contains an inappropriate reversal of evidence. Following the Altmark case, regional airfields, which mainly serve private transport and regional airfields with subsidiary scheduled flights generally have to be excluded from the guideline’s considerations and should be allowed to receive state aid.

Margin no. 46:
The incorrect approach, i.e. to only regard the airfields premised on market-based criteria, leads to misjudgments also in chapter 3.4. To view an infrastructure independently from all social or regional-political considerations contradicts millennial experiences in matters of infrastructure. The exact opposite is correct: an infrastructure – be it either waterways/ports, railroads, streets or aviation – is always an integral part of the state-owned services for the public and has to be measured in a politico-economic way.

Margin no. 49:
The a.m. dilemma is made clear in margin no. 49. Herein the airfields are conceded to play an important part in the advancement of the local development or connections; for the observation of an active, market-based economic participant this observation is not allowed. Simultaneously, under certain conditions it is allowed to take the politico-economic considerations into account. The respective stipulated framework in operational- and investment-aid and periods of transition does not adequately do justice to this observation.

Also chapter 3.5 is subject to the incorrect observation of infrastructures as competitors and market participants. The acquisition of passengers is the chief requirement of the air transport companies and not of the airfields. The airfields and in particular their proprietors viz. co-partners – consisting of local authorities and region – have a connectivity in mind which should be as multi-layered, reliable, and advantageous as possible. The increase of passenger numbers is a consequence thereof, but not the primary target.

Margin nos. 59 and 60:
A reason for the new draft was the Member States’ and aviations’ request for clearer guidelines. The remarks in margin nos. 59 and 60 are unfortunately by no means suitable for clarification; rather they are more suitable to provide the courts with work for years to come. Only if the principles of infrastructures and PSO are understood the request could be followed and the guideline become well-balanced.

Chapter 4 deserves special attention and the definition of services of general economic interest:

Airfields could be certified as “public” or “special”. Already this distinction contains basic statements regarding an SGEI-function. Obviously a detailed substantiation should take place; thereby, basically the airfield’s fundamental role with its normally imposed, mandatory continuous operation and its licensing requirements has to be considered. Artificially and randomly specified limitations – as determined by the Commission – are to be rejected. In case of guideline conditions – e.g. passenger numbers – these have to be profoundly lodged.

It would be helpful to clarify the definition and the handling of SGEI on an European level; if need be, political stipulations should be drafted, e.g. in the TEN-T.
Margin no. 75:
We appreciate the proposal of the Commission to draw up a national regulation in margin no. 75 and suggest involving all aviation-related associations, but also the end-user, the regions and the economy. The Member States should indeed share the Commission’s fundamental considerations, but reject the randomly fixed numbers – as e.g. in margin nos. 80, 92, 100, 104, 106, and 107. Instead, a balanced, non-discriminative valuation between general economic promotion, competition, PSO, basic function of an infrastructure, SGEI, users’ cost sharing etc. should be found. Due to the stipulations of the guideline, the Member States’ scope of action – contrary to the principle of subsidiarity – will be limited unacceptably; a typical over-regulation will arise from the guideline, which will especially cause difficulties to the SME. The marked-out framework for investment as well as for operational aid is too narrow and contradicts the positive approach of the guideline package. This applies to the limit values of airfield sizes as well as to the permitted amount of aid. Also, the considerations regarding a commuting area of 100km or 1h are randomly and only applicable to certain user groups at best. The variance regarding mobility requirements is manifold and a random stipulation is inappropriate. A business trip should be evaluated differently from a holiday trip, and custom tours differ from scheduled flights and charter flights. These, on the other hand, have different considerations as far as the commuting area is concerned.
We can support Commission’s thoughts regarding economic involvement in the sense of proportionality and the resulting, suitable user participation; likewise, we support the setting up of incentives for a more efficient operating procedure and a more effective air traffic infrastructure per se. Nevertheless, investment aid – e.g. to increase operational safety – should continue to be possible for the major and minor airfields. In particular, the Commission should accept a minimum of functionality of the airfield in form of operational aid and moreover a balance between sovereign procedures and SGEI to the then nationally defined amount.

Margin no. 88:
The limitation of the eligible expenses on initial investments is neither justified nor sensible.

Margin nos. 104, 106, and 109:
Likewise, the limitation of the State aid to a period of 10 years is neither appropriate nor purposive. For instance, one can hardly count on the fact that expenses for rescue and fire fighting services will be noticeably lower in future, no matter how much incentive for efficiency increase there may be. Furthermore, depreciation periods of considerably more than 10 years are not uncommon. We furthermore assume that new European regulations for air traffic control and airfields will imply increasing rather than decreasing expenses.

Regarding definitions of terms, the definition “regional aerodrome” needs to be revised. The various assignments of minor airfields are so manifold that they cannot orient themselves towards fixed passenger numbers; the approach of the TEN-T – by applying network and functional thinking when considering the size of the infrastructures – fit soonest.

Summarizing, it has to be stated that the Commission – despite an initially auspicious approach – was unsuccessful regarding the requested clear guideline. The Commission particularly disregards the basic function of the infrastructures and harms the principle of subsidiarity. Considerable expenditures are needed to improve the guideline or to develop a sensible strategy of transposition.
A lot of aerodromes within the nominal scope of this guideline never had any issues with competition but are essential for a competitive European economy – be it small and medium sized enterprises or the biggest international companies. They assist Europe to stand a global player.

Some operational costs will never decrease and unfortunately, due some European regulations, we expect increasing costs. Therefore the 10-year-limit for operational aid has to be deleted or at least has to be changed into a progressive system.

We suggest to study the development of a system to verify the need of mobility for European citizens and economy in order to make better decisions on the size, numbers and places of infrastructure on a local, regional, national and European level.

We are at your disposal for further presentations, discussions, and drafting of reports. With best regards,

EUROPEAN REGIONAL AERODROMES COMMUNITY

original document signed by
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Secretary