



EU state aid requirements on international airports in (partial) public property with a focus on legal personalities in the airport organization

Beihilfenrechtliche Anforderungen an internationale
Flughäfen in (anteiligem) Staatseigentum mit
besonderem Augenmerk auf deren Ausgestaltung als
juristische Personen

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Comparative Private Law Research Workshop

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I. Introduction



Article 107

(ex Article 87 TEC)

1. Save as otherwise provided in the Treaties, 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.

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) 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;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.



I. Introduction



State aid in the aviation sector – Commission guidelines on airports and airlines (revision)

The planned revision of the 2014 state aid guidelines on Airports in the EU draws again attention to:

- (1) Connection between public infrastructure and competitiveness of the EU
- (2) Mixed nature of international airports in terms of public and private law
- (3) Coexisting of public tasks and services with private sector and companies in airports


Ref. Ares(2024)6063603 - 27/08/2024

CALL FOR EVIDENCE FOR AN IMPACT ASSESSMENT	
TITLE OF THE INITIATIVE	Aviation Guidelines – Revision
LEAD DG (RESPONSIBLE UNIT)	DG Competition – Unit F2, State aid - Transport
LIKELY TYPE OF INITIATIVE	Commission autonomous act – Commission Communication
INDICATIVE TIMETABLE	The revision process should be completed before the expiry date of the extended transitional period for operating aid to regional airports (Q2 2027)
ADDITIONAL INFORMATION	
<i>This document is for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described, including its timing, are subject to change.</i>	



I. Introduction



Ref. Ares(2024)0603603 - 27/08/2024

CALL FOR EVIDENCE FOR AN IMPACT ASSESSMENT

TITLE OF THE INITIATIVE	Aviation Guidelines – Revision
LEAD DG (RESPONSIBLE UNIT)	DG Competition – Unit F2, State aid - Transport
LIKELY TYPE OF INITIATIVE	Commission autonomous act – Commission Communication
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77 feedback within deadline often pointed out that current aid criteria are not sufficient anymore and should adopt to higher changed market conditions, competition pressure of airports as well as internationally difficult times (armed conflicts, COVID etc.)



AÖV-STELLUNGNAHME ZUM THEMA: „Staatliche Beihilfen im Luftverkehr – Leitlinien der Kommission für Flughäfen und Luftverkehrsgesellschaften“

POSITION DER ARBEITSGEMEINSCHAFT ÖSTERREICHISCHER VERKEHRSFLUGHÄFEN (AÖV)

Nach wie vor können insb. viele Regionalflughäfen die Verkehrszahlen aus 2019 („pre-covid“) noch nicht wieder erreichen: das zeigt sich einerseits an teilweise schwächeren Passagier- und Bewegungszahlen; andererseits sind viele Regionalflughäfen besonders im Bereich der Konnektivität zurückgefallen. Um die regionale Konnektivität und darüber die jeweiligen Wirtschafts- und Tourismusstandorte zu stärken, braucht es auf europäischer Ebene weiterhin praxistaugliche Leitlinien für staatliche Beihilfen für Flughäfen und Luftverkehrsgesellschaften. Bezüglich der Beihilfen für Flughäfen sind daher aus Sicht der AÖV folgende Punkte zu berücksichtigen:

Betriebsbeihilfen

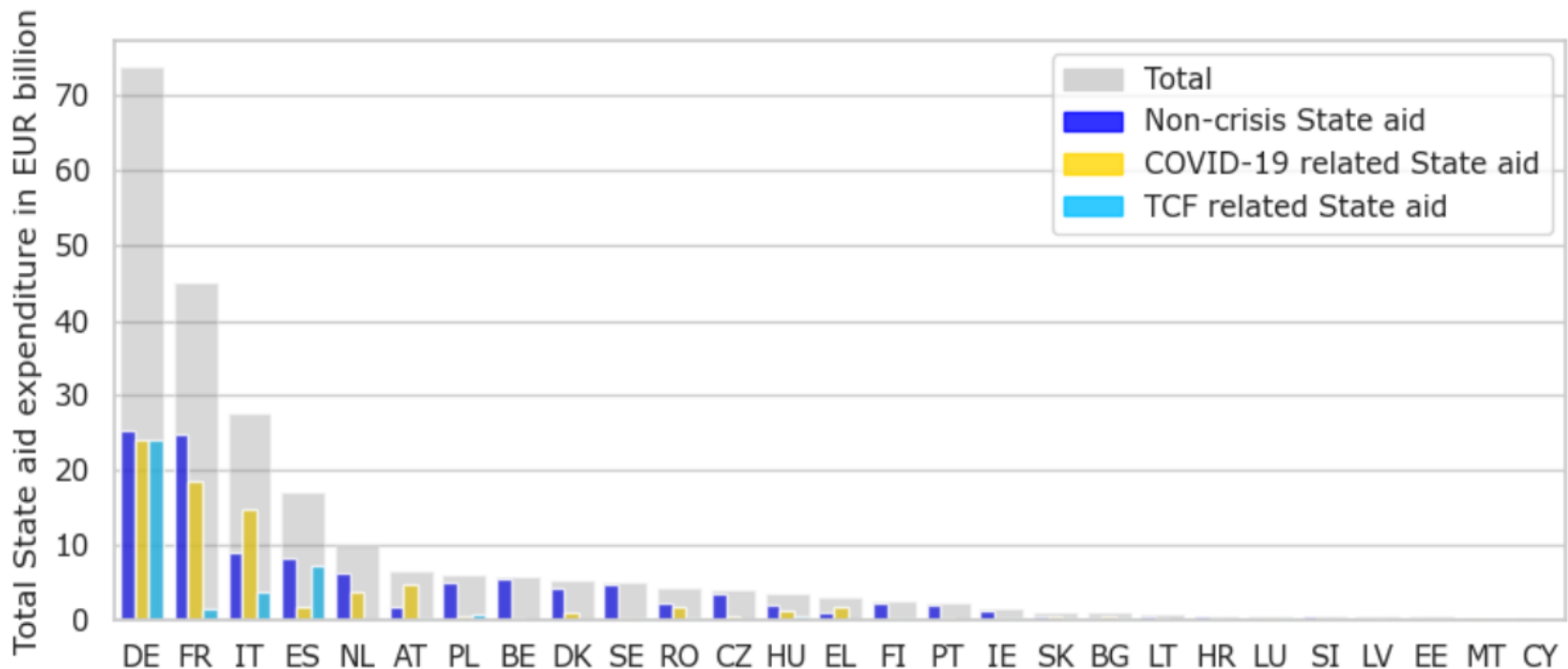
Wie bereits durch die Eignungsprüfung im Auftrag der EU-Kommission aus dem Jahr 2020 gezeigt wurde, können manche Flughäfen unter einem bestimmten Schwellenwert an Passagieren auch langfristig nicht operativ profitabel sein. Dabei wurden hier noch nicht die jüngsten Krisen (COVID19, Ukraine-Krieg, Konflikt im Nahen Osten, etc.) berücksichtigt, die die Profitabilität von Flughäfen weiter beeinträchtigt haben – wodurch die definierten Schwellenwerte aus der Eignungsprüfung jedenfalls auch nochmals nach oben revidiert werden sollten. Diese Flughäfen sind besonders anfällig für externe Schocks; die Verkehrsentwicklung nach der Corona-Pandemie bestätigt dies. Tatsächlich fällt die Erholung des Luftverkehrs nach der Pandemie in Europa sehr unterschiedlich aus, jedoch zeigt sich, dass viele Regionalflughäfen noch ein Defizit bei Passagieren, Bewegungen und Verbindungen aufweisen.

State Aid and EU Competitiveness

State Aid Scoreboard, 2023 DG Comp

In 2022, Member States have overall reduced their spending... - EU27 Member States spent EUR 227.98 billion, corresponding to 1.4% of their 2022 GDP, on State aid for both crisis and other measures. Overall, this corresponds to a reduction by 34.8%, from EUR 349.7 billion of expenditure in 2021. Despite being still at significant levels, ranging between 2.1% and 0.3% of national GDP, also spending dispersion across Member States consistently reduced if compared to 2021 when it ranged between 4.6% and 0.9% of national GD.

Figure 3: Total State aid expenditure by Member State, in EUR billion breakdown between COVID-19, State aid in response to the Russian invasion of Ukraine and other State aid measures





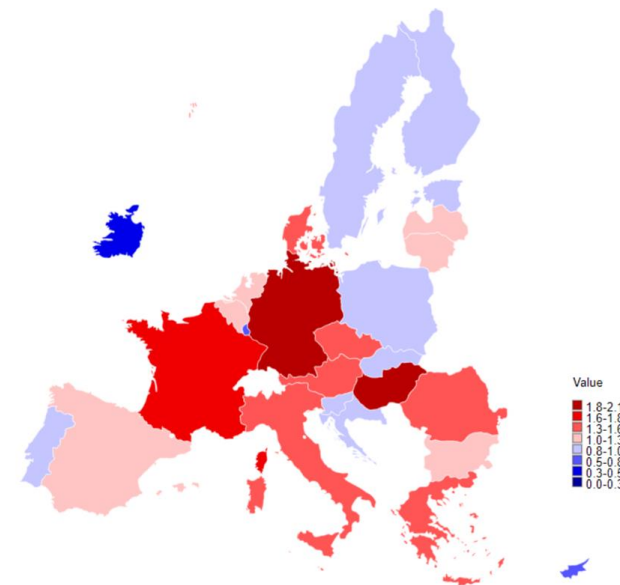
State aid an EU Competitiveness



In alle EU-Regionen investieren



Figure 1: Total State aid expenditure by Member States, as % of national 2022 GDP





Economic relevancy of aviation sector in the EU

Economic relevancy of aviation in the EU (2014 Commission Guidelines):

15 million annual commercial movements, 822 million passengers transported to and from Union airports in 2011, 150 scheduled airlines, a network of over 460 airports and 60 air navigation service providers.

The Union benefits from its position as a global aviation hub, with airlines and airports alone contributing more than EUR 140 thousand million to the Union's Gross Domestic Product each year.

The aviation sector employs some 2.3 million people in the Union.



Purpose of 2014 guideline revision

The Commission plans to review the aviation guidelines. In doing so, the Commission will also consider, for consistency reasons, the existing options of granting aid to the aviation sector other than under the framework of the aviation guidelines. These other options are set out in the bullet points below:

- Airports and airlines may be entrusted with public-service obligations and compensated for these obligations under the State aid rules applying to services of general economic interest ('the SGEI package').
- The General Block Exemption Regulation permits operating aid to airports with up to 200 000 passengers a year and investment aid to airports with up to 3 million passengers a year under certain conditions.
- The Commission's guidelines on State aid for climate, environmental protection and energy ('the CEEAG') or the framework for State aid for research and development and innovation ('the R&D&I State aid guidelines') both allow grant aid for the greening of the aviation sector.
- The rescue and restructuring guidelines allow support to be given to airlines or airports in difficulty under certain conditions.



Economic relevancy of aviation in the EU

In Germany, there are over 500 airfields, 39 of which are commercial airports, namely those that have been classified as airports by the responsible state aviation authority in accordance with Section 38 of the Air Traffic Licensing Regulation (LuftVZO) in conjunction with Section 12 of the Air Traffic Act (LuftVG).

There are currently 127 officially registered airports in Hungary and also here only a small proportion are operated as international commercial airports (Budapest, Debrecen, Sármellék-Hévíz, Győr).

Budapest: 16 mio passengers

Debrecen: 300-350.000 passengers

Franfurt/M: 60 mio passengers

Platz 10: Flughafen Leipzig/Halle: 2,1 mio passengers



Practical examples for Airport corporation structures with the State being involved

Flughafen Leipzig/Halle GmbH

Flughafen Leipzig/Halle GmbH (hereinafter Leipzig Airport) is a subsidiary of Mitteldeutsche Flughafen AG (hereinafter MFAG). MFAG holds a participation of 94 percent in Leipzig Airport. The remaining shares are owned by Land Sachsen and the communities Delitzsch, Leipziger Land, and Schkeuditz. The shareholders of MFAG are: 73 percent Land Sachsen, 14 percent Land Sachsen-Anhalt, 6 percent Stadt Dresden, 5 percent Stadt Halle, 2 percent Stadt Leipzig. There are no private shareholders.



Practical examples for Airport corporation structures with the State being involved

Debrecen Airport

Debrecen airport is located 7 km from the city of Debrecen, the second largest city in Hungary by population and the largest city in the Northern Great Plain, a less developed region in Hungary. Debrecen airport is owned by Debrecen Municipality, while it is operated by Debrecen International Airport Kft. (“the operator” or “the airport operator”).

Since 2018, the majority owner of the operator is Debrecen Municipality, which owns 49.8% of the shares directly and an additional 25.02% indirectly through its fully owned municipal asset management company, Debreceni Vagyonkezelő Zrt. (DV Zrt.). The remaining 25.02% are owned by the private property management company, AIRPORT DEBRECENI HOLDING Vagyonkezelő Kft. (AD Holding Kft).



Practical examples for Airport corporation structures with the State being involved



Dortmund Airport

Flughafen Dortmund **GmbH** “Dortmund airport” is owned by the city of Dortmund (26% share) and the Dortmunder Stadtwerke **AG** (“Dortmunder Stadtwerke”), a public utility provider (74% share) that is fully-owned by the city of Dortmund.





Practical examples for Airport corporation structures with the State being involved

Budapest Airport

With more than 16 million passengers in 2019, Budapest International Airport is the largest and busiest in Hungary, the twelfth most touristy country in Europe.

The airport is the main base of the Hungarian airline Wizz Air founded in 2003.

In June 2024, VINCI Airports announced the acquisition of a **20% stake** in the concession company for Budapest Airport and becomes the operator of the platform. The remaining duration of the concession is more than 55 years, expiring in 2080. The remaining **80 %** are held by Corvinus (Corvinus Nemzetközi Befektetési Zrt.), which is owned fully by the Hungarian state.

The Ministry for National Economy acts as owner on behalf of the Hungarian State within the Zrt., a stock company.

Az egyes állami tulajdonban álló gazdasági társaságok felett az államot megillető tulajdonosi jogok és kötelezettségek összességét gyakorló személyek kijelöléséről szóló **1/2022.(V.26.) GFM rendelet** – alapján a Nemzetgazdasági Minisztérium gyakorolja a gazdasági társaság felett.



Practical examples - organisational structure in general





State aid Criteria for Airports

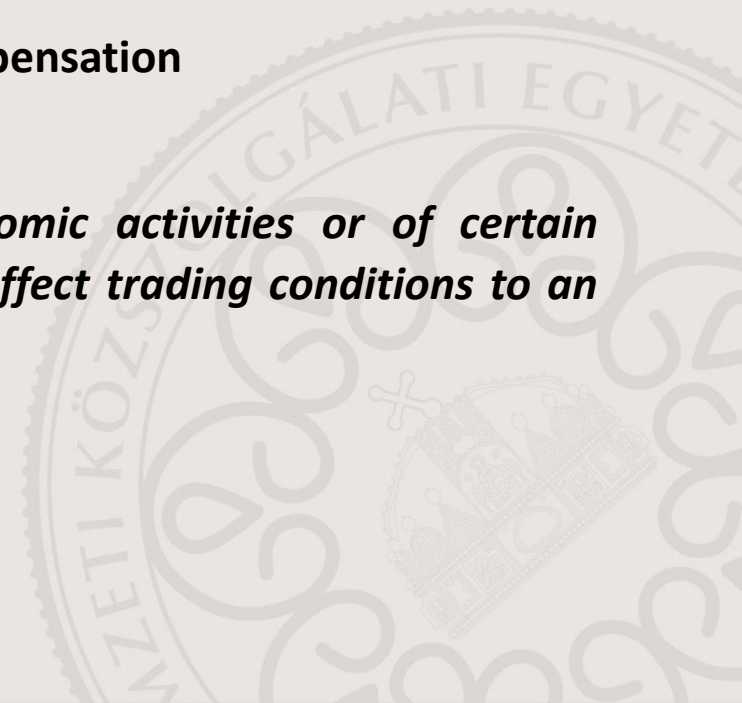


The main criteria applied by the Commission since 2014 related to state aid for Airports are:

- Public funding of airports and the application of the Market Economy Operator principle
- Public funding of Services of General Economic Interest
- Definition of a service of general economic interest in the airport and air transport sectors
- Compatibility of aid in the form of public service compensation
- Compatibility of aid under Article 107(3)(c) TFEU

(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)

- Investment aid to airports
- Operating aid to airports





State aid Criteria for Airports



Investment aid means aid to finance fixed capital assets, specifically, to cover the capital costs funding gap;

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.

According to 2014 Guidelines:

- (a) airports with up to 200 000 passengers per annum may not be able to cover their capital costs to a large extent;
- (b) airports with annual passenger traffic of between 200 000 and 1 million are usually not able to cover their capital costs to a large extent;
- (c) airports with annual passenger traffic of 1–3 million should, on average, be able to cover their capital costs to a greater extent;
- (d) airports with annual passenger traffic of above 3 and up to 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 some of their capital costs;
- (e) airports with annual passenger traffic above 5 million are usually profitable and are able to cover all of their costs, except in very exceptional circumstances.

The following table summarises the maximum permissible aid intensity depending on the size of the airport as measured by the number of passengers per annum ^{([66](#))}.

Size of airport based on average passenger traffic (passengers per annum)	Maximum investment aid intensity
>3-5 million	up to 25 %
1-3 million	up to 50 %
<1 million	up to 75 %



State aid Criteria for Airports



Operating aid means aid to cover the ‘operating funding gap’, either in the form of an upfront payment or in the form of periodic instalments to cover expected operating costs (periodic lump sum payments);

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 for a transitional period of 10 years (2024) 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.

Under current market conditions, the need for public funding to finance operating costs will, due to high fixed costs, vary according to the size of an airport and will normally be proportionately 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:

- (a) airports with up to 200 000 passengers per annum may not be able to cover their operating costs to a large extent;
- (b) 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;
- (c) airports with annual passenger traffic of 700 000 to 1 million should in general be able to cover their operating costs to a greater extent;
- (d) airports with annual passenger traffic of 1–3 million should, on average, be able to cover the majority of their operating costs;
- (e) airports with annual passenger traffic above 3 million are usually profitable at operating level and should be able to cover their operating costs.

Therefore, the Commission considers that in order to be eligible for operating aid, the annual traffic of the airport must not exceed 3 million passengers.⁽⁹¹⁾



State aid Criteria for Airports



Public funding of airports and the application of the Market Economy Operator principle

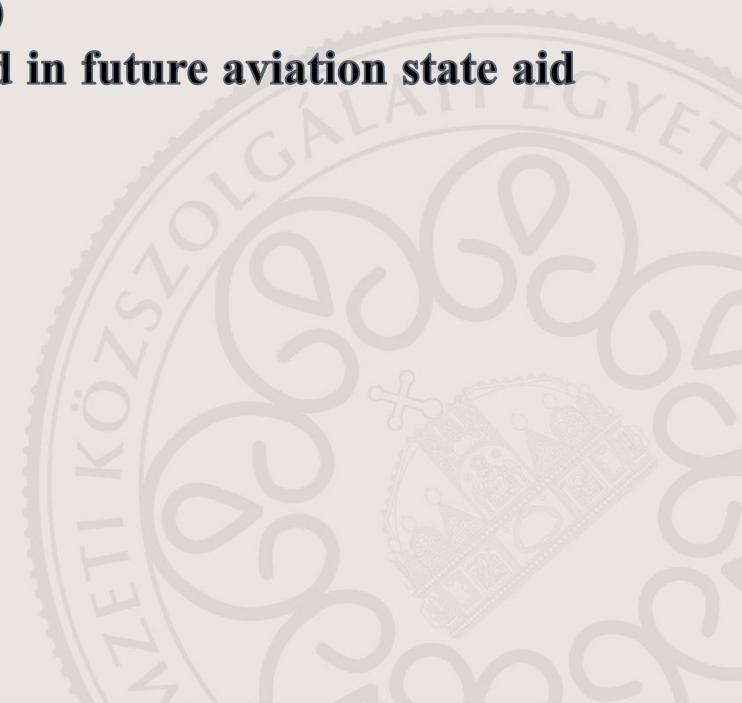
When an airport benefits from public funding, the Commission will assess whether such funding constitutes aid by considering whether in similar circumstances a private operator, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations,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

The ECJ 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, over the lifetime of the investment. These considerations are particularly pertinent to investment in infrastructure, which often involve large amounts of financial resources and can produce a positive return only after many years. Any assessment of the profitability of an airport must take into account airport revenues.



Aims of research

- **Detailed description of comparable airports in Germany and Hungary (geographic situation and size) in terms of corporation structure and role of judicial persons / state**
- **Analysis of state aid measures evaluated by Commission**
- **Characteristics for corporation structure in Germany and Hungary with main differences (i.e. “Stadtwerke vs Corvinus”)**
- **Which new requirements should be implemented in future aviation state aid guideline?**





Literature and other resources

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Thank you for your attention

