

Targeted Consultation on the Aviation Guidelines

Fields marked with * are mandatory.

Targeted Public Consultation - Fitness Check of the 2014 Aviation Guidelines

As part of the evaluation process (Fitness Check) of the current State aid rules, the directorate general for competition of the European Commission (DG COMP) is launching a general public online consultation covering State aid rules in about ten different areas. The general consultation can be found here: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981/public-consultation_en.

As part of this overarching evaluation, DG COMP has designed a number of targeted questions specifically for the 2014 Aviation Guidelines[1]. The Commission is interested in hearing your views on the Fitness Check of the 2014 Aviation Guidelines. Your answers are important for us to determine whether the current rules are fit for purpose. Therefore, you are kindly invited to reply to the set of questions below.

Please make sure you use the save button as you proceed with the questionnaire to avoid losing information that was already inserted - especially in the case of questions with open replies. At the end of the survey, you will have an opportunity to provide broader, more general comments and to upload documents, which you consider as relevant.

The results of this consultation will feed into the overall evaluation process. The Commission will publish an analysis of the results of the Fitness Check and examine possible follow up actions at the beginning of 2020.

[1] Communication from the Commission - Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p.3.

Why are we consulting?

In 2012, the Commission launched the State aid modernization with the objectives to: 1) foster sustainable, smart and inclusive growth in a competitive internal market; 2) to focus the Commission's ex ante scrutiny on cases with the biggest impact on the internal market; and 3) to streamline the rules and to provide for faster decisions. In view of these objectives, the Commission revised the Guidelines for the aviation sector in 2014 and included in the General Block Exemption Regulation[2] the conditions under which certain categories of airports can receive investment and operating aid without the prior screening by the Commission. The objective of the so-called 2014 Aviation Guidelines was to support regional development

and accessibility of regions on the one hand, and to limit the distortion of competition on the other. The Aviation Guidelines provide that the Commission will undertake an evaluation of the Guidelines by April 2020.

In January 2019, the European Commission launched a comprehensive policy evaluation in the area of State aid ("Fitness Check"). Part of this exercise is the evaluation of the framework applicable to airports and airlines to assess if the current rules are still fit for purpose. Besides the general public consultation on the Fitness Check of EU State aid rules, this targeted consultation aims to ask supplementary questions in order to gather stakeholders' views on the implementation of the 2014 Aviation Guidelines as well as the relevant provisions in the General Block Exemption Regulation and to receive insights about potential gaps, overlaps, or excessive regulatory burden.

[2] Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ L 156, 20.6.2017, p.1.

About You

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* Do you agree with the publication of your identity as described above?

☒ Yes.

☐ No, I wish my contribution to be anonymous.

* Language of my contribution:

English

* Name:

Dutch authorities: Interdepartementaal Staatssteun Overleg

* I am giving my contribution as:

Public authority

* Country of origin

Netherlands

* E-mail address:

Please describe the main activities of your company/organisation/association, if applicable.

1500 character(s) maximum

This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities.

* Please describe the relevance of State aid rules for you.

1500 character(s) maximum

The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities who have to comply with the State aid rules. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.

* How would you best describe the nature of your understanding and involvement in matters related to State aid rules?

1500 character(s) maximum

The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities who have to comply with the State aid rules and therefore have a broad knowledge and experience with the State aid rules.

Targeted Evaluation Questions

General

1. Are there any provisions of the Aviation Guidelines that are not sufficiently clear to provide you with guidance?

- ☒ Yes
☐ No
☐ I do not know

If yes, please indicate which one and explain why.

3000 character(s) maximum

The Dutch authorities would like to see some more guidance as to the concept of "airport" in point 25 (6) of the Aviation Guidelines, in particular as to the meaning of "an entity" or "group of entities".

Furthermore guidance is useful as to the concept of "a given legal order" in point 37 of the Aviation Guidelines, specific in the context of a decentralized unitary State as The Netherlands are.

2. As stated in recital 56 et seq. of the Aviation Guidelines, the Commission takes the view with regard to the application of the Market Economy Operator principle to airport-airline agreements that a large majority of Union airports benefit from public funding and are publicly owned. However, in practice, even if some airports are privately owned or managed without social or regional considerations, the prices charged by those airports can strongly be influenced by the prices charged by the majority of publicly subsidised airports. In those circumstances, the Commission expresses strong doubts in the Aviation Guidelines that an appropriate benchmark can be identified to establish a market price for services provided by airports.

Do you consider the above to be still correct and does it reflect the current market situation?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

The considerations which led the Commission to her conclusion in 2014 seem to be unchanged since then.

3. Do the rules under the Aviation Guidelines adequately take into account the environmental and climate impact of airports?

- ☐ Yes
- ☒ No
- ☐ I do not know

Please substantiate your answer.

1500 character(s) maximum

The Aviation Guidelines appear to be neutral as regards environmental and climate aspects. These Guidelines therefore do not seem to oppose State aid measures from Member States in support of environmental or climate goals, they do however not contain any positive incentives for Member States to do so. This might hinder possibilities to meet possible future challenges for the aviation sector. The Dutch authorities would like the Commission to include some specific provisions in the Aviation Guidelines in order to fulfil environmental and climate goals.

Investment Aid to Airports

4. The Aviation Guidelines stipulate the maximum permissible aid intensity for investment aid depending on the size of the airport as measured by the number of passengers per annum:

Size of airport based on average passenger traffic (passengers per annum)	Maximum investment aid intensity
5 million	In principle not eligible for aid
3-5 million	up to 25 %
1-3 million	up to 50 %
1 million	up to 75 %

a) Is the categorization of airports according to their passenger numbers as listed above appropriate to determine aid intensities?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

Although the categorization as such is adequate, it is important to introduce a passenger traffic category < 1 million.

b) Are the aid intensities set by the Aviation Guidelines adequate?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

According to the Dutch authorities the aid intensities set by the Aviation Guidelines are sufficient.

5. Is the method to determine whether the aid is limited to the minimum necessary, requiring the determination of the funding gap (amount needed to bring the Net Present Value of a project to zero), the eligible costs (related to investments that are eligible under the Aviation Guidelines, and excluding other costs) and the maximum aid intensity (ratio [aid/eligible costs]), appropriate?

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer, and if relevant distinguish according to funding gap, aid intensity and thresholds used to set the maximum aid intensity.

3000 character(s) maximum

6. The Guidelines contain different rules for operating aid and for investment aid for airports. Is the distinction between operating aid and investment aid under the Aviation Guidelines economically justified?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

Both the aim of investment aid as the span of time of such aid in comparison to operating aid justifies such a differentiation.

7. The Aviation Guidelines do not contain special provisions for investment and operating aid for airports belonging to a network of airports. Should such airports be treated differently?

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer, and if relevant distinguish between investment and operating aid.

1500 character(s) maximum

As is rightly observed, the Aviation Guidelines do not contain special provisions for airports belonging to a network of airports. The meaning of “network” therefore is not included in the definitions of paragraph 2.2 of the Aviation Guidelines. Therefore the Dutch authorities are not in the position to reply to this question. See also the answer to question 1.

Operating Aid to Airports

8. The Aviation Guidelines provide for a transitional period of 10 years from 4 April 2014 until 3 April 2024, during which airports with annual average traffic of up to 3 million passengers can receive operating aid. By the end of the transitional period in 2024, all such airports must have reached full coverage of their operating costs and in principle, no operating aid to these airports shall be considered compatible with the internal market after that date.

Is the transitional period of 10 years, provided for by the Aviation Guidelines (2014-2024), sufficient to allow airports to reach operational cost coverage by the end of this period?

- ☐ Yes
- ☒ No
- ☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

Whereas under ‘normal’ market conditions a period of 10 years might have been sufficient, this is not the case for (most) regional airports. These airports are mostly serviced by ‘low cost carriers’. As these low cost carriers tend to change from one airport to another according to the lowest airport charges they can negotiate, is virtually impossible for the regional airports to maintain a long term strategy, covering for instance a period of 10 years. Furthermore due to their size some small regional airports bear relatively higher costs for security and safety measures. A period of 10 years does not suffice to cover the security and safety costs of the small regional airports.

9. To date, Member States have notified only a relatively small number of operating aid measures. To your knowledge, what are the reasons for this development?

a) The rules (funding gap, eligible costs) are too complex.

- ☐ Yes
- ☐ No
- ☒ I do not know

b) The rules are too demanding and the requirements too burdensome.

- ☐ Yes
- ☐ No
- ☒ I do not know

c) The administrative burden of the notification process is too high.

- ☒ Yes
- ☐ No
- ☐ I do not know

d) The rules do not reflect the way airports take economic decisions.

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

Having regard to the low number of airports in the Netherlands falling within the scope of the Aviation Guidelines, no representative conclusions can be drawn from the Dutch situation. However in those cases notification was necessary, such notification has been done. The Dutch authorities would like to point out that the timeframe of the notification procedure is of the essence for these kind of cases.

e) Other reasons?

Please substantiate your answer.

1500 character(s) maximum

10. Have airports adjusted their business plans since the entry into force of the Aviation Guidelines in particular to reduce their deficit, optimize their workforce, reorganize themselves so as to avoid being dependent on State subsidies to cover their operational costs by the end of the transitional period?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer by referring specifically to each of the elements listed above.

3000 character(s) maximum

See the answer on question 8.

11. Do the rules provide incentives for airports to improve their financial situation?

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

12. The Aviation Guidelines determine the maximum aid intensities (50% and 80%) based on specific annual passenger thresholds (200 000 – 700 000, 700 000 – 3 million passengers).

a) Are these thresholds adequate in view of current market conditions?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

According to the Dutch authorities these thresholds are adequate as regards the (important) option for regional authorities to support small regional airports (vital infrastructure for the regions).

b) With regard to airports with annual passenger traffic of up to 700 000, the Guidelines state that under the current market conditions, they may face increased difficulties in achieving full cost coverage by 2024. For this reason, the maximum permissible aid amount for this category of airports is set at 80 % of the initial operating funding gap. The Guidelines state that the Commission will reassess the need for continued specific treatment and the future prospects for full operating cost coverage for this category of airports.

Is there a continued need for this category of airports to have a higher aid intensity (80% aid intensity compared to 50% aid intensity for larger airports) and do the rules under the Aviation Guidelines reflect the current market situation?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

1500 character(s) maximum

See the answer on question 8.

13. Are the rules under the Aviation Guidelines appropriate for calculating the maximum aid amounts?

- ☒ Yes
- ☐ No

☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

14. Is the EBITDA (earnings before interest, taxes, depreciation and amortisation) an appropriate proxy to determine operational profit?

- ☐ Yes
☐ No
☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

15. Is the way in which the operating aid is capped by the initial operating funding gap (average funding gap in the years 2009 – 2013) a relevant reference?

- ☐ Yes
☒ No
☐ I do not know

Please substantiate your answer.

1500 character(s) maximum

Given the very volatile market in which regional airports operate, due amongst other to their dependence to a large extend on low cost carriers, this fixed reference to a criterium which lies in the past is not appropriate.

Catchment Area

16. Is the distance of 100 km/60 min travelling time an adequate criterion for determining the boundaries of a geographic market where given airports intensely compete?

- ☒ Yes
☐ No
☐ I do not know

Please substantiate your answer.

3000 character(s) maximum

Although the criterion of the distance of 100km/60 min travelling time by car, bus, train or high-speed train is precise and unambiguously questions of delimitation still may arise. For certain regional airports this criterion may be too restrictive to determine the relevant catchment area. The Dutch authorities are aware of the fact that any other criterium may lead to other borderline cases. Nonetheless as stated in the Aviation Guidelines the catchment area of a given airport may be different and needs to take into account the specificities of each particular airport. In order to determine the catchment area of an airport the characteristics of the airport, including its business model, location and the destination it serves should be taken into consideration.

17. Are other parameters being sufficiently taken into account (e.g. diverging business models, geographic market, congestion, competition with other modes of transport, etc.) to determine the relevant catchment area and possible effects on competition?

- ☐ Yes
- ☒ No
- ☐ I do not know

Please substantiate your answer.

1500 character(s) maximum

See the answer on question 16.

18. Has the introduction of the concept of 'catchment area' in the 2014 Aviation Guidelines reduced the distortive effect of State aid measures on competition?

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

19. Is the current criterion and definition of the catchment area effective in order to avoid overcapacity of regional airports?

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

20. Question to airports: Whom do you consider to be your main competitor and why (mode of transport, distance, business model, etc.)?

3000 character(s) maximum

Not applicable.

21. Question to airports: How would you define your own catchment area?

3000 character(s) maximum

Not applicable.

Aid to Airlines

22. The Aviation Guidelines provide for three forms of aid to airlines: (i) start-up aid, (ii) compensation for Public Service Obligations, and (iii) social aid. Other forms of financing of airlines (for example marketing agreements) need to be market conform.

a) Are the three forms of aid described above sufficient to achieve the desired objectives to facilitate regional development and the connectivity of regions?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

1500 character(s) maximum

In the situation of The Netherlands effectively only form I (start-up aid) has been relevant. In actual practice the rules in respect of granting start-up aid to airlines turned out to be complicated.

b) Has the absence of possibilities to grant aid other than the three forms of aid described above reduced regional development and the connectivity of certain regions?

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

23. Are the specific conditions for start-up aid to airlines appropriate to achieve the desired objective?

- ☐ Yes
- ☒ No
- ☐ I do not know

Please substantiate your answer.

1500 character(s) maximum

The conditions concerning start-up aid do not seem to take sufficiently into account the market realities in which most regional airports operate.

24. Have these rules been used as a tool to facilitate regional development and the connectivity of regions by giving an incentive to airlines to launch new routes?

- ☒ Yes
- ☐ No
- ☐ I do not know

Please substantiate your answer.

1500 character(s) maximum

General Block Exemption Regulation

25. Are the rules for investment and operating aid for airports under the General Block Exemption Regulation appropriate to achieve the desired objective?

Investment aid

- ☐ Yes
- ☐ No
- ☒ I do not know

Operating aid

- ☐ Yes
- ☐ No
- ☒ I do not know

Please substantiate your answer.

3000 character(s) maximum

The Dutch authorities have not gained (yet) any experience with the provisions concerning regional airports in the GBER.

26. Have the categories of aid to airports, which now fall under the General Block Exemption Regulation made it simpler for airports to comply with the provisions? Have the rules reduced the administrative burden?

Investment aid

- ☐ Yes
- ☐ No
- ☒ I do not know

Operating Aid

- ☐ Yes

- ☐ No
☒ I do not know

Please substantiate your answer.

3000 character(s) maximum

See the answer to question 25.

Additional Questions to Member States

27. To date, Member States have notified only relatively few national schemes for aid to airports. To your knowledge, what are the possible reasons for this development?

3000 character(s) maximum

See the answer to question 9.

28. What do you consider to be the main the administrative burden linked to the notification of aid to airports?

3000 character(s) maximum

See the answer to question 9.

29. Are the Guidelines' requirements as regards the provision of data proportionate, compared to what a typical, well-run regional airport can be expected to provide?

a) Volume of data:

- ☐ Yes
☐ No
☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

b) Type of data:

- ☐ Yes
☐ No
☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

30. Do you consider the rules under the Guidelines to be coherent with your national strategies relative to transport, energy, and climate, as well as with the EU strategic objectives?

- ☐ Yes
☐ No
☒ I do not know

Please substantiate your answer.

1500 character(s) maximum

Additional information

Further to your replies of the questionnaire, you may provide below any additional comments, observations, information, or suggestions you deem relevant to share with us.

5000 character(s) maximum

You may also upload a file in relation to your response here:

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Contact

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