

## **Regulation on evaluating State Aid for Financing of Airports and Start-Up Aid to Airlines**

This Regulation transposes the provisions of the Community Guidelines on Financing of Airports and Start-Up Aid to Airlines Departing from Regional Airports (2005/C 312/01), published in the Official Journal of the European Union C 312/1 of 09.12.2005.

### **Section 1. General Provisions**

1. This Regulation provides rules based on which the state aid for financing of airports as well as of airlines at the start-up of new air routes is going to be evaluated.
2. In accordance with Art. 5 (1) i) of the Law No. 139 of 15.06.2012 on State Aid, the sector aid meant to financing of airports and start-up for airlines may be deemed compatible with the normal competitive environment.
3. This Regulation applies to the state aid for beneficiaries that provide services, which are economic activities, regardless of the legal organization form, the affiliation to the public or the private sector and the way of financing.
4. The airport management and operation activities consisting of providing airport services to airlines and various service providers in airports are economic activities, to the extent that these activities are not the responsibility of empowered state authorities.
5. The airport manager, as well as the airline, is deemed as practicing economic activities to the extent that they do not perform other activities which are the responsibility of empowered state authorities.
6. This Regulation sets the conditions based on which the aid granted to start-up airlines is going to be evaluated and the criteria on evaluating aid granted to airport managers for financing airport activities.
7. When evaluating the state aid granted by providers, in order to prevent any distortion of the normal competitive environment, it is going to be taken into account the method how they took into consideration the non-discrimination, transparency and proportionality principles when granting the aid.
8. Under this Regulation, the below terms shall have the following meanings:

***Beneficiary*** – any airport manager or airline;

***Airport manager*** – legal or natural person that conducts the exploitation of an aerodrome (airport) based on an aerodrome (airport) certificate;

***Airline*** – natural or legal person that holds an air carrier certificate and provides air transport services;

***Profitability threshold*** – the minimum number of passengers, which, when serviced, the income and the expenditure of the airline are equal;

***New air route*** – a seasonal route that becomes permanent or a prior non-existing route that is conducted to transport for a fee passengers, being published in computerized reservation systems and is accessible to the public;

***New air frequency*** – a seasonal route that becomes permanent or an existent flight frequency, which becomes at least daily;

***Ground handling services*** – necessary services for the arrival and departure of aircraft to / from the airport;

***Catering costs*** – costs for insurance of passengers and crew with food and drinks on the board of the aircrafts;

***Digressive aid*** – aid of temporary nature, for a maxim of a three year period, which reduces its intensity in time.

## **Section 2. State Aid that may be compatible**

9. When determining the compatibility with a normal competitive environment of an aid granted to airport operators and airline companies to perform certain economic activities constituting services of general economic interest it is being assessed whether:

- a) The beneficiary is effectively charged to perform certain obligations of general economic interest, and these obligations should be clearly defined;
- b) The parameters that form the basis for the calculation of the compensation should be prior established, in an objective and transparent manner, in order to avoid granting of economic advantages that may favor the beneficiaries up against other competitors on the market;
- c) The compensation may not exceed what is necessary to fully or partially cover the costs incurred in relation to the performance of a service obligation of general economic interest, taking into account the relevant revenues, as well as a reasonable profit;
- d) When the selection of the beneficiary that should be charged to perform a service obligation of general economic interest is not conducted under a public procurement procedure, which would allow selecting the bidder able to provide the respective services at the lowest costs, the level of compensation should be determined based on a cost analysis, which a typical beneficiary in similar conditions, well managed and adequately equipped, would bear to fulfil the respective obligation, taking into account the relevant revenues, as well as a reasonable profit.

10. The services of general economic interest, for which the compensation is granted, should not include the performance of activities specified in Art. 12 d) of this Regulation.
11. The state aid does not include support measures granted to airlines or airport managers that are of a general nature and may be applied to all sector of the national economy.

### **Section 3. Financing of Airports**

12. Airport activities may be categorized the following way:
  - a) Construction of airport infrastructure and equipment (runways, terminals, aprons, control tower etc.) or facilities that directly support them (fire-fighting facilities, security or safety equipment etc.);
  - b) Operation of the infrastructure, comprising the maintenance and management of airport infrastructure;
  - c) Provision of airport services ancillary to air transport, such as ground handling services and the use of related infrastructure, fire-fighting services, emergency services, security services, etc.;
  - d) Pursuit of commercial activities not directly linked to the airport's core activities, including the construction, financing, use and renting of land and buildings, not only for offices and storage, but also for the hotels and industrial enterprises located within the airport, as well as shops, restaurants and car parks.
13. The financing of activities listed in Art. 12 d) as an exception are not subject to assessment according to the provisions of this Regulation, but they are going to be evaluated, as appropriate, under the relevant sectorial and general relevant norms .
14. The state aid offered to airport managers may be compatible in the case when it is required to perform a service of general economic interest, ~~or~~ it is meant to facilitate the development of areas where the standard of living and/or the employment level is low, as well as to facilitate the development of certain activities or economic regions, provided that they do not distort the competition in an unjustified manner.
15. When providing state aid to airport managers, it is going to be assessed the impact on competition between airports into account also the following factors:
  - a) Type of airport services provided by the airport;
  - b) Population;
  - c) Economic activity;
  - d) Existing land access;
  - e) Traffic congestion;
  - f) Level of taxes to use airport infrastructure;
16. The financing of airport infrastructure infers the state aid granted to build the airport infrastructure and equipment or installations that directly support them in accordance with Art. 12 a) of this Regulation.

- 17.** When financing airport infrastructure, it should be determined if:
- a) The construction and operation of the infrastructure meets a clearly defined objective of general interest;
  - b) The infrastructure is necessary and proportional to the objective which has been set;
  - c) The infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
  - d) All potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
  - e) It does not affect competition in an unjustified manner.
- 18.** The operations of selling or allocating the infrastructure by the public authorities to airports managers, that are conducted at market prices or when the price for these operations represents the result of a bidding procedure conducted under the law, does not constitute state aid in the sense of this Regulation.
- 19.** The financing for operation of airport infrastructure infers state aid for the management and maintenance of airport infrastructure.
- 20.** When granting state aid for the operation of the infrastructure, its compatibility is going to be assessed in view of the provisions of Art. 14-17 of this Regulation.
- 21.** In case of awarding some competencies to an airport manager regarding a service of general economic interest, it is necessary to record the respective action in a special award document, which should include all information required to identify the specific costs of this service.
- 22.** The award document shall include:
- a) The precise nature of the obligation of general economic interest;
  - b) The managers and the territory in question;
  - c) The nature of any exclusive rights granted to the airport;
  - d) The arrangements for calculating, monitoring and reviewing compensation;
  - e) The means of preventing and correcting any over- or under-compensation;
  - f) The obligation of the beneficiary to establish a transparent accounting system and to separate the accounts for various activities.
- 23.** When allocating the additional infrastructure to the airport manager that was not planned when the available infrastructure was allocated, the operator must pay the price determined under normal market conditions, proportional to the costs of new infrastructure and the duration of its use.
- 24.** Ground handling services is a commercial activity open to competition in terms established in the normative acts

25. An airport manager acting as a supplier of ground handling services may charge different tariffs for ground handling services provided to airlines, only if these different rates reflect cost differences in the nature or extent of the services provided.
26. In terms established in the normative acts, the ground handling services may be self-financed through other commercial revenues of the airport or through public resources which is given as an airport authority or operator of a service of general economic interest.
27. The state aid for financing of airports must be notified to the Competition Council in order to be able to review the impact of the granted aid on the normal competitive environment.

#### **Section 4. Start-Up Aid**

28. The start-up aid is the state aid granted to airlines to establish new air routes or new air frequency and to attract a number of passengers required to achieve the profitability thresholds.
29. When evaluating the start-up state aid it is going to be taken into account that the it may favor the beneficiary airlines, may lower the operation costs of the beneficiary, may distort competition between companies.
30. When granting start-up state aid it is going to be determined if the following conditions are fulfilled:
  - a) The beneficiary of start-up aid should hold a valid air carrier certificate;
  - b) A new air route and/or a new air frequency is established;
  - c) The route for which the aid is granted should prove profitable, i.e. at least cover its costs, without public funding;
  - d) The amount of the aid is strictly related to the additional start-up costs borne to launch the new route or frequency, costs which the beneficiary should not bear after start-up in normal operation regime;
  - e) exists a business plan of the beneficiary, which would present long-term viability of the route after the completion of the aid;
  - f) The payments under the aid should be directly related to the net growth of the number of transported passengers;
  - g) The aid should not encourage the transfer of traffic from one airline to another;
  - h) The aid should not generate traffic diversion that is not justified in terms of the frequency and viability of existing services which leave from an airport to another airport in the same city or in the same airport system, serving the same or a similar destination.
31. The degressive aid may be granted for a maximum period of 3 years. In any case, the period for which the start-up aid is granted to an airline, should be lower than the period during which an airline commits to operate on the airport in question, as shown in the requested business plan.

32. The degressive aid may be granted as an exception for a period of up to 5 years for the internal routes.
33. The amount of the digressive aid in a year may not exceed 50% of the total eligible costs for the year in question, while the total aid may not exceed an average of 30% of eligible costs.
34. For internal routes in disadvantaged regions and regions with a low population density, the amount of aid in a year may not exceed 50% of total eligible costs for the year in question, while the total aid may not exceed an average of 40% of eligible costs. When granting aid for a period of 5 years, it may be maintained at the level of 50% of total eligible costs for an initial period of 3 years.
35. The state aid provider which plans to provide start-up aid to an airline for a new route must make its plans public in advance respecting the legal requirements to allow all interested airlines to offer services.
36. Before granting state aid to start up a new air route, the provider is going to conduct an analysis of its impact on the competing routes.
37. It is not allowed to grant start-up aid for a new air route that corresponds to a high-speed railway connection.
38. The state aid may not be granted to an airline that, after using the entire aid for a certain route, requests a new aid for a competing route that departs from the same city or region. A simple substitution of the route, during the period when the aid is granted, with another route that departs from the same airport and that expects to generate at least an equal number of passengers does not hinder the continuous payment of the aid for the entire period, as long as this substitution does not affect the other basic conditions in which the start-up aid has been initially granted.
39. The aid may not be granted for standard operation costs, such as the rent or the depreciation of the aircraft, fuel, crew salaries, airport charges or catering costs.
40. The start-up aid cannot be cumulated with other types of aid granted for operation of a route, including with aid of social nature provided in relation to performing some services of general economic interest or with another aid granted to cover similar costs.
41. The start-up aid cannot be granted if the access to a route has been reserved for a single airline.
42. The start-up aid, granted to airlines must be notified to the Competition Council in order to review its impact on the normal competitive environment.

## **Section 5. Monitoring Conditions**

43. The monitoring of state aid for the financing of airports and the start-up aid for airlines is conducted in accordance with the Section 14 of the Regulation on Notification Form, Review and Decision-Making Procedure concerning State Aid, approved by the Plenum of the Competition Council, Decision No.1 of August 30, 2013.

44. Each provider of state aid publishes yearly the list of air routes that have received aid, indicating the beneficiary, the amount of paid aid and the number of passengers.

### **Section 6. Safety Measures**

45. State aid provider has the right to request from the beneficiary of the aid to lodge a guarantee in order to ensure compliance with the commitments taken as a result of benefiting from state aid.
46. In case of failure to observe the commitments assumed by the beneficiary in the result of receiving the start-up or financing aid, this can be recovered by the provider based on the decision adopted by the Competition Council.
47. In case of illegal aid or abusively used aid, the recovery of the aid will be performed according to the provisions of Art. 13-16 of the Law No. 139 on State Aid from 15.06.2012.
48. When the Competition Council adopts a decision to recover the unlawfully granted state aid and the respective aid has not been reimbursed by the beneficiary, when assessing the entire aid for the airport infrastructure or the start-up aid, it is necessary to take into account both the cumulative effect of the previous and new aid, and the fact that the previous aid has not been reimbursed.

### **Section 7. Special Provisions**

49. The notification of state aid for financing of airports and start-up aid for airlines shall be made by observing the provisions of the Regulation on Notification Form, Review and Decision-Making Procedure concerning State Aid, approved by the Plenum of the Competition Council, Decision No.1 of August 30, 2013.
50. The recording and inventorying of state aid granted under this Regulation shall be conducted in accordance with the provisions of the Regulation on State Aid Register, approved by the Plenum of the Competition Council, Decision No.3 of August 30, 2013.
51. The providers of state aid for financing of airports and startup aid provided to airlines are obliged to submit yearly to the Competition Council the Form on reporting the granted state aid.
52. This Regulation shall apply following the norms laid down in the Regulation on aid granted to beneficiaries that provide services of general economic interest, approved by the Plenum of the Competition Council, Decision No. 11 of August 30 2013 and in the Regulation on regional development, approved by the Plenum of the Competition Council, Decision No. 4 of August 30, 2013.