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**State aids to airports and airlines:
old rules versus the new Guidelines**

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- I. Evolution of the EC's practice**
- II. Different activities within an airport**
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I. Evolution of the EC practice towards airports

EC Communication of 1994

- ✚ General infrastructure investments such as airports fall outside the scope of State aid rules
- ✚ Restructuring aids to airlines

Example : Manchester airport decision (1999)

But evolution of the sector : air transport liberalization, PPP, privatization

Aéroports de Paris judgment (2000 and 2002)

Airports exercise an economic activity and are undertakings submitted to competition law

EC : application of State aid rules to the financing of airports

Examples : Schiphol airport and Aer Riorta (2002)

The EC decision of 12 February 2004: the Charleroi Airport / Ryanair case

All the rebates and commercial incentives granted by the Walloon Region and BSCA are illegal aids but some are compatible.

The EC ordered the recovery of

- the reduced airport charges;
- the losses on ground handling fees after compensation with the profits realised by BSCA on the strictly commercial activities;
- the marketing support granted for the Dublin – Charleroi route opened in 1997.

The EC authorised aids for the opening of new routes (start-up aids) provided that they meet certain conditions

- marketing support;
- one shot incentives (contribution for the staff recruitment, training and accommodation cross, opening of new routes and provision of premises)

- + The General Court annulled the decision in 2008
- + New investigation and extension of the procedure in 2012
- + New EC decision expected in 2014

II. Different activities within an airport

Non economic activities	Economic activities
<ul style="list-style-type: none"> ✚ Activities that normally fall under State responsibility <ul style="list-style-type: none"> ➡ Police, customs, air traffic control, security, fire protection ✚ Safety ? 	<ul style="list-style-type: none"> ✚ Services on a market at a price (parking, concessions, airlines, groundhandling) <div style="border: 1px solid #003366; border-radius: 15px; padding: 10px; margin-top: 20px;"> <p><u>Services of general economic interest</u></p> <ul style="list-style-type: none"> ➡ Management of a small airport in an isolated region ➡ Non viable routes </div>

Applicable EU rules to each activity

Non economic activities	Economic activities
<ul style="list-style-type: none"> ■ Falling outside TFEU ■ Public financing allowed : <ul style="list-style-type: none"> ■ IF no over compensation (prohibition of cross subsidiation) and ■ no discrimination between airports under the same legal order 	<ul style="list-style-type: none"> ■ Incompatible State aid except derogations (Art. 107 (2) and (3) TFEU): <ul style="list-style-type: none"> ■ Operating aid ■ Infrastructure aid ■ Rescue and restructuring aid <div style="border: 1px solid black; border-radius: 15px; padding: 10px; margin-top: 20px;"> <p><u>Services of general economic interest</u> = shared value of the EU (Art. 14 TFEU) → Public financing allowed but submitted to conditions (Art. 106 (2) TFEU and Regulation 1008/2008)</p> </div>

III. 2005 Aviation Guidelines

1. The public funds granted to airports :

- ➡ Public subsidies for non activities (safety, air traffic control, police, customs, security);
- ➡ Financial compensations for airport activities constituting SGEI;
- ➡ No aid for airport activities (airport management, handling, ...);
- ➡ Aids for airport infrastructure : very broad conditions.

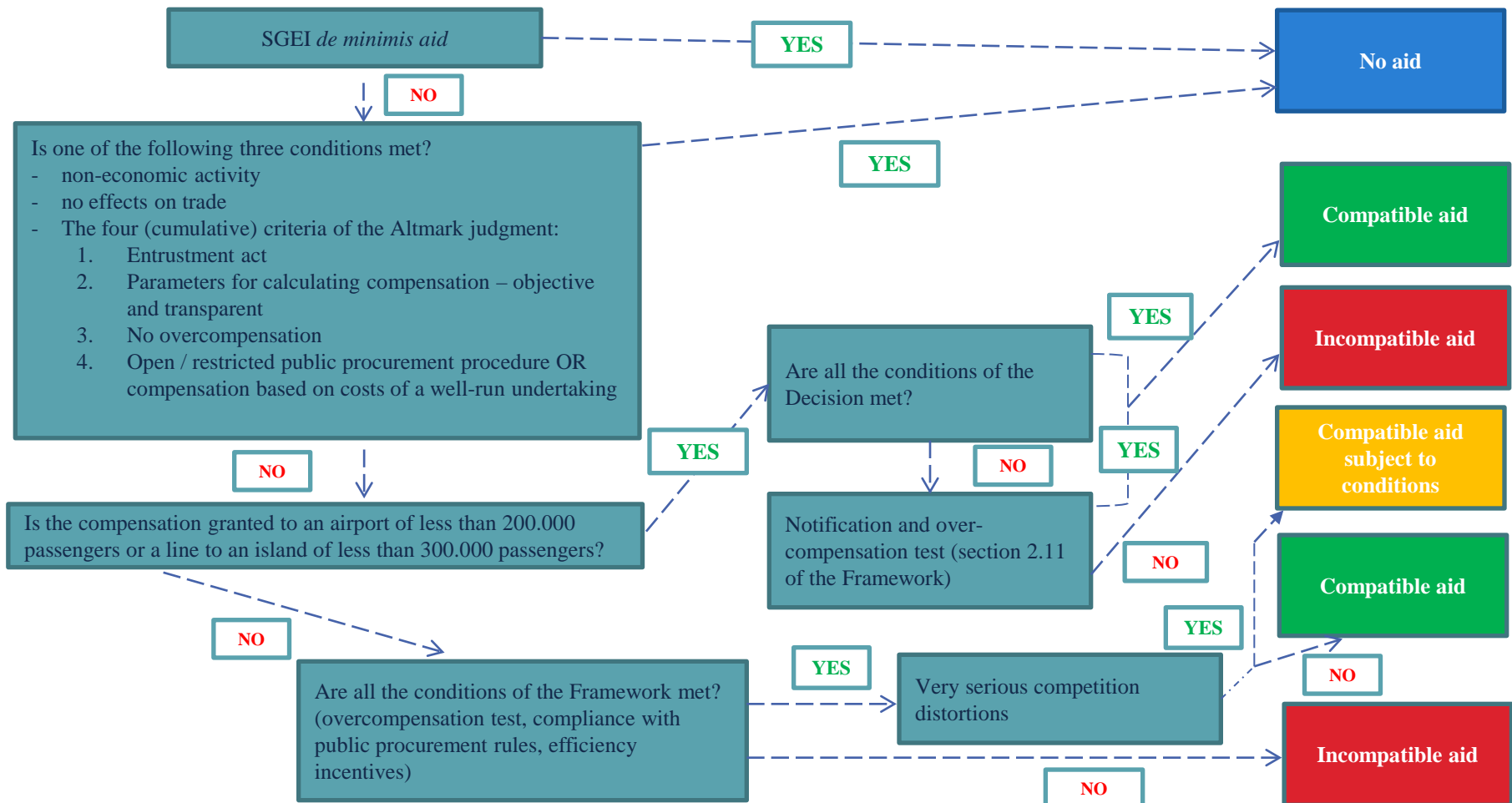
2. Commercial incentives granted by public authorities/airport operators to airlines :

- ➡ Private investor principle;
- ➡ Start-up aid : strict and numerous conditions.

IV. Financial compensations for airport activities constituting SGEI

- ✚ **If the Altmark ruling criteria's are fulfilled** : the financial compensation does not constitute State aid and must not be notified to the Commission
- ✚ **Financial compensations below 500.000 EUR for 3 years** : *de minimis* Regulation (no notification and limited conditions)
- ✚ **Airports with less of 200.000 passengers per year and routes to islands with less than 300.000 passengers per year** : the EC decision of 20 December 2011 provides for an exemption of notification for aid for SGEI
- ✚ **Airports above 200.000 passengers and routes to islands with more than 300.000 passengers per year**: prior notification to the Commission of all public compensations for SGEI under the Framework of 20 December 2011.

SGEI Analysis Tree (source : europa website)



V. NEW AVIATION GUIDELINES

- ➡ Draft Guidelines made public in July 2013
- ➡ Adoption on 20 February 2014
- ➡ Entry into force : 4 April 2014
- ➡ New approach : too many non viable regional airports
 - ✚ investment aid limited to max aid intensities
 - ✚ operating aid authorized for a 10 years period
 - ✚ lighter and fewer conditions for start-up aid

a. Aids to airports

➡ MEOP :

+ prospects of normal profitability

+ rational business plan

➡ If MEOP not met : investment or / and operating aid to be notified by the Member State to the European Commission

Compatibility conditions

a) Contribution to a well-defined objective of common interest	<ul style="list-style-type: none"> - Increasing mobility by establishing access points for intra-EU flights - Combating congestion at major hubs - Facilitating regional development <p>Duplication of airports and unused capacity in absence of satisfactory medium-term prospects for use does not contribute to a well defined objective of common interest.</p>
b) Need for State intervention	<p>< 3 million passengers</p> <p>< 3-5 million passengers under certain case-specific circumstances</p> <p>> 5 million passengers only in very exceptional circumstances</p>
c) Appropriateness of the aid measure	<p>The aid measure must be an appropriate policy instrument to address the objective of common interest.</p> <p>Consideration of less distortive aid instruments (guarantees, soft loans, etc.)</p>
d) Incentive effect	<p>Present, if the investment would not have been undertaken or to a different extent (counterfactual or funding gap analysis based on ex ante business plan)</p>
e) Proportionality of the aid (aid limited to the minimum)	

Investment aid to the airport (2)

Compatibility conditions	
<i>Eligible costs :</i>	Costs relating to investments in airport infrastructure and equipment, except investment costs for non-aeronautical activities
<i>Maximum permissible aid intensities:</i>	> 3-5 million up to 25% 1-3 million up to 50% < 1 million up to 75%
<i>Exceptions :</i>	<p>For airports located in remote regions (irrespective of their size) The maximum aid intensities for investment aid to finance airport infrastructure may be increased by up to 20%</p> <p>For airports < 1 million passengers per annum located in a peripheral region: intensity may exceed 75% in exceptional circumstances subject to case-by-case assessment</p> <p>In case of relocation: proportionality, necessity and maximum aid intensity will be assessed regardless of average traffic</p> <p>For airports over 5 million passengers per annum: only under very exceptional circumstances, characterized by a clear market failure and taking into account the magnitude of the investment and the competition distortions.</p>

Investment aid to the airport (3)

Compatibility conditions

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

Open to all potential users and not dedicated to one specific user.

Airports < 5 million passengers per annum: upfront fixed amount or annual instalments to compensate for capital cost funding gap resulting from airport business plan

Notification requirements for aid schemes and individual aid measures

Aid schemes:

- Airports < 3 million passengers per annum

Individual notifications:

- Airports > 3 million passengers per annum
- Investment aid to an airport < 1 million passengers per annum exceeding 75% aid intensity
- Investment aid granted for the relocation of airports
- Mixed passenger/freight airports > 200.000 tonnes of freight during two financial years preceding the notification year
- Creation of a new passenger airport (including conversion of existing airfield)
- Creation or development of an airport located within 100 km or 60 minutes travelling time from an existing airports

Operating aid to airports (1)

Compatibility conditions

a) Contribution to a well-defined objective of common interest	<ul style="list-style-type: none"> - Increasing mobility by establishing access points for intra-EU flights - Combating congestion at major hubs - Facilitating regional development <p>Duplication of airports and unused capacity in absence of satisfactory medium-term prospects for use does not contribute to a well defined objective of common interest.</p>
b) Need for State intervention	< 3 million passengers
c) Appropriateness of the aid measure	<p>The aid measure must be an appropriate policy instrument to address the objective of common interest.</p> <p>Ex ante as a fixed sum covering the expected funding gap of operating costs (determined on the basis of an ex ante business plan) during a 10 year transitional period.</p>
d) Incentive effect	Present, if the level of economic activity of the airport would be significantly reduced in its absence.
e) Proportionality of the aid (aid limited to the minimum)	
<i>Eligible costs:</i>	Operating funding gap of the airport

Operating aid to airports (2)

Compatibility conditions	
<i>Maximum permissible aid intensities:</i>	<p>During the transitional period : 50% of the initial average operating funding gap calculated as average of 5 years preceding the transitional period (2009-2013).</p> <p>After transitional period of 10 years: no operating aid allowed (except if granted under horizontal rules)</p>
<i>Exceptions:</i>	<p>For airports < 700 000 passengers per annum : 80% of the initial average operating funding gap for 5 years after the beginning of the transitional period</p>
f) Avoidance of undue negative effects on competition and trade between Member States	<p>Assessment of distortion of competition and effect on trade.</p> <p>Open to all potential users and not dedicated to one specific user.</p> <p>Airports < 700.000 passengers per annum: reassessed four years after the beginning of the transitional period.</p>
Notification requirements for aid schemes and individual aid measures	<p>Aid schemes:</p> <ul style="list-style-type: none"> - Airports < 3 million passengers per annum <p>Individual notifications:</p> <ul style="list-style-type: none"> - Mixed passenger/freight airports > 200.000 tonnes of freight during two financial years preceding the notification year - Operating aid to an airport within 100 km or 60 minutes travelling time from other airports

b. Commercial incentives to airlines

Examples : rebates on airport charges, rebates on ground handling tariffs, marketing incentives, ...

➡ MEOP :

- ✚ market price for airport services
- ✚ prospect of normal profitability : business plan showing coverage of incremental costs of the airline's activities

➡ If MEOP not met :

- ✚ start-up aid to be notified to EC
- ✚ *de minimis* aid (EU regulation 2006) : max. 200.000 EUR per airline per period of 3 years
- ✚ OPS (EU Regulation 1008 / 2008) : strict conditions and no competition with railway
- ✚ routes to islands : SGEI
- ✚ social aids

Start-up aids (1)

Compatibility conditions

a) Contribution to a well-defined objective of common interest	<ul style="list-style-type: none"> - Increasing mobility by establishing access points for intra-EU flights - Facilitating regional development <p>No duplication of existing comparable connection operated by a high-speed rail service or by another airport in the same catchment area under comparable conditions</p>
b) Need for State intervention	<ul style="list-style-type: none"> - Airports < 3 million passengers per annum - Airports located in remote regions irrespective of their size - Airports between > 3-5 million passengers per annum only in exceptional circumstances - No start-up aid for air links from airports above 5 million passengers per annum
c) Appropriateness of the aid measure	<ul style="list-style-type: none"> - Not eligible if the route is already operated by a high-speed rail service or another airport in the same catchment area under the same conditions - Ex ante business plan showing profitability of the route at least after 3 years or irrevocable commitment from the airline to operate the route least for a period as long as the period during which it received start-up aid

Start-up aids (2)

Compatibility conditions

d) Incentive effect	<p>Present, if in the absence of the aid, the level of economic activity of the airline at the airport concerned would be significantly reduced (for example the new route would not have been launched).</p> <p>The new route or the new schedule can start only after submitting the application form for aid from the granting authority.</p>
e) Proportionality of the aid (aid limited to the minimum)	
<i>Eligible costs:</i>	Airport charges in respect of a route
<i>Maximum permissible aid intensities:</i>	50% for a maximum period of 3 years
f) Avoidance of undue negative effects on competition and trade between Member States	<ul style="list-style-type: none"> - Public authorities must make plans public in good time to enable all interested airlines to offer services - No cumulation with other types of State aid for operation of a route
Notification requirements for aid schemes and individual aid measures	<p>Aid schemes:</p> <ul style="list-style-type: none"> - Airports < 3 million passengers per annum and airports located in remote regions <p>Individual notifications:</p> <ul style="list-style-type: none"> - Airports > 3 millions passengers per annum, except airports located in remote regions

Pending EC investigations

- ➡ 40 investigations of the EC on the public financing of airports and their commercial contracts with airlines (mainly Ryanair but also Wizzair, Easy Jet, Air Berlin, etc.);
- ➡ complaint by Air France 27 French airports (2009): formal examination procedures concerning Marseille, Paris-Beauvais, La Rochelle, Nîmes, Carcassonne, Pau and Angoulême.

Critics of the Commission

- ✚ illegal aids to airport activities and infrastructure
- ✚ marketing agreements with AMS (Ryanair's subsidiary);
- ✚ very low or discriminatory airport charges;
- ✚ free groundhandling services
- ✚ questioned the non-economic character of security, fire protection activities, safety, etc...

Recent EC Decisions

- ✚ EC Decision of 11/02/2014 on Gdynia airport
- ✚ EC Decision of 20/02/2014 on Marseille airport, Aarhus Airport, Ostrava airport and Berlin Schönefeld airport
- ✚ EC Decision of 09/04/2014 on start-up aids from Canary Islands
- ✚ EC Decision of 09/04/2014 on Groningen airport
- ✚ EC Decision of 09/04/2014 on Verona and Brescia airports
- ✚ EC Decision of 07/05/2014 on St-Mary's and Land's End

Merci pour votre attention

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