

## THE SCOPE OF STATE AID AND PUBLIC SERVICE OBLIGATION FOR AIRPORTS AND AIR CARRIERS IN THE LIGHT OF EUROPEAN LAW

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### Abstract:

*Public aid is the kind of advantage granted directly or indirectly for private companies from State resources. The European Commission prerogative to control the transfer of public resources by the public authorities (national or local) for the benefit of private undertakings, as a general rule, there is an obligation of notification, as provided for in article 108 (3) of the Treaty on the Functioning of the European Union (TFEU). It should be noted in the beginning that State aid given to undertakings conducting economic activity is, in principle, incompatible with the European Union' law, as provided for in article. 107 (1) of the TFEU.*

*There are certain situations that the granting of public funds will not constitute "public aid" within the meaning of article 107 of the TFEU and, therefore, will not violate European rules in this field. One of them are activities related to the exercise of the prerogatives of the public authority (security, safety, customs, air traffic control). The other is related to the exercise of services in general economic interest. This could be an example of public service obligation (PSO). This service can be applied in the light of the provisions of European law on two types of action on air routes, and on airport managing body. The imposition of a PSO to the specified route is the support given by the State to the outermost regions that due to their unfavourable geographical position cannot fully develop economically, and no carrier had not been interested in performing air services to that region due to the lack of cost effectiveness. Some activities at the airport may be considered as activities of general economic interest.*

**Keywords:** *Air Carriers, Airports, European Law*

### 1. Introduction:

The European aviation market is fully liberalized. European air carriers may freely carry out air transport in each Member State of the EU, or a number of other European countries. Air carriers from third countries operating in Europe have some limitations resulting from bilateral agreements on air transport, however, they might have a wider range of freedom for the operation, provided that they have concluded horizontal agreement with the European Union. Liberalization of the aviation sector in the European Union in the first half of the 1990s. of the last century was a milestone in the development of this industry and contributed to the opening of the European sky. The consequence of these actions was the adoption of a variety of measures to ensure the conduct of free and fair competition between undertakings in this sector, while guaranteeing the citizens of the Union a high level of service provision. Opening of the market caused that many new air carriers entered the European market. This can be seen especially on the example of the emergence of low-cost-carriers. Liberalization of air transport in Europe was an abandonment from the principle of the "regulatory State" and adaptation to market mechanisms for the development of civil aviation. Liberalization didn't mean in many cases easy and "painless" phenomenon. Many traditional carriers went bankrupt, although their position on the market for many years before remained stable. At the same time this fact had to be accompanied by a certain degree of State aid to cope with new reality and sometimes to support the vitality of the entity.

The emergence of new trends, such as the appearance and rapid development of the air carriers with low-cost financial structure (low-cost airlines) caused, that airports had to focus on the new situation. Airports need to meet the challenges of an increasingly dynamic growth in air traffic, which was associated with greater intensity level of operations performed and the number of passengers. Favourable conditions have been opened for regional airports. New airports were being constructed and some of the existing ones were being modernized. As it may be noticed many of them showed significant activity in obtaining new air connections.

Starting from the beginning of the 1990s. of the last century, we have to deal with quite quickly implemented aviation policy by the European Union in accordance with the provisions of the common transport policy and increasing the prerogatives of the EU in the harmonization of aviation policy. On the basis of the case-law of the Court of Justice of the European Union in matters of the so-called "open skies" judgements of 2002, it is necessary, that State aid in the development of airports or to keep some of the smaller airlines through the ability to perform services within the public service obligation (PSO) rule, was in line with the EU law. There are some important questions to be raised. Is State aid to airports possible in any case? What are the conditions of granting State aid for private undertakings, in order not to disrupt the internal market? Is financing the air carrier performing services under the PSO does not distort competition? In what circumstances State aid may be granted to be compatible with EU law?

## 2. The Essence of Public Aid: The Notification Procedure

Public aid is the kind of funding, which might be given by the Central Authority (government administration) or by regional or local authority (local self-government bodies, such as municipalities) from the public sources to support the activity of private undertakings. It constitutes an advantage granted directly or indirectly for private companies from State resources. This policy applies to all the Member States of the European Union and those countries which have concluded relevant agreements with the EU on the application of these principles in their own national legal order, i.e. States belonging to the EEA (Iceland, Liechtenstein, Norway) and Switzerland. A body, which safeguards the correct transfer of public resources to the beneficiaries is the European Commission.

The Commission prerogative to control the transfer of public resources by the public authorities (national or local) for the benefit of private undertakings, as a general rule, there is an obligation of notification, as provided for in article 108 (3) of the Treaty on the Functioning of the European Union (TFEU, 2007). First of all, the obvious question is who and under what conditions must make the notification to the Commission. It should be clarified whether the beneficiary of the aid, which is dependent on the public authority which is its majority shareholder or owner is entitled *ex lege* to submit notification obtained from local government authorities or other.

In accordance with article 108 (3) of the Treaty the obligation of notification lies on the side of the Member States. The notification means informing the European Commission by the Member State (central, regional or local authority) about its intention to provide financial support to a particular undertaking. This means, in practice, that notification shall be made not by the beneficiary itself, but by the authority, which intends to give a public support or to change the existing one. The Commission must have time to issue its decision about the steps it shall undertake (Article 108 (3): *The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid*).

The above mentioned arguments applies to the condition in which there is a doubt as to whether the aid granted from public funds is in line with article 107 TFEU. The Treaty indicates the enumerative three cases in which State aid is compatible with its provisions on internal market. None of these cases does not qualify as an aid to aviation business undertakings. These cases are, in accordance with article 107 (2) of the TFEU, the following:

- 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 amending the Treaty on European Union and the Treaty establishing the European Community, the Council, acting on a proposal from the Commission, may adopt a decision. **(Note: Currently, the Council on Commission's proposal may at any time withdraw this provision).**

With regard to the aviation sector there may be indications resulting from article 107, paragraph 3 (a), (a) (b), and (c). In accordance with the disposition of that provision, 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.*

The above mentioned definition is written in the sub junctive, which means that actions taken must be validated pursuant to those provisions. It should be presumed that the obligation to authenticate the aid received in accordance with one or more premises, as referred to above, shall rest upon the authority providing such assistance in consultation with the beneficiary of that aid. These premises do not constitute an automatic granting of public funds to a specific undertaking.

Before State aid is granted, the notification should occur. Notification is a mandatory procedure. The notification procedure is carried out when there is a suspicion that a "public aid" to any entity may be provided, and the only body to control the legality of such an action is the European Commission. The notification shall be made on the appropriate form set out in annex I of regulation 794/2004 in electronic form (Commission Regulation, 2004). The following information shall be included:

- a) the identification of the aid granter,
- b) the identification of the aid (description of the aid: primary objective and, if applicable, secondary objective; the information whether the notification relates to individual aid),
- c) the national legal basis,
- d) beneficiaries of the aid,
- e) the amount of the aid,
- f) form of the aid and means of funding,
- g) duration of the aid,
- h) supplementary information about a particular type of aid (Part III of Annex I to Regulation (EC) 794/2004),
- i) all necessary attachments.

The notification procedure is mandatory only to the extent of any incompatibility with the EU law, and where the specific dispositions so provide. The lack of notification is a formal failure when having an intention to grant State aid, but is not an illegal action. It is worth noting at this moment to the legal structure of the provision of article 108 (2) of the TFEU, in which it was found, that: *If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission (...).* It is clearly stated that this case is about the aid already granted, and not the intention of granting it in the future, as the Commission may take one of two decisions: abolish the existing aid or change it. Central Authority or local self-government administration cannot grant public aid before a decision is taken by the Commission in this case (the so-called standstill clause). When such aid shall be granted without notification to the Commission, the authority granting the aid must reckon with the fact that the Commission will call upon that authority to make an explanation whether or not there has been infringement of rules concerning State aid referred to in article 107 and article 108 of the TFEU. The Commission shall make a decision whether or not the granting of public funds is legal after taking an action referred to in Regulation (EC) no 659/1999. There is a specific procedure concerning the aid that need to be notified, or the procedure of aid granted illegally and provided against its purpose as well as the procedure concerning existing aid schemes.

The European Commission may ex officio commence the preliminary procedure, if it becomes aware of information coming from mass media or opponents about obtaining or intention to obtain aid from public. The Commission has three options:

- a) will issue a decision stating that the aid is not "State aid" within the meaning of article 107 of the TFEU, or
- b) will issue a decision stating that the aid is "State aid", but it is compatible with the internal market, i.e. with article 107 (1) or (2) a), b) or c), or
- c) will issue a negative decision stating that, following the procedure laid down in article 108 (2). (the main investigation), the aid is not compatible with the internal market and must not be used.

To sum up this part it must be noted, that reporting, notifications, *ex ante* is to avoid potential risks in the future. A Member State which does not apply to the Commission decision in the specified term, the latter may cause the transmission of the case directly to the Court of Justice of the European Union (CJEU). In the case when the aid was granted unlawfully, the Commission may pursue compensation claims from a Member State concerned. The compensation claim term is 10 years following a day, in which the aid was granted unlawfully to the beneficiary.

In the case of the aviation sector, there are the conditions for application of the State aid on the basis of some of the provisions of article 107 of the TFEU. Disposition referred to in article 107, paragraph 3 (a) may be combined with the disposition of article 107, paragraph 3 (b) (c), which refer to aid to certain less developed regions to regions with significant unemployment. These are the NUTS II regions whose gross domestic product *per capita* is less than 75% of the EU average (European Parliament and of the Council, 2003). In turn, the disposition of article 107, paragraph 3 (b) refers to the important European projects, for example the expansion of the Trans-European Transport Networks (TEN-T).

Therefore, when analyzing whether the public aid granted in accordance with article 107, paragraph 3 (a), (b) or (c) will be legitimate, it must be explained whether this support will not “distort or threaten to distort the competition”. This compliance must be demonstrated by the authority granting appropriate assistance from public funds.

### 3. The Case Law of the Court of Justice of the European Union on Public Aid for the Airport

It should be noted in the beginning that State aid given to undertakings conducting economic activity is, in principle, incompatible with the European Union’ law, as provided for in article. 107 (1) of the TFEU. It was not clear in previous regulations of the Treaty (formerly known as Treaty establishing the European Community) concerning State aid to entities conducting economic activity can be referred to aviation undertakings, namely to airports. The Court in 1993 *expressis verbis* found, that airports are entities which conduct economic activity (see: Case *Poucet et Pistre* versus *AGF and Cancava*) (Court Reports 1993). In accordance with another case-law of the Court, any activity which offers goods and services on a given market is an economic activity (Case C-35/96, judgement of June 18, 1998, *Commission* versus *Italy* and in Joined Cases C-180/98-184/98, judgement of September 12, 2000, *P. Pavlov and others*). Thus, a service that airport offers to its users constitute an economic activity.

Extremely helpful was also the judgment of the Court of Justice of the EU of October 24, 2002 on “Aeroports de Paris” (C-82/01, Court Reports 2002, pp.I-09297). In accordance with Court’s argumentation, (...) *In the field of competition law, the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. (...) In order to determine whether the activities in question are those of an undertaking within the meaning of Article 106 of the TFEU, it is necessary to establish the nature of those activities. (...) The provision of airport facilities to airlines and the various service providers, in return for a fee at a rate freely fixed by airport management body, constitutes an economic activity. (...) Any activity consisting in offering goods and services on a given market is an economic activity.*

Not all, however, airport activities will be deemed as an economic activity. In accordance with the judgment of the Court of Justice of the EU of February 17, 1993 (Case *Poucet et Pistre* against *AGF et Cancava*) an economic activity of any entity, regardless of its legal status and the way in which it is funded is not its “social function” (Court Reports 1993). The activities of the entity associated with the social security fall under the principle of social solidarity, and are part of a non-profit activity. Therefore, these activities do not constitute the economic activity.

### 4. The Exercise of the Prerogatives of the Public Authority by an Airport

There are certain situations that the granting of public funds will not constitute “public aid” within the meaning of article 107 of the TFEU and, therefore, will not violate European rules in this field. One of them are activities related to the exercise of the prerogatives of the public authority. Here, it can be provided the following types of activities related to:

- a) safety,
- b) security,

- c) air traffic control,
- d) Customs Service,
- e) air navigation services.

They are connected with the exercise of the prerogatives of the public authority and the article 107 of the TFEU does not apply to them. Some spheres are not of an economic nature, and therefore, the above mentioned areas can be financed by public funds, without the risk of activity incompatible with European law. In this respect, there is a final judgment of the Court of Justice of the EU from 1997 on Case *Cafe and Figli* (Court Reports 1997). At the same time, there is no condition to make the notification procedure. The European Commission confirmed the view of the Court on the case of 2001, commenting as follows: *The air transport industry has itself traditionally borne the bulk of security costs. The reinforcement of certain security measures by the public authorities in the wake of attacks directed against society as a whole and not at the industry players must, in the Commission's opinion, be borne by the State. It goes without saying that, if certain measures are imposed directly on airlines and other operators in the sector such as airports, suppliers of groundhandling services and providers of air navigation services, the financing of such measures by the public authorities must not give rise to operating aid incompatible with the Treaty* (European Commission, 2001). It is important that any entity shall separate in its accounting the costs associated with an economic activity, which shall be borne by that entity, and the costs associated with the operation of the activities that the State will finance. Regardless of whether it is a public or private entity, it is necessary to specify the costs incurred by the State as ineligible for public assistance.

## 5. The Activities of General Economic Interest on the Example of Public Service Obligation

Public Service Obligation (PSO) can be considered to be services of general economic interest.

There is no definition of the term „public service obligation” to be found in the Treaty on the functioning of the European Union. This service can be applied in the light of the provisions of European law on two types of action:

- a) on air routes, and
- b) on airport managing body.

### 5.1. PSO and Air Carriers

PSO is a restriction of the exercise of the carrier's traffic rights. The legal basis for the imposition of public service obligations is article 16-18 of Regulation 1008/2008 of 24 September 2008 on common rules for the operation of air services in the European Union (OJ UE, 2008). A Member State may impose it having regard to the following principles:

- a) after consultations with other interested Member States,
- b) after having informed the Commission, the airports concerned and air carriers operating on the route,
- c) imposing the public service obligation on a route:
  - between an airport in the European Union and an airport serving a peripheral or development region in its territory, or
  - on a thin route to any airport on its territory any such route being considered vital for the economic and social development of the region which the airport serves,
- d) the obligation shall be imposed only to the extent necessary to ensure on that route the minimum provision of scheduled air services satisfying fixed standards of continuity, regularity, pricing or minimum capacity, which air carriers would not assume if they were solely considering their commercial interest,
- e) the fixed standards imposed on the route subject to that public service obligation shall be set in a transparent and non-discriminatory way.

What's more, in such a case where other modes of transport cannot ensure an uninterrupted service with at least two daily frequencies, the Member States concerned may include in the PSO the requirement that any EU air carrier intending to operate the route gives a guarantee that it will operate the route for a certain period, to be specified, in accordance with other rules concerning PSO.

It is important that public service obligation shall be established on the route, and not on an air carrier which will actually perform it. In accordance with article 16 (4) of the Regulation 1008/2008 *when a Member State wishes to impose a public service obligation, it shall communicate the text of the envisaged imposition of the public service obligation to the Commission, to the other Member States concerned, to the airports concerned and to the air carriers operating the route in question.* The information notice on a public service obligation shall be published by the European Commission in the *Official Journal of the European Union*. However, where the number of passengers expected to use the air service is less than 10 000 per annum, the notice on PSO may be published in the national official journal of the Member State concerned. The date of entry into force of a PSO shall be the date indicated in the publication of the information notice in official journal.

The EU air carrier shall be able to offer seat-only sales provided that the air service in question meets all the requirements of the PSO. Consequently that air service shall be considered as a scheduled air service. Warto podkreślić, że jeśli przewoźnik lotniczy operował już na tej trasie wcześniej, to od momentu wejścia w życie przepisów o nałożeniu obowiązku użyteczności publicznej na obsługiwana przez niego trasę, może on wykonywać operacje w oparciu o tę zasadę. Notwithstanding the above mentioned provisions, any EU air carrier shall at any time be allowed to commence scheduled air services on a specific route meeting all the requirements of the PSO imposed on that route. This freedom is, however, limited to the situation when no EU air carrier is interested in performing scheduled air services on a specific route in accordance with the PSO imposed on it. In such a situation, the Member State concerned may limit access to the scheduled air services on that route to only one EU air carrier for a period of up to four years. This period may be up to five years if the public service obligation is imposed on a route to an airport serving an outermost region, referred to in Article 349 (2) of the TFEU<sup>1</sup>. However, in this case, in accordance with article 16 paragraph 1 and without prejudice to article 17 of regulation 1008/2008, Member States must carry out a public tendering procedure.

A public service obligation shall be deemed to have expired if no scheduled air service has been operated during a period of 12 months on the route subject to such obligation, in accordance with article 16 (11) of the Regulation 1008/2008.

PSO is very widespread in many Member States. At the end of 2014, there were 225 routes in the EU, with PSO imposed on them, in the following countries: Norway (51 routes), France (42 routes), Greece (route 28 routes), Portugal (24 routes), United Kingdom (22 routes), Italy (20 routes), Spain (18 routes), Sweden (10 routes), Estonia (4 routes), Finland (3 routes), Ireland (3 routes).

In conclusion, the imposition of a PSO to the specified route is the support given by the State to the outermost regions that due to their unfavourable geographical position cannot fully develop economically, and no carrier had not been interested in performing air services to that region due to the lack of cost effectiveness (low frequency of flights, a small number of passengers).

## 5.2. PSO Towards Airports

Some activities at the airport may be considered as activities of general economic interest. Although according to the European Commission, certain economic activities carried out by airports can be considered by the public authority as constituting a service of general economic interest<sup>2</sup>. In this regard, the authority imposes on the airport management body a commitment to perform PSO, which may receive compensation for the provision of such services. There is also the possibility to recognize the management of the airport as a whole for the service provided in the general economic interest. Then, in accordance with the Commission's position expressed in paragraph 34 in conjunction with point 53 (iv) of the *Guidelines...* of 2005 the management of the airport could not cover activities not related directly to its core activities and commercial activities (e.g. use and renting of land and buildings). Such action, however, is rare.

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<sup>1</sup> It's about the following regions, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands.

<sup>2</sup> See par. 34 of *Community guidelines on financing of airports and start-up aid to airlines departing from regional airports*, OJ EC, C 312, 9.12.2005.

Helpful in explaining whether the compensation in respect of the provision of PSO does not constitute State aid in the light of article 107 of the TFEU, it is the judgment of the Court of Justice of the EU 2003 in *Altmark* Case<sup>3</sup>. In accordance with Courts position, compensation for the airport does not constitute State aid and is not covered by TFEU rules, when the following four criteria are met:

- a) first, the recipient undertaking must actually have public service obligations to discharge and the obligations must be clearly defined,
- b) second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner,
- c) third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations, and
- d) fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations.

Returning to the *Altmark* case-law, it should be noted that the compensation for the provision of public services by the beneficiary after the fulfillment of all four reasons as referred to above, is not State aid within the meaning of article 107 TFEU and article 108 of the TFEU. However, failure to meet at least one of these criteria, results in classification the aid as State aid within the meaning of article 107 of the TFEU. Then, it should only be explained, whether the granted support (aid) will not affect the EU trade exchange and whether it does not distort or threaten to distort the competition, as referred to in the above argumentation.

## 6. Conditions for State Aid to Regional Airports

It should be explained in the beginning, whether regional airports are in a better situation to receive State aid? Well, big airports are located in metropolitan areas and large cities, which is the reason to attract well-known air carriers to perform operations from that airport (e.g. Paris, London, Frankfurt). Regional ports are in the less favourable situation, as they do not usually have these carriers and may not offer passengers the most convenient flight route network. Location in the outermost region concerned affects the reduction of attractiveness and the image of the airport. Therefore, State aid in the development of regional airports should not encounter resistance from the European Commission. The development of new, or the expansion of existing regional airports in economically less developed regions can be an opportunity to increase their attractiveness and increase overall investment and improving macroeconomic indicators. In 2014 the Commission approved State aid to individual airports in five cases: Airport Altenburg-Nobitz (Germany), Stretto Airport (Italy), Groningen Airport (Netherlands), Ostrava Airport (Czech Republic), Airport Marseille-Provence (France). In previous years, similar number of applications have been approved. In the case of the Berlin-Schönefeld airports, in Germany, the Commission considered that in general, the aid granted to that airport cannot be considered as State aid. It was recognized that, although for many years, this airport received financial support from the Federal Government and local self-government for development, this support was compatible with EU rules on State aid (European Commission, 2014). However, in one case, in relation to the Gdynia Airport (Poland), the Commission considered that the financial contribution made by local and regional authorities was in breach of European rules. The Commission argued that this aid has contributed to the increasing competitive advantage, which was contrary to European competition law and State aid

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<sup>3</sup> Case C-280/00, judgement of July 24, 2003, *Altmark Trans and Regierungspresidium Magdeburg*, Court Reports 2003, p.I-7747.

rules. Although a year later, on 26 February 2015, the Commission modified its decision while remaining on the assumption that the aid was incompatible with EU law, the resources to be returned have been diminished in relation to the costs incurred in the exercise of the prerogatives of the public authority (related to the safety), i.e.: the cost of buildings and equipment fire department, customs, airport security officers, police officers and border guards. The Commission, therefore, ordered, repayment of resources in the amount of about 22 mln EUR (European Commission, 2014).

Regional airport can lead certain types of economic activity. With the exception of two, referred to above, in other cases it may apply for State aid, which will be in line with article 107 (3) of the TFEU. There are four criteria of the airport activity, in which there is possible to obtain State funding, in accordance with par.53 of *Guidelines...* of 2005.

First, construction of airport infrastructure and equipment (runways, terminals, aprons, control tower) or facilities that directly support them (fire-fighting facilities, security or safety equipment). In such a case, the Commission will assess whether there was State aid in this area, and whether it is in accordance with article 107, paragraph 3 (a), (b), or (c) and article 106 (2). Namely, whether a specific type of project refers to general economic interest (e.g. the development of the region), whether it is indispensable for the designated purpose, whether all potential users can freely use this project, and whether it is compatible with the general interests of the Union.

Second, operation of the infrastructure, comprising the maintenance and management of airport infrastructure. Generally, State aid in this area would be inconsistent with the provisions of the Treaty, since it comes from the assumption that the airport operator, like any other operator in the market, should cover from its own resources the costs associated with the management of the infrastructure. Otherwise, he would have been exempt from current expenditure, which would result in a significant way to infringe the competition rules of the European Union. If a public entity acts as would a private investor in a market economy, this cannot be recognized as State aid, in accordance with the *Altmark* Case of 2003. In another case, support from public funds may be considered as State aid in the operational purpose and it will be in line with article 107, (3) (a) and (c), or article (106) (2), if the aid is to support the region in which there is high unemployment, the standard of living is lower than in the rest of the country and the provision of the service will take place in the general economic interest as well as in accordance with the interest of the Union. Regional airports have therefore the possibility of development, having received State aid in this subject, which will be compatible with EU law.

Third, provision of airport services ancillary to air transport, such as groundhandling services and the use of related infrastructure, fire-fighting services, emergency services, security services, etc. The European Union has defined threshold for this kind of activity, beyond which the public aid is impossible and would be incompatible with the provisions of the Treaty. In accordance with Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at EU airports, the provision of this service is a commercial activity, when annual traffic is not less than 2 million passenger movements. Otherwise, the airport management body, acting as a service provider, may separate the various sources of its revenue and losses between purely commercial activities, with the exception of the public funds allocated to it for the provision of the service of general economic interest.

Fourth, 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. However, these are not transport activities, so public financing of them is not covered by these guidelines and will be assessed on the basis of the relevant sectoral and general rules.

## 7. The Commence of Regional Airport Activity and Public Aid

Another important issue is the answer to the question whether State aid is allowed to commence the airport business. When taking into account large airports (hubs) it hard to imagine that such aid would be acceptable and the Commission would approve it. The argumentation could be as follows, that it distort the competition, because huge airport has more opportunities to develop than smaller airport, in peripheral regions. Nevertheless, when we look at closer to the example of Berlin Brandenburg Airport (BBI), we may notice some incoherency and split in argumentation (Gerlach, 2015). In the case of regional airports in certain situations such a possibility exists. The Commission is well aware of the fact that regional airports have a small number of passengers, which can often not be sufficient to overcome the profitability of the airport. Large airports (hubs) do not have a problem with it because

of the support of a significant number of passengers and the geographical location in the big cities or metropolitan areas which makes them more attractive.

There is no uniform interpretation about the number of passengers to be the threshold of profitability. It is estimated it at 500,000, 1 million, or even 1.5 million. It depends on many factors, i.e. the location of the State, the region, the choice of specialisation and organisation of the airport. As a general rule air carriers do have anxiety about opening new air routes from unknown airports. Therefore, the European Union allows the State funding for a specific route by imposing by a Member State concerned a public service obligation to that route. Those carriers who wish to perform operations to and from such regional airport can benefit from that PSO. Thanks to this, the airport will be able to better promote and achieve or exceed the threshold of profitability, and the region a chance to social and economic development. Therefore, State aid for the launch of the new routes will be in line with article 107 (3) (a) or (c) with reservation, that there will be no high-speed rail connection on this route. In fact, the Union supports the transport intermodality solutions as referred to in the White Paper of 2011. However, connections performed between regional airports located in outermost areas and overseas of some of the Member States (e.g. French Guiana, Reunion, the Azores) to neighbouring third countries in Africa or Americas can receive State support in accordance with article 107 (3) (a) of the TFEU. The idea is to promote integration in that specific region and counter the isolation of such a place. Similarly, public aid for air carriers starting operations from airports located in sparsely populated regions could be considered as compatible with EU law.

## 8. Conclusion:

Public aid in aviation is acceptable only under the conditions laid down in the Treaty on the Functioning of the European Union. Granting funds to a specific airport shouldn't distort the competition in that area, i.e. other surrounding airports. Air carriers may also have co-financed activity if they perform flights covered by the public service obligation. Member States may decide, whether a specific route is important to the whole country and impose a PSO to that route, so air carriers may start performing operations to be partially or substantially financed by the public authorities. It must be noted, that such PSO on a specific route may be imposed when no air carrier is interested in performing flights on that route in market economy.

The activity of undertakings in market economy is undisturbed with reservation that the State performs to each one of them a harmonized policy and they have equal treatment and none of them has more favourable position by these authorities. Providing special help or treatment for a specific undertaker or group of undertakings on the domestic market would constitute discrimination against the other, and as a consequence even to limit the number of similar undertakings in this market. Such action could lead to a monopoly on a particular sector, and that as a consequence could threaten to disturb the functioning of the market.

It happens sometimes, that States in various forms promote national entrepreneurs, not only in granting direct money but also by carrying out policy in favour of the development of the company. In the sense of free-trade rules it is the disruption of business activities, and in terms of national interest, it means defending their own entrepreneurs and their protection on the market before foreign competitors. The combination of these two ideas have been materialized in the rules laid down in the European Union. The European Union is taken as a whole, all Member States have an obligation to apply to the adopted rules, which excludes any national derogations. In this case, the Union sets a uniform rule for all of its members. Therefore, on the one hand it creates a right to protect each trader from any Member State and the principle of equality and non-discrimination on grounds of nationality are applied throughout its area, on the other hand, acts as a single entity (one State) to protect its market from external competition from non-member countries and promotes European undertakings.

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