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C (2017) 5530 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.44377 (2016/NN) – Denmark - Aarhus Airport**

Sir,

**1. PROCEDURE**

- (1) On 29 January 2016, the Danish authorities notified to the Commission investment aid and operating aid for the airport of Aarhus (the "Airport"). The notification was registered under the number SA.44376 for the investment aid and SA.44377 for the operating aid.
- (2) The Danish authorities submitted additional information by letters dated 3 March and 6 March 2017. The Danish submission was further supplemented by letters of 26 April 2017 and 27 June 2017.
- (3) On 7 April 2016, the cases were transferred to the registry of non-notified aid, as the aid had already been granted prior to the notification to the Commission.
- (4) On 16 March 2017, the files SA.44376 and SA.44377 were merged for a joint assessment under the case number SA.44377.

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## **2. DESCRIPTION OF THE AID**

### **2.1. The beneficiary**

- (5) The Airport is an international passenger airport located in Tirstrup, approximately 43 km from the city of Aarhus, the second largest city in Denmark.
- (6) Denmark submits that the Airport has a natural catchment area of 1.2 million people and recorded an average of approximately 450 000 - 500 000 passengers per year until 2014. However, in years 2015 and 2016, it experienced a decline, recording since then on average 370 000 passengers per year.
- (7) The Airport is open to all users. It is currently used by different airlines, including SAS Scandinavian Airlines, Ryanair and Czech Airlines.
- (8) The Airport is owned and operated by a public company, Aarhus Lufthavn A/S (the "Aarhus Airport"). Until the end of 2016, Aarhus Airport was owned by the municipalities of Aarhus (58.1% of shares), Randers (18.5% of the shares), Syddjurs (7.8% of the shares), Norddjurs (7.8% of the shares), and Favrskov (7.8% of the shares). On 1 January 2017, the municipality of Aarhus acquired more than 90% of the shares in Aarhus Airport. At the time of this decision, the Airport is owned by three municipalities: Aarhus (90.02% of the shares), Norddjurs (4.99% of the shares) and Syddjurs (4.99% of the shares).
- (9) Aarhus Airport does not have any subsidiaries or associated enterprises and is not part of any group of airport owners or operators.
- (10) There are no other airports within 100 km/ 60 minutes radius of the Airport. The nearest airports to the Airport are:
  - (a) Karup airport: approximately 110 km or approximately 1 hour and 26 minutes by car or 5 hours and 16 minutes by public transport;
  - (b) Aalborg airport: approximately 135-140 km or approximately 1 hour and 33 minutes by car or 3 hours and 31 minutes by public transport;
  - (c) Billund airport: approximately 135-140 km or approximately 1 hour and 29 minutes by car or 3 hours and 32 minutes by public transport.

### **2.2. Overview of the measures**

- (11) The Danish authorities notified an investment aid and operating aid to Aarhus Airport to sustainably secure the functioning of the Airport. The Danish authorities consider the Airport necessary in order to improve the quality of the transport infrastructure and services within the region in order to increase the mobility of residents in the catchment area with strengthened connections of Jutland with the rest of Denmark and Europe. The Danish authorities submitted that the modernised Airport would make it possible to further develop connecting routes between Aarhus and other regions. The business plan contains four new confirmed routes for 2017 (Malaga (SAS), Gdansk (Ryanair), Ithaca (Aarhus Charter) and Prague (CSA).
- (12) The tourism business has continued to experience steady growth in demand for accommodation. Tourists spent 2.57 million nights in the region in 2013, around 2.9 million in 2014, and approximately 3.0 million in 2015. Moderate but steady growth is forecast for the next ten years. Over the next few years, the Airport will play an increasingly important role in helping Jutland's tourism industry to tap into new target groups.
- (13) The Danish authorities also submitted that the investment aid aims to guarantee a greater flow of business travellers and the connectivity and accessibility within and

outside Jutland to the benefit of the regional development of the area. The modernised Airport will stimulate regional development, in particular as regards new industry investment. The Danish authorities submit that there are over 450 000 jobs in the business area Aarhus. There is an ambition to create 2 000 new jobs annually and to reach 250 000 jobs in the City of Aarhus alone by 2050. Investments of internationally oriented companies are a key driver of this development, as they have a multiplier effect, creating indirect jobs and growth in other sectors, up to 66%.<sup>1</sup> The Danish authorities submitted that having an airport nearby is a must for internationally oriented companies for contacts with shareholders, clients, suppliers and recruitment of employees. According to the International Congress and Convention association (ICCA), the city is among the Top 100 conference cities in the world.

- (14) Aarhus is a center for research and education in the Nordic countries. Aarhus University - Scandinavia's largest university - is based there.

### *2.2.1 Investment Aid*

- (15) The Danish authorities provided explanations related to the development of Aarhus Airport's financial situation. In 2010, Aarhus Airport started implementing a consolidation plan to tackle its internal loss-incurring elements. The consolidation plan was based on a new efficiency-driven business strategy. In particular, changes in management, consolidation of shareholding and cost-cutting measures eventually led to an improvement of Aarhus Airport's financial situation. The consolidation plan led to a positive EBITDA in 2010 and 2011.
- (16) However, in 2012, a major decline in the operations of the Airport occurred. The factors leading to the loss of its profitability were largely of an external nature. These included the bankruptcy of the airline Cimber Sterling serving the most important route out of the Airport, a subsequent significant increase in fares due to the loss of competition which, in turn, led to a massive passenger loss.
- (17) Due to a fall in the number of passengers, which resulted in a critical financial situation for the airport, in 2014 Aarhus Airport's shareholders commissioned a study to identify financial potentials/possibilities for reversing the negative development of Aarhus Airport.
- (18) Two consultancy reports were produced accordingly, the Atkins report and the Dragsted report. They both concluded that restoring Aarhus Airport's profitability based on the expected passenger growth was a possibility.
- (19) In 2016, an updated business plan was prepared by Aarhus Airport outlining a realistic forecast of the financial development of Aarhus Airport until 2039, that is until the end of the economic lifetime of the assets financed through the investment aid.
- (20) The Danish authorities submitted that the latest revised business plan already includes measures to hedge against past occurrences being repeated in the future, such as a diversification of the destinations and the airlines serving the Airport.
- (21) The Danish authorities submit that the investments aim to bring the airport to or near its current maximum capacity of 800 000 passengers per year and thus will lead to additional revenues for Aarhus Airport.

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<sup>1</sup> Oxford Research, March 2010 quoted in the notification.

- (22) The investment relates to infrastructure capacities of the airport in order to use the airport capabilities servicing the expected passenger growth in the area, ensuring its operability and safety.
- (23) The major parts of the investments are linked to the renovation of the terminal, diverse operating facilities and access area.
- (24) In 2015, Aarhus Airport already received DKK 7 297 500 (DKK 8 573 171 discounted) to finance investments listed below (Table 1).

**Table 1: Investment costs in 2015**

<b>Investment measures</b>	<b>Cost (in thousands DKK)</b>	<b>Investment aid (75%) - nominal (in thousands DKK)</b>	<b>Investment aid (75%) - discounted (in thousands DKK)</b>
Voice switches air to ground	[...]*	[...]	
New wind gauges for weather observation	[...]	[...]	
Updating of Metobs IT platform	[...]	[...]	
Check-in system "CUTE"	[...]	[...]	
FIDS	[...]	[...]	
New roof	[...]	[...]	
Change of baggage carousel	[...]	[...]	
EPOS Salary system	[...]	[...]	
Fiber and network cabling	[...]	[...]	
Server room cooling system	[...]	[...]	
Dismantling/relocation of oil tanks	[...]	[...]	
Replacement of electric dollies	[...]	[...]	
Replacement of vehicles -technical division- related to airport infrastructure	[...]	[...]	
<b>Total</b>	<b>9 730</b>	<b>7.297,5</b>	<b>8 573.171</b>

\* confidential information

- (25) The outstanding investment costs are listed in Table 2 below and they include:
- (1) maintenance of runways and taxiways, a new coating of taxiway and replacement of concrete at the ends of the runway (aircraft);
  - (2) new check-in and information systems (passengers);
  - (3) building renovation (rebuilding of passenger areas, expansion of security, customs and arrival areas to replacement of various technical aids used by security, IT-related improvements);
  - (4) rolling stock on the apron related to airport infrastructure.

**Table 2: Overview of all investment measures (nominal, in thousands DKK)**

Investment measures	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total (nominal)
Urgent investments in 2015	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Infrastructure (aircraft)	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Infrastructure (passengers)	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Building renovation	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Airport infrastructure related vehicles and tools	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<b>Total investment costs</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	<b>196 953</b>

- (26) Total planned capital expenditure amounts to nominal DKK 196 953 000 (discounted value DKK 167 171 520). Thereof nominal DKK 151 082 730 (discounted value DKK 127 293 911)<sup>2</sup> are eligible investment costs of economic nature.
- (27) The Danish authorities confirmed that the aid will be limited to 75% of the total eligible investment costs (DKK 127 293 911), namely to DKK 95 470 433.
- (28) The Danish authorities submit that they calculated the capital cost funding gap of the investment project within the meaning of point 99 of the Commission guidelines on State aid to airport and airlines<sup>3</sup> (hereinafter "the Aviation Guidelines"). The Danish authorities took into account the expected positive and negative cash-flows, including investment costs, over the lifetime of the assets.
- (29) The airport's ex-ante business plan shows a capital cost funding gap to the amount of DKK 123 169 844.
- (30) For the calculation of the investment funding gap on the basis of the discounted values, the applicable discount rate used corresponds to the weighted average cost of capital (WACC) and amounts to 8.39%.
- (31) The Danish authorities submitted that certain investments and services of the Airport associated with air navigation, aircraft firefighting, security, police and customs are of non-economic nature. However, the Danish authorities did not conclude on whether there is a general legal system applicable in Denmark ensuring non-discrimination between airport operators with respect to the public financing of such activities. Therefore, the Danish authorities included those costs as related to the economic activities of the Airport.

<sup>2</sup> The amounts include the planned investment cost granted in 2015 of nominal DKK 9 730 000, compounded DKK 11 430 894 as well as the investments planned as of 2017 of nominal DKK 187 223 000, discounted to DKK 155 740 626.

<sup>3</sup> OJ C 99, 04.04.2014, p.3.

### 2.2.2 Operating aid

- (32) The operating aid is intended to cover the operating funding gap of the current operations of Aarhus Airport. The operating aid covers the period 4 April 2014 – 3 April 2019<sup>4</sup> and includes operating aid already received by Aarhus Airport in 2015.<sup>5</sup>
- (33) The Danish authorities submitted the following information for the 2009–2013 period for the purposes of the calculation of the initial funding gap:

**Table 3: Overview of the initial funding gap**

<b>EBITDA</b>	<b>Value used for the calculation of initial funding gap (discounted)</b>
2009	-4 073 609
2010	0 <sup>6</sup>
2011	0
2012	-7 633 876
2013	-12 804 192
<b>Total</b>	<b>- 24 511 677</b>
<b>Initial Funding Gap</b> (average per annum (1/5 of total))	-4 902 335.4
80 % of the Initial Funding Gap (p.a.)	3 921 868.32
<b>Maximum permissible operating aid amount 2014–2019</b>	<b>19 609 341.6</b>

- (34) The business plan submitted by the Danish authorities shows the expected operating funding gap for the 2014 – 2019 period to be DKK 37.5 million. As the operating funding gap estimated in the business plan exceeds the 80% threshold of the initial funding gap, the Danish authorities limited the aid amount to DKK 19 609 341.6.
- (35) The total amount is intended to be made available to Aarhus Lufthavn A/S in the form of a non-repayable grant in instalments.
- (36) The Danish authorities submitted that Aarhus Airport would be able to cover its own costs by the end of the transitional period in 2024.
- (37) The Danish authorities submitted that Aarhus Airport would not be able to cover a senior loan beyond the 25% of the investment at the conditions proposed by the banks.
- (38) The Danish authorities committed to comply with the rules on transparency as provided for in points 162 and 163 of the Aviation Guidelines and as amended by the

<sup>4</sup> The Danish authorities limited the aid to the period until 2019 in line with the Aviation Guidelines. The Danish authorities submitted that they reserve the right to grant further operating aid thereafter, if the Aviation Guidelines allow it in the future.

<sup>5</sup> DKK 8 573 171, discounted.

<sup>6</sup> As the airport covered its operating costs in 2010 and 2011 (EBITDA was DKK 5 422 093 in 2010 and DKK 6 591 419 in 2011), no funding gap existed.

transparency communication<sup>7</sup> (the "Transparency Communication"). This commitment includes the publication of the relevant information as well as keeping it public for at least 10 years. The Danish authorities declared that the information will be available to the interested public without restrictions.

- (39) The Danish authorities further undertook measures to keep detailed records regarding the aid measures. Such records will contain all information necessary to establish that the compatibility conditions have been observed, in particular those regarding eligible costs and maximum allowable aid intensity, where applicable. Those records will be maintained for 10 years from the date on which the aid is granted and be provided to the Commission upon request.
- (40) The Danish authorities committed that the aid will not be cumulated with any other aid for the same eligible expenses.

### **3. ASSESSMENT OF THE AID**

#### **3.1. Existence of aid**

- (41) By virtue of Article 107(1) of the Treaty on the Functioning of the European Union (the "TFEU" or the "Treaty") *"any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."*
- (42) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, for a measure to constitute State aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled. The financial support must:
- be granted by the State or through State resources,
  - favour certain undertakings or the production of certain goods,
  - distort or threaten to distort competition, and
  - affect trade between Member States.
- (43) In the following sections the Commission assesses whether the measures described above meet those cumulative criteria and thus constitute aid in the meaning of Article 107(1) TFEU.

##### *3.1.1 Notion of undertaking and economic activity*

- (44) According to settled case law, the Commission must first establish whether Aarhus Airport is an undertaking within the meaning of Article 107(1) TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its

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<sup>7</sup> Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2015-2020, on State aid for films and other audio-visual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ C 198/30, 27.6.2014.

legal status and the way in which it is financed.<sup>8</sup> Any activity consisting in offering goods and services on a given market is an economic activity.<sup>9</sup>

#### 3.1.1.1 Undertaking

- (45) It is settled case law that the operation of an airport, including the provision of airport services to airlines and to the various service providers within airports, is an economic activity.<sup>10</sup> The Court of Justice confirmed that the operation of an airport for commercial purposes and the construction of airport infrastructure constitute an economic activity.<sup>11</sup> Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) TFEU<sup>12</sup>.
- (46) The Commission notes that the airport infrastructure and equipment are owned and operated by Aarhus Airport, the beneficiary of the public funding under assessment. Aarhus Airport charges airlines, as well as general aviation, fees for the use of the airport infrastructure, and thus exploits the Airport commercially. It follows that the entity owning and operating the Airport constitutes an undertaking for the purposes of Article 107(1) TFEU.

#### 3.1.1.2 Economic activity

- (47) While Aarhus Airport must be considered to constitute an undertaking for the purposes of Article 107(1) TFEU, it must be recalled that not all the activities of an airport owner and operator are necessarily of an economic nature.<sup>13</sup>
- (48) As explained in point 35 of the Aviation Guidelines, 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.
- (49) However, as stated in point 37 of the Aviation Guidelines, public financing of non-economic activities necessarily linked to the carrying out of an economic activity 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.<sup>14</sup> Therefore, if in a

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<sup>8</sup> Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, paragraph 36; Judgment of the Court of Justice of 23 April 1991, *Höfner and Elser*, C-41/90, ECLI:EU:C:1991:161, paragraph 21; Judgment of the Court of Justice of 16 November 1995, *FFSA and Others*, C-244/94, ECLI:EU:C:1995:392, paragraph 14; Judgment of the Court of Justice of 11 December 1997, *Job Centre*, C-55/96, ECLI:EU:C:1997:603, paragraph 21.

<sup>9</sup> Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85 ECLI:EU:C:1987:283, paragraph 7; Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, 35/96, ECLI:EU:C:1998:303, paragraph 36.

<sup>10</sup> Judgment of the Court of First Instance of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290, confirmed by the judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01 P, ECLI:EU:C:2002:617.

<sup>11</sup> Judgment of the Court of Justice of 19 December 2012, *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, C-288/11, ECLI:EU:C:2012:821; see also Judgment of the Court of Justice of 24 October 2002, *Aéroports de Paris v Commission*, C-82/01, ECLI:EU:C:2002:617, and Judgment of the Court of First Instance of 17 December 2008, *Ryanair v Commission*, T-196/04, ECLI:EU:T:2008:585.

<sup>12</sup> Judgment of the Court of Justice of 17 February 1993, *Poucet and Pistre*, Joined Cases C-159/91 and C-160/91, ECLI:EU:C:1993:63.

<sup>13</sup> Judgment of the Court of Justice of 19 January 1994, *SAT/Eurocontrol*, Case C-364/92, ECLI:EU:C:1994:7.

<sup>14</sup> See i.a. Judgment of the Court of Justice of 3 March 2005, *Heiser*, C-172/03, ECLI:EU:C:2005:130, paragraph 36, and case-law cited.



given legal system it is normal that airlines or airport managers bear the costs of certain services, whereas some airlines or airport managers providing the same services on behalf of the same public authorities do not have to bear those costs, the latter may enjoy an advantage, even if those services are considered in themselves as non-economic.

- (50) Denmark initially considered some of the activities related to air navigation, fire-fighting, security, police and customs to be of non-economic nature. However, the Danish authorities were not in a position to confirm whether there is a general legal system applicable in Denmark ensuring non-discrimination between airport operators with respect to the public financing of activities falling within the public remit. Therefore, the Danish authorities included such costs as related to the economic activities of the Airport (recital (31)).
- (51) Hence, the Commission considers all of the aided activity to be of an economic nature.

### *3.1.2 Use of State resources and imputability to the State*

- (52) The funding for the investment project at the Airport and for covering Aarhus Airport's operating losses will stem from the budget of the municipal public authorities.
- (53) The funding is thus imputable to the State and involves State resources.

### *3.1.3 Economic advantage*

- (54) The above-mentioned public funding reduces the investment costs which Aarhus Airport would normally have to bear in order to function. The public funding, therefore, confers an economic advantage on Aarhus Airport.
- (55) The compensation of operating losses relieves Aarhus Airport from the burden of covering its own operating losses. Therefore, those contributions also confer an economic advantage to Aarhus Airport.

### *3.1.4 Selectivity*

- (56) Article 107(1) TFEU requires that a measure, in order to be defined as State aid, favours "*certain undertakings or the production of certain goods*". The Commission notes that the public funding in question will be granted to Aarhus Airport only. Hence, the measure is selective within the meaning of Article 107(1) TFEU.

### *3.1.5 Distortion of competition and effect on trade*

- (57) The Commission notes that when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.
- (58) In accordance with settled case law,<sup>15</sup> for a measure to distort competition, it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (59) The Commission considers that any undue economic advantage granted to an airport operator from public resources can strengthen the beneficiary's position vis-à-vis its competitors on the market of providers of airport services.

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<sup>15</sup> Judgment of the Court of First Instance of 30 April 1998, *Het Vlaamse Gewest v Commission*, T-214/95, ECLI:EU:T:1998:77.

- (60) The Commission notes that many operators are in competition for the management of airport infrastructure in Europe, including local and regional airports. In addition, airport operators compete for air carriers to operate from their airports. Aid to the operator of the Airport may therefore distort competition in the markets for airport infrastructure operation by reinforcing its economic position and by reducing business opportunities for competing airports.
- (61) Therefore, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

#### *3.1.6 Conclusion on the existence of State aid*

- (62) For the reasons set out above the Commission concludes that the public funding for the planned infrastructure investments at the Airport constitutes State aid within the meaning of Article 107(1) TFEU.
- (63) With regard to the planned operating funding which aims to cover operating losses of Aarhus Airport, the Commission also concludes that the notified measures constitute State aid within the meaning of Article 107(1) TFEU.

### **3.2. Lawfulness of the aid**

- (64) Pursuant to the standstill clause of Article 108(3) TFEU and to Article 3 of Council Regulation No 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, new aid measures must not be put into effect before the Commission has taken a decision authorising such aid. In this context, aid measures can be considered to be put into effect when the legally binding act providing for the aid is adopted.
- (65) The Commission regrets that Denmark has not respected the standstill obligation laid down in Article 108(3) TFEU with regard to the investment aid and the operating aid and has granted the aid prior to the Commission's approval. The investment aid and the operating aid granted in 2015 therefore constitute illegal aid.
- (66) The Commission notes that Denmark has respected the standstill obligation laid down in Article 108(3) TFEU with regards to the investment aid and the operating aid to be granted as of 2017.

### **3.3. Compatibility of the aid**

#### *3.3.1 Basis for assessing the compatibility of the aid with the internal market*

- (67) Article 107(3)(c) TFEU stipulates that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the internal market.
- (68) With the notified State aid, the Danish authorities intend to provide financial support for investments in infrastructure and equipment at the airport of Aarhus. They will also compensate the airport for operating losses.
- (69) The Aviation Guidelines provide for principles to assess, among others, the compatibility of investment aid and operating aid to airports with the internal market.
- (70) Point 79 of the Aviation Guidelines stipulates cumulative common principles that a State aid measure has to respect in order to be found compatible with the internal market:
- (a) contribution to a well-defined objective of common interest;

- (b) need for State intervention;
- (c) appropriateness of the aid measure;
- (d) incentive effect;
- (e) proportionality of the aid (aid limited to the minimum);
- (f) avoidance of undue negative effects on competition and trade between Member States;
- (g) transparency of aid.

### 3.3.2 *Investment aid*

(71) Investment aid granted to airports will be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU provided that the cumulative conditions mentioned above are fulfilled as set out in points 84 to 108 of the Aviation Guidelines. Transparency criteria in points 162 and 163 of the Aviation Guidelines have been amended by the Transparency Communication. Compatibility with those amended criteria will be assessed below.

#### *(a) Contribution to a well-defined objective of common interest*

(72) Under point 84 of the Aviation Guidelines, investment aid to airports will be considered to contribute to the achievement of an objective of common interest if it (a) increases the mobility of Union citizens and the connectivity of the regions by establishing access points for intra-Union flights; or (b) combats air traffic congestion at major Union hub airports; or (c) facilitates regional development.

(73) According to Denmark, the Airport is of great significance for the region around the city of Aarhus, the second largest city in Denmark (recital (11)). In terms of economic development, the region has a role as a business destination. According to ICCA, it is among the top 100 conference cities in the world. Internationally oriented companies are considered to be a key driver of the regional development (recitals (11) and (13)). It is also a centre of education and research (recital (14)).

(74) In terms of tourism, air traffic requirements are expected to rise due to the development of Aarhus as a touristic destination. The tourism business has continued to experience steady growth in demand for accommodation. Tourists spent 2.57 million nights in the region in 2013, around 2.9 million in 2014, and approximately 3.0 million in 2015. Moderate but steady growth is forecast for the next ten years. Over the next few years, the airport will play an increasingly important role in helping Jutland's tourism industry to tap into new target groups (recital (12)).

(75) Hence, the aid contributes to regional development, in line with point 84(c) of the Aviation Guidelines.

(76) In line with point 85 of the Aviation Guidelines, the Commission also has to assess whether the primary aim of the investment project is the creation of additional capacity which would contribute to the duplication of unprofitable airports or the creation of additional unused capacity in the same catchment area. Any investment should have satisfactory medium-term prospects for use and should not diminish the medium-term prospects for use of an existing infrastructure in the catchment area. In addition, according to point 86 of the Aviation Guidelines, when the airport is located in the same catchment area of an existing airport which is not operating at near or full capacity, the medium-term prospects for use of the airport infrastructure must be demonstrated based on sound forecasts in an ex-ante business plan and must

identify the likely effect of the investment on the use of existing infrastructure. The catchment area is defined in point 25(12) of the Aviation Guidelines as '*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 specificities 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.*'

- (77) The Commission notes that there are no airports that fall within the same catchment area as the Airport. Furthermore, the Commission notes that the business plan submitted by the Danish authorities foresees stable passenger numbers for the years 2017-2024. The condition of positive medium-term prospects for use of the airport infrastructure is therefore met.
- (78) The Commission therefore concludes that the modernisation and operation of the airport infrastructure meets a clearly defined objective of common interest.

*(b) Need for State intervention*

- (79) Point 87 of the Aviation Guidelines stipulates that State aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver. Point 89 of the Aviation Guidelines also establishes the categories of airports that have more difficulties in securing financing for their investments without public funding.
- (80) With annual passenger traffic of approximately half a million, the Airport falls within point 89(b) of the Aviation Guidelines under which airports with annual passenger traffic between 200 000 and 1 million are usually not able to cover their capital costs to a large extent. The Commission notes that the Airport is well below the 1 million threshold.
- (81) In addition, the Danish authorities have explained that Aarhus Airport cannot attract private investors. Despite the prospect of a positive operating cash-flow as of 2023, the immediate financing need cannot be financed from the airport operator's own resources. The planned investment is necessary to implement its business plan and to become profitable. The market is however not ready to share the risks and revenues of the investment and to fund 100% of the investment before the airport can prove its profitability. The Airport operator would not be able to finance a senior loan beyond 25% of the investment at the conditions proposed by banks before the investments are undertaken (recital (37)).
- (82) This explanation confirms points 88 and 89 of the Aviation Guidelines, which outline that smaller airports may have difficulties in ensuring the financing of their investments without public funding.
- (83) The Commission therefore concludes that there is a need for State intervention.

*(c) Appropriateness of the aid measure*

- (84) Pursuant to point 90 of the Aviation Guidelines, Member States must demonstrate that the aid measure is an appropriate policy instrument to achieve the intended objective or resolve the problems intended to be addressed by the aid. An aid measure will not be considered compatible with the internal market if other less distortive policy instruments or aid instruments allow the same objective to be reached.

- (85) The Danish authorities submitted that a grant covering 75% of the total investment costs is an appropriate manner to finance the present investment. The business model shows an existing funding gap which is calculated for the economic lifespan of the investments. The Danish authorities concluded that a State loan to finance the investment, even at an interest rate below market rates, would not be a viable alternative to a direct grant, such a loan could not be borne by the airport at the moment without constraining its ability to become profitable and attract private investment over long term.
- (86) The Commission therefore concludes that the aid measure at stake is an appropriate policy instrument.
- (d) Incentive effect*
- (87) Point 93 of the Aviation Guidelines requires that works on an individual investment have not have started before an application has been submitted to the granting authority. Point 94 of the Aviation Guidelines requires that it needs to be verified that the project is not economically attractive in its own right and that the investment would not have been undertaken or would not have been undertaken to the same extent without any State aid.
- (88) The Danish authorities confirmed that the application was submitted to the granting authority before the start of works.
- (89) The Danish authorities have demonstrated that Aarhus Airport could not undertake the investment project without the grant covering part of the project cost.
- (90) The Danish authorities have showed in the business plan that the capital cost funding gap exceeds the aid amount by approximately DKK 123.17 million. The investment is not economically attractive in its own right.
- (91) The Commission therefore concludes that the aid has an incentive effect for Aarhus Airport as it would not undertake the investments without the aid in question.
- (e) Proportionality of the aid amount (aid limited to the minimum)*
- (92) State aid is deemed to be proportional if its amount is limited to the minimum needed to induce the additional investment or activity in the area concerned. State aid to airports, as any other State aid measure, should be proportional in relation to the aimed legitimate objective in order to be cleared as compatible aid.<sup>16</sup>
- (93) Point 97 of the Aviation Guidelines stipulates that the maximum permissible amount of State aid must be expressed as a percentage of eligible costs (the maximum aid intensity) and that the eligible cost are the costs relating to the investments in airport infrastructure, including planning costs, ground handling infrastructure (such as baggage belt, etc.) and airport equipment. Point 101 of the Aviation Guidelines specifies that the maximum permissible aid intensity for airports with less than 1 million passengers is 75% of the eligible costs.
- (94) As listed in recitals (24) and 0 above, the aid is used for investments in airport infrastructure, ground handling infrastructure and airport equipment within the meaning of point 97 of the 2014 Aviation Guidelines. The investments are not related to non-aeronautical activities.

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<sup>16</sup> According to settled case law, the Commission may declare State aid compatible only if it is necessary for achieving a legitimate objective (see Judgment of the Court of Justice of 17 September 1980, , *Philip Morris*, 730/79, ECLI:EU:C:1980:209, paragraph 17; Judgment of the Court of 15 April 2008, *Nuova Agricast*, C-390/06, ECLI:EU:C:2008:224, paragraph 68; Judgment of the Court of First Instance of 14 January 2009, *Kronoply*, T-162/06, ECLI:EU:T:2009:2, paragraph 65).

- (95) The maximum intensity for investment aid also respects points 101, 102 and 103 of the Aviation Guidelines. The Airport comes under the category of airports which process fewer than 1 million passengers per year (recital (6)). In accordance with this, aid of up to 75 % of the eligible costs is permitted; the beneficiary itself has to make a 25% contribution.
- (96) The Danish authorities have confirmed that the aid is limited to 75% of the eligible costs (recital (27)).
- (97) Point 99 of the Aviation Guidelines stipulates that in cases where no specific alternative project/activity is known that the beneficiary would have undertaken if it had not received the aid, in order to be proportionate, the amount of the aid should not exceed the capital cost funding gap of the investment project. That gap is determined on the basis of an ex ante business plan as the net present value of the difference between the positive and negative cash flows (including investment costs) over the lifetime of the investment. For investment aid, the business plan should cover the period of the economic utilisation of the asset.
- (98) In the case at hand, no alternative project/activity is known that would have been undertaken without the aid. In the absence of the aid, Aarhus Airport would not be able to make the necessary investments and would face traffic restrictions and ultimately closure.
- (99) As explained above in recital (29), the aid amount is below the capital cost funding gap of the project.
- (100) Given the above, as the aid does not exceed the capital cost funding gap and as the aid intensity does not exceed the maximum permissible aid intensity, the Commission therefore concludes that the investment aid is proportional.

*(f) Avoidance of undue negative effects on competition and trade between Member States*

- (101) The negative effects of the aid must be sufficiently limited, so that the overall balance of the measure is positive.
- (102) Point 106 of the Aviation Guidelines specifies that in particular the duplication of unprofitable airports or the creation of additional unused capacity in the catchment area of existing infrastructure might have distortive effects.
- (103) There are no other airports within the catchment area of the Airport (recital (10)). The measures do not lead to any duplication of unprofitable airports and also create no additional unused capacity in an existing airport's catchment area.
- (104) Point 108 of the Aviation Guidelines specifies that in order to further limit any distortions, the airport, including any investment for which State aid is granted, must be open to all potential users and must not be dedicated to one specific user.
- (105) Denmark confirmed that the infrastructure being funded is, by its very nature, open to all users and it is not dedicated to one specific user (recital (7)).
- (106) On the basis of the above, the Commission therefore concludes that the investment aid in question has no undue negative effects on competition and trade between Member States.

*(g) Cumulation of aid*

- (107) Pursuant to point 159 of the Aviation Guidelines, aid authorised under the Aviation Guidelines may not be combined with other State aid, de minimis aid or other forms

of Union financing, if such a combination results in higher aid intensity than the one laid down therein.

(108) The Danish authorities have confirmed that the present aid granted under the Aviation Guidelines will not be cumulated with any other aid (recital (40)).

(109) The Commission therefore concludes that the cumulation of aid provisions of the Aviation Guidelines are complied with.

*(h) Transparency*

(110) Section 8.2 of the Aviation Guidelines as amended by the Transparency Communication specifies transparency requirements which shall ensure that Member States, the Commission, economic operators and the public have easy access to all relevant acts and to pertinent information about the aid awarded thereunder. Specific criteria for the publication of relevant information are set out in point 162 of the Aviation Guidelines. Point 163 of the Aviation Guidelines requires Member States to ensure that detailed records are kept regarding all measures involving the granting of State aid.

(111) The Danish authorities committed to observe the transparency requirements (recitals (38) to (39)).

(112) The Commission therefore concludes that the aid is transparent within the meaning of the Aviation Guidelines.

*(i) Conclusion*

(113) In view of the above, the Commission considers that the investment aid to Aarhus Airport for its operations at the Airport is in accordance with the compatibility conditions set out in the Aviation Guidelines.

(114) Hence, the investment aid measure is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

### *3.3.3 Operating aid*

(115) Operating aid granted to airports after 4 April 2014 will be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU for a transitional period of ten years, provided that the cumulative conditions set out in points 113 to 134 of the Aviation Guidelines are fulfilled. The compatibility with those criteria is assessed below.

*a) Contribution to a well-defined objective of common interest*

(116) Point 113 of the Aviation Guidelines stipulates that, in order to give airports time to adjust to new market realities and to avoid any disruptions in the air traffic and connectivity of the regions, operating aid to airports will be considered to contribute to the achievement of an objective of common interest, if it: a) increases the mobility of European Union citizens and connectivity of regions by establishing access points for intra-European Union flights; or b) combats air traffic congestion at major European Union hub airports; or c) facilitates regional development.

(117) As set out in recitals (72) to (75), aid to Aarhus Airport can be considered to contribute to regional development.

(118) In line with point 114 of the Aviation Guidelines, the Commission has to assess whether the aid would contribute to the duplication of unprofitable airports and what the effect would be on traffic of other airports located in the same catchment area.

- (119) The nearest airports are (recital (10)):
- (a) Karup airport: approximately 110 km or approximately 1 hour and 26 minutes by car or 5 hours and 16 minutes by public transport;
  - (b) Aalborg airport: approximately 135-140 km or approximately 1 hour and 33 minutes by car or 3 hours and 31 minutes by public transport;
  - (c) Billund airport: approximately 135-140 km or approximately 1 hour and 29 minutes by car or 3 hours and 32 minutes by public transport.
- (120) Therefore, it follows that there are no other airports in the catchment area of the Airport within the meaning of the Aviation Guidelines (recital (10)).
- (121) In view of these considerations the Commission concludes that there is no duplication of unprofitable airports within the catchment area of the Airport.
- (122) Therefore, the operation of the Airport meets a clearly defined objective of common interest.
- b) Need for State intervention*
- (123) Points 116 to 118 of the Aviation Guidelines provide that the aid should be targeted towards situations where the market itself cannot deliver. The Aviation Guidelines further recognise that the need for public funding to finance operating costs will normally be proportionately greater for smaller airports due to high fixed costs and that airports with annual passenger traffic between 200 000 and 700 000 passengers may not be able to cover their operating costs to a substantial extent.
- (124) The Danish authorities submitted that the Airport served 470 000 passengers in 2014, which number decreased to 370 000 passengers annually on average in 2015 and 2016 (recital (6)). This number of passengers is significantly lower than the threshold set by the 2014 Aviation Guidelines as an upper limit for this category of regional airports.
- (125) The business plan submitted by the Danish authorities shows that the Airport will not exceed the annual passenger traffic of 700 000 by 2019.
- (126) The ex-ante business plan submitted by the Danish authorities also shows that Aarhus Airport will not be able to cover its operating costs in the relevant period. For 2014 – 2019, the Danish authorities submitted an expected operating funding gap as described in recital (34) above. The revenues will not be sufficient to cover its costs.
- (127) The Commission therefore concludes that there is a need for State intervention.
- c) Appropriateness of the aid measure*
- (128) Point 120 of the Aviation Guidelines states that any measure of aid to an airport must be an appropriate policy instrument to address the objective of common interest. The Member State must, therefore, demonstrate that no other less distortive policy instruments or aid instruments could have allowed the same objective to be reached.
- (129) According to the Danish authorities, the aid measure at stake is appropriate to address the intended objective of common interest that could not have been achieved by another less distortive policy instrument. Given the financial situation of Aarhus Airport, it is not likely that it could have obtained and reimbursed loans to cover the operating funding gap.
- (130) In accordance with points 121 and 122 of the Aviation Guidelines, in order to provide proper incentives for efficient management of an airport, the aid amount is, in principle, to be established ex-ante as a fixed sum covering the expected operating



funding gap (determined on the basis of an ex-ante business plan) during a transitional period. For those reasons, no ex-post increase of the aid amount should, in principle, be considered compatible with the internal market. The Member State may pay the ex-ante fixed amount as an up-front lump sum or in instalments, for instance on an annual basis.

- (131) The Danish authorities established the aid amount ex-ante, on that basis of an ex-ante business plan. However, the Danish authorities subsequently limit it to the maximum permissible aid intensity capped by the initial funding gap as explained in recital (33). The operating aid indicated above is to be given to Aarhus Airport as a grant.
- (132) In view of the above, the Commission considers that the measure at stake is appropriate to reach the desired objective of common interest.

*d) Incentive effect*

- (133) According to 124 of the Aviation Guidelines, the incentive effect for operating aid is present if it is likely that, in the absence of operating aid, the level of economic activity of the airport would be significantly reduced. This assessment needs to take into account the presence of investment aid and the level of traffic at the airport.
- (134) The Danish authorities submit that Aarhus Airport is not able to cover its operating costs. The aid serves to keep Aarhus Airport operational. Without the aid, the Airport would have to close down and would not be able to contribute to local accessibility and regional development. Although steady growth in passenger numbers is to be expected, Aarhus Airport will still not be in a sufficiently strong position in the coming years to cover its operating costs alone. This confirms the fact that the airport would not be able to operate without the public support.
- (135) In view of the above, the Commission considers that the aid measure at stake has an incentive effect.

*e) Proportionality of the aid (aid limited to the minimum)*

- (136) Point 125 of the Aviation Guidelines provides that in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place. For airports with less than 700 000 passengers per year, point 130 of the Aviation Guidelines specifies that they may face increased difficulties in achieving full cost coverage during the 10-year period. For this reason, the Aviation Guidelines allow the maximum permissible aid amount for those airports to be 80% of the initial operating funding gap for a period of five years after the beginning of the transition period. The Commission will reassess the need for continued specific treatment and the future prospects for full operating cost coverage for this category of airport, in particular with regard to the change of market conditions and profitability prospects.
- (137) The Danish authorities confirmed that the aid will be limited to the maximum aid intensity of 80% of the initial operating funding gap for a period of five years. The public authorities will cover Aarhus Airport's operating funding gap during the period 4 April 2014 to 3 April 2019 in the amount of DKK 19 609 341.6 which is 80% of the initial operating funding gap (recital (33)).
- (138) The Commission also took note of the development of the situation at the Airport as described in recitals (15) to (17).
- (139) The Danish authorities also submitted that Aarhus Airport will be able to cover its own costs by the end of the transitional period in 2024 (recital (36)), on the basis of a business plan outlining a realistic forecast of the financial development of Aarhus

Airport until 2039 thanks to the new business strategy as described in particular in recitals (19), (20) and (21).

- (140) In view of the above, the Commission considers that the operating aid amount in the present case is proportional and limited to the minimum necessary for the aided activity to take place.

*f) Avoidance of undue negative effects on competition and trade between Member States*

- (141) According to points 131 to 134 of the Aviation Guidelines, when assessing compatibility of operating aid account will be taken of the distortions of competition and the effects on trade. Where an airport is located in the same catchment area as another airport with spare capacity, the business plan, based on sound passenger and freight traffic forecasts, must identify the likely effect on the traffic of the other airports located in the catchment area. In addition, it must be demonstrated that all airports in the same catchment area will be able to achieve full operating cost coverage at the end of the transition period. And finally, the airport must be open to all potential users and not be dedicated to one specific user.
- (142) In the present case the Commission took note that there are no other airports in the catchment area of the Airport within the meaning of the Aviation Guidelines (recital (10)).
- (143) In order to further limit the negative effects on competition and trade, the Danish authorities submitted that the Airport is and will remain open to all potential users and is and will not be dedicated to one specific user (recital (7)).
- (144) In view of the above, the Commission considers that the undue negative effects on competition and trade between Member States are limited to the minimum.

*g) Transparency of aid and cumulation*

- (145) The Danish authorities have committed to respect the transparency requirements associated to the operating aid assessed in the present decision (recitals (38) and (39)). Furthermore, the Danish authorities have committed that the present aid granted under the Aviation Guidelines will not be cumulated with any other aid (recital (40)).

*h) Conclusion*

- (146) In view of the above assessment, the Commission considers that the operating aid to Aarhus Airport is in accordance with the compatibility conditions set out in the Aviation Guidelines.
- (147) Hence, the operating aid is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

#### 4. CONCLUSION

The Commission regrets that Denmark, in 2015, put the aid in question into effect before the Commission had taken a decision authorising such aid, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, on the basis of the foregoing assessment, it has decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3) of the Treaty on the Functioning of the European Union.

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Yours faithfully,  
For the Commission

Margrethe VESTAGER  
Member of the Commission