

Bachelor thesis

University of Twente

Supervisor: Dr. T. van der Burg

Co-reader: Prof. R.A. Wessel

Regulation of financial stimulation of regional airports in the European Union

- A case study of the airport Münster-Osnabrück -



Simone Hein (s0171662)

s.hein@student.utwente.nl

Study program: European Studies (cohort 2007)

Study year: 2010/2011

24.08.2011

UNIVERSITEIT TWENTE.

Summary

In this thesis the research question *“How do the European Union, the German national government and the sub-national German governments regulate the financial stimulation of the regional airport in Münster-Osnabrück and are the policies of the different institutional bodies consistent?”* is answered. In order to come to a valid conclusion, first of all the European Union level is analyzed, because all national law of any Member State has to be consistent with European Union law. The most important thing in the field of regulation of financial stimulation of regional airports is the European Commission “guideline on financing of airports and start-up aid to airlines departing from regional airports”. After having drawn conclusions about the regulation and financial stimulation on the European Union level the case of Münster-Osnabrück is analyzed. Then, a look at the different German levels of governments, the national and sub-national levels, involved in regulating of the financial stimulation of the airport of Münster-Osnabrück is taken. Additionally, examples of the ways in which they do it are given. After this descriptive case, the consistency between European Union law and German national and sub-national law and the practice are tested. In the end an overall conclusion to the main research question can be given.

Table of Contents

1. Introduction	5
1.1 Outline.....	7
1.2 Münster-Osnabrück	8
1.3 Concepts	8
1.3.1 Hard and soft law	8
1.3.2 (Financial) stimulation	9
1.3.3 Governments.....	9
1.3.4 Consistency	10
2. How does the European Union regulate the financial stimulation of regional airports?	11
2.1 Introduction	11
2.2 Hard law.....	12
2.3 Soft law	13
2.3.1 Commission guidelines	13
2.3.2 Different types of airports within the EU.....	14
2.3.3 Relevance of the guidelines	15
2.3.4 Basic contents of the guidelines.....	16
2.3.5 Public – Private ownership.....	16
2.3.6 Services of non-economic nature.....	17
2.3.7 Services of economic nature	17
2.3.7.1 Charge level.....	17
2.3.7.2 Infrastructure	18
2.3.7.3 Start-up aid.....	18
2.4 Conclusion	19
3. Münster-Osnabrück	21
3.1 How do the German national government and the sub-national German governments regulate the financial stimulation of the regional airport of Münster-Osnabrück?	21
3.1.1 Federal level of government	21
3.1.2 Federal state level of government	22
3.1.3 Regional level of government	23
3.2 Conclusion	26
4. Consistency.....	29
4.1 Are the European Union, the German national and the sub-national German levels of government consistent when it comes to regulation of financial stimulation of regional airports in the case of the airport of Münster-Osnabrück?	29

4.2 Conclusion	30
5. Conclusion	32
6. References	35
7. Annex	39

1. Introduction

In 2001, the European Commission issued a White Paper on European transport policy for 2010. In this ten year strategic paper, the issue of air transport was raised. The objective for the next ten years was to control the growth in air transport, tackle saturation of the skies, maintain safety standards and protect the environment (European Commission - White Paper: European transport policy for 2010, 2001). Especially the first point should raise the attention as the increase in passenger transport accounted for by air transport is set to double from 4% to 8% between 1990 and 2010. Steady increasing numbers of European citizens want to use air transport as an easy way to travel within the EU. Their reasons are various: business, visiting family or holidays. Additionally, between now and 2025, over 60 European airports will be heavily congested and the top 20 airports will be saturated at least 8 to 10 hours per day. The airports are the weakest link and this is in fact threatening the efficiency of the entire air transport network (European Commission, 2001).

The cheap supply of airline tickets has created a generation of young Europeans who visited more foreign countries than neighboring local recreation areas. The European Commission, or to be more specific, the Directorate General (DG) Transport, takes a positive view on the fact that the citizens get more mobile and open towards other Member States and their cultures. Furthermore, the establishment of low-cost airlines has also led to another trend: the revitalization of former military airbases and secondary airports. There are two reasons why there was and is the need for more airports in the EU in the eyes of DG Transport. First of all, the existence of the low-cost carriers with their frequent flights and their need for cheap slots had a huge impact on the start up of new commercial airports. Furthermore, people experienced flying as a normal way of transportation and therefore demand airports close to their living areas. The European Commission sees the establishment of regional and secondary airports as a vital part of their regional development strategy and in general encourages this development. However, there is the problem of economic feasibility of secondary airports, especially in the starting years. The infrastructure has to be built and air carriers have to be allured to operate on the specific airport. Most of the time the government in question, either on the national level or on the regional level, wants and promotes these airports and is therefore willing to give aid in the form of loans with good conditions or via direct payments (DG Transport, 2010).

But, this is a problematic issue as the common market policy of the EU, as constituted in the EC Treaty, pronounces the general prohibition of state aid in order to prevent preferential treatment of single individuals or companies. However, there are exceptions to this rule and the EU has established a series of legal acts which fundament a worldwide unique system of rules under which State aid is monitored and assessed. For issues of State aid on the air transport sector the DG Transport is responsible within the EU.

However, the DG Transport and DG Competition are not the only ones who are concerned with the issue of air transport and respectively secondary airports. It is also acknowledged and especially emphasized by the DG Environment that the air transport industry is a contributor to global climate change. Emissions caused by aviation increased by almost 100 % in the period from 1990 to 2006. And the growth is likely to continue in the coming decades (European Commission, 2010).

Especially when taking regard to the last paragraphs, the policies of the European Commission are somewhat ambiguous. On the one hand the Commission wants to increase the number of secondary airports in order to promote regional development and to give citizens the opportunity to visit other Member States in order to increase mutual understanding; but, on the other hand, the air transport industry is highly harmful to our environment. The promotion of secondary airports through State aid should be on reasonable basis and not only aim at consumer benefits and profits, but should also take into account that aviation is a contributor to climate change (Airportwatch, 2004). Therefore regulation and legislation on all governmental levels involved should be reasonable in order to aim at a good fit between economic benefits and environmental protection.

Recent research by Blauburger (2008) suggests that the European Commission's role normally is a negative integrator when it comes to the field of State aid. This implies that the Member States can do what they want as long as it is not conflicting with the rules of the EU. This makes it possible for the Member States to design individual State aid policies which might benefit the economy of the individual Member State but in the overall welfare be counteractive towards the policies and strategies of other Member States. The latter would be against the common market principle where competition should be fair and nondiscriminatory, especially in border regions or where markets overlap. For airports, this could be the case when they are located close to each other and naturally have the same catchment area. This is most likely the case for airports which lie in the border regions of the Member States.

In the following, I will conduct research on this issue and therefore make a descriptive analysis of the actual regulations on State aid or as it is called in the following financial stimulation for regional airports within the European Union and the Member States. I will conduct a case study on the airport of Münster-Osnabrück in Germany. I will also look at the differences of the regulation of financial stimulation by the different governments and test the consistency. The consistency is especially important because all Member State law should be in line with European Union law in areas where the European Union holds the competence. Therefore my main research question is formulated as follows:

How do the European Union, the German national government and the sub-national German governments regulate the financial stimulation of the regional airport in Münster-Osnabrück and are the policies of the different institutional bodies consistent?

This research question rests upon the assumption that the different levels governments treat the case of regulation of financial stimulation of regional airports differently and this might give an advantage to one airport, which then would be contradictory to the common market principle (the European Union law); as well as possibly to the goal to decrease pollution by the aircraft industry, which the European Union is also aiming at. Member State law and/or practices might be contrary to European Union law, or there might be no Member State law and practices contrary to European Union law. However, the overall question of legitimacy of the aircraft industry in terms of environmental protection is not questioned in this research. The case examined is the airport of Münster-Osnabrück in Germany. The sub questions to answer the main research question are:

1. How does the European Union regulate the financial stimulation of regional airports?

The first sub question is concerned with the European Union level due to the fact that legally binding regulations of the European Union are applicable for all Member States, thus also for Germany and the regional airport of Münster-Osnabrück; therefore first of all this level should be analyzed and evaluated regarding the answer of the main research question. European Union law is always superior to national law, this means that in legal terms practices in the Member States should not infringe European Union law. The second sub question will test if this is always the case in Germany when it comes to state aid for regional airports. Therefore the second sub question is formulated as follows:

2. How do the German national government and the sub-national German governments regulate the financial stimulation of the regional airport of Münster-Osnabrück?

In this part the focus will lie on the different German levels of government which are involved in the regulation and financial stimulation of the airport of Münster-Osnabrück and also a look at the practices of financial stimulation are given in order to get a full overview.

After having answered the second sub research question the European Union level of regulation of financial stimulation and the German, in this case the German national and sub-national levels of regulation of financial stimulation will be compared in regard to their consistency. Hence the third sub research question should be as following:

3. Are the European Union, the German national and the sub-national German levels of government consistent when it comes to regulation of financial stimulation of regional airports in the case of the airport of Münster-Osnabrück?

After having done an evaluation of the European Union level, which is valid for any airport in the European Union, and the respective legislation of Germany in the field of stimulation of regional airports and the regulation thereof, a conclusion about the consistency of these legislations and real life practices in the case of the airport of Münster-Osnabrück can be drawn and the main research question can be answered.

1.1 Outline

To answer the main research question the three sub questions are going to be answered in the following. The three sub questions are organized as to first analyze the European Union level, which is applicable to all airports within the European Union. The second sub question deals with a specific case of one airport in the European Union namely the German airport of Münster-Osnabrück. The third sub-question compares the results of the first two sub questions and looks if the European Union level and the German level of regulation of financial stimulation are consistent. Each of these sub questions will be dealt within one chapter. The last chapter will give then an answer to the main research question.

1.2 Münster-Osnabrück

The airport Münster-Osnabrück (IATA code used to abbreviate: FMO) is located in the North of the federal state of Northrhine-Westfalia in Germany. It has a catchment area of 7 million people of an hour circle distance by car and around 17 million people of two hour circle distance by car (see figure 2). This two hour circle catchment area includes the whole Ruhr area and most parts of the Netherlands. The annual passenger volume in 2009 was 1.5 million people but according to the FMO there is even capacity for approx. 2.5 million passengers per year (FMO, 2011). This means that the airport has still a strong growth potential without expanding the existing ground handling facilities. However, to achieve this growth in passengers per year, the airport is planning a runway extension in order to be able to provide flights to distances such as to the east coast of the United States. Another measure to achieve growth in passengers per year is sought by the opening of new routes especially to Northern and Eastern Europe. The airport is in public ownership which is divided between different public institutions that act as shareholders. The ones with the biggest part of the shares are *Stadt Münster* with 35,1 %, *Kreis Steinfurt* with 30,3 %, *Stadt Osnabrück* with 17,2 % and *Stadt Greven* with 5,8 % (for others see figure 3). The Chairman of the Supervisory Board is the Mayor of Münster, Markus Lewe. The Councilor of the Kreis Steinfurt (Thomas Kubbendorff) and the Mayor of Osnabrück (Burkhard Jasper) function as Deputy Chairmen of the Supervisory Board.

1.3 Concepts

To get an answer to the research question there are several concepts used that serve for the better understanding of the research. Those are explained in the coming section.

1.3.1 Hard and soft law

This thesis deals partially with how different governments regulate regional airports. Therefore a definition of regulation is needed. A distinction can be made between two concepts; hard law and soft law. Some lawyers argue that law always has to be constituted in some forms of treaties or statutes (Snyder, 1993). However, in the European Union a complex system of soft and hard law alike has evolved in the recent years. A clear definition of soft law was given by Snyder (1993:2), according to him there are “rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects”. Examples of soft law in the European Union context are: Community frameworks and guidelines, Commission communications, recommendations, notices, decisions, and letters, as well as revisions, corrigenda, and amendments to the respective documents (Blauberger, 2008: 13). In the case of the European Union hard law are the treaties and as such are legally binding for all Member States. In the treaty writing procedure they have agreed to accept those. Whereas soft law, in the European Union context, is not legally binding and the implementation of it rests solely on the goodwill of those agreeing and affected by it (Cini, 2001: 194). This means that the instruments of hard law, the treaties of the EU, are agreed and accepted by all Member States. Whereas the instruments of soft law, frameworks, guidelines, etc, are written by the European institutions which consist of representatives of the Member States but sometimes develop their own dynamics.

In the European Union context hard law is often referred to as a tool of negative integration because it forbids certain practices for the Member States. In the case of state aid the European Union

Member States integrate negatively because giving State aid generally is prohibited by the treaties, the hard law. In difference soft law is associated with positive integration. Negative integration means that constraints are given by the EU law and prohibit certain measures whereas positive integration means that certain specific measures are allowed for Member States. In the case of State aid this means that for example the Commission guidelines on financing of airports and start-up aid to airlines departing from regional airports allow certain measures of financial stimulation of regional airports due to the insignificance in the common market. This is seen as positive integration because it implies that an idea of “good” practices and measures is taken by the European Commission and these are specifically allowed (Blauberger, 2009). This does not mean that soft law only allows practices that are seen “positive”, in the common sense of the word, by the Member States. Positive integration is therefore positive as it allows certain practices rather than in the traditional sense of law forbids certain behavior. However, Member States may as well perceive soft law as a negative thing. Soft law is using the converse argument of hard law; unlike hard law it does not forbid financial stimulation in general but allows certain forms of financial stimulation that are unlikely to harm the common European market.

In the following analysis the emphasis will lay on a distinction of the regulation imposed by the governments especially the European Union. It will be analyzed whether the regulation of financial stimulation of regional airports can be defined soft or hard law. In a next step, the consequences in terms of negative or positive European integration will be discussed.

1.3.2 (Financial) stimulation

Stimulation of regional airports by governments in terms of State aid can take various forms. Possible stimulation could be the granting of direct subsidies but also more indirect by financially stimulating enterprises and industries through conceding tax privileges, abstaining from collecting social security contributions or selling public property under market value (Blauberger, 2008: 8). Financial stimulation in terms of State aid can be seen in the light of the European Commission’s definition of it: “an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities” (European Commission, 2010). This means that governments that financially stimulate regional airports in any way whatsoever would give an advantage in comparison to other airports in the European Union to the airport. This implies that for those airports the criterion of State aid is met.

1.3.3 Governments

In this thesis, the definition of government is taken from the Merriam-Webster's Dictionary of Law (2010) and states as following: “the organization, machinery, or agency through which a political unit exercises authority and performs functions and which is usually classified according to the distribution of power within it”. In the case of the European Union the “political unit” can be the European, national, regional or local level as the principle of subsidiarity rules that matters should be handled on the lowest level of government possible. As Article 5(3) of the Treaty on the Functioning of the European Union (TFEU) states the principle of subsidiarity defining that in areas that do not fall under the exclusive competence of the European Union the European Union should only act if this cannot be done by the Member State, either at central level or at regional and local level.

1.3.4 Consistency

Consistency in here will be defined as the degree to which European Union law and guidelines are in line with German national and sub-national law and practice. Legally, all national and sub-national law must not infringe European Union law (European Commission, 2009). In all areas where European Union law has the authority to rule it is superior to national law; if not stated otherwise. In the field of regulation of financial stimulation for regional airports the authority lies within the European Union. Therefore national and sub-national law must not be different to European Union law; this would be a breach of law.

However practice in Member States differs sometimes from what is determined by the European Union. As long as this behavior is not challenged by a court ruling it might be unlawful but still in practice. In this research it will be looked at the formal regulation for financial stimulation as well as the practice in Germany. The analysis of both, the written regulations but also the practice at the airport Münster-Osnabrück, will lead to the final result of analysis.

2. How does the European Union regulate the financial stimulation of regional airports?

2.1 Introduction

The European Union has established a single common market which brings many advantages to the customers. Effective competition in goods and services lowers prices and at the same time raises the quality of goods and services available and broadens the choice customers can make. Furthermore it helps technological innovation flourishing. In order to secure the common market, the European Union has wide powers to ensure that businesses and governments stick to European Union law. In general, a vast amount of rules and laws on the policy fields of antitrust, mergers, cartels, liberalization, international development and State aid exist. However, there are always exceptions to this law in order to take into account the interests of innovation, unified standards, and small business development (European Commission, 2010). In this research, the focus will lay on the policy field of regulation of financial stimulation for regional airports.

Because the policy field of air transport has sector-specific rules (European Commission, 2011), the general competition rules are not applicable for this sector. Therefore the analysis in the following is not focused on the general competition rules of the European Union but on the sector-specific rules of the air transport sector and more specific on the regulation of financial stimulation of regional airports.

The definition by the European Commission of State aid is following: “State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by Article 107 of the Treaty on the Functioning of the European Union (TFEU) and do not constitute state aid.” (European Commission, 2010). What Article 107 TFEU contains will be explained in the next section.

In order to overcome the broad possibilities for interpretation of the TFEU (hard law), the European Commission also determines soft law. This has the form of guidelines, recommendations and others. In the Commission communication from 2005 over the “Guidelines on state aid for developing regional airports” it is described more in depth what aid is allowed in certain circumstances for regional airports and what are the procedures the airports have to follow when granting this aid. The guidelines give more specific interpretations on how the financing of regional airports needs to be done in the European Union. This is typical for soft law within the European Union as it gives exceptions to the hard law, TFEU, and allows specific behavior. This allowance of the specific behavior is understood as positive integration.

The first research question deals with the European Union level of government. This is important because all Member States are bound by the legislation established in the Treaty on the functioning of the European Union. If a Member State does not comply with them, formally written or in practice this is breach of European Union law. The principles and provisions written down in the TFEU and the attached protocols, annexes and declarations are all hard law, thereby proposing negative

integration from above when defining what is not allowed in the Community context. With the hard law of the European Union in the field of regulation of financial stimulation for regional airports will be dealt in the following section. After a discussion of the hard law in this field the focus will be on soft law as most of the more specific rules are laid down in soft law as they allow exceptions to the laws determined by the hard law.

2.2 Hard law

In the context of hard law of regulation of financial stimulation for regional airports within the EU, the main articles are Article 107 TFEU, Article 108 TFEU and Article 109 TFEU. Due to these Articles, state aid is generally forbidden with some exemptions that shall be compatible with the common market. The common market principle means that there should be no boundaries, in any form whatsoever, between the Member States of the European Union when it comes to free trade. Foreign products, services, etc. need to be treated in the same way than home products, services, etc. In terms of negative integration this means that all aid that helps only home country businesses is prohibited whereas aid that is applicable for all businesses under the same conditions within the European Union can be allowed. This is in the logic of the non-discriminatory principle which implies that no business in a Member State should be discriminated within the common market based on the behavior of how another Member State treats its businesses.

As said above the hard law that is important for the regulation of financial stimulation of regional airports in the European Union is Article 107 TFEU which is ruling out the general prohibition of State aid but also allowing for State aid under certain conditions; it is made of three paragraphs. Article 107(1) TFEU lays down the definition of “incompatible” state aid; labeling all aid that distorts or threatens the internal market as incompatible. Article 107(2) TFEU provides for cases of *de iure*, meaning concerning law, derogations to the incompatibility; allowing for aid that needs to be compatible with the following criteria: firstly aid that has social character granted to the individual consumer, secondly aid that makes good the damage caused by natural disasters and thirdly aid granted to some areas in the east of Germany to make up for the division of Germany. Article 107(3) TFEU provides for cases of discretionary derogation to the incompatibility; it declares aid compatible with the internal market that first promotes the development in areas where the standard of living is exceptionally low, second 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, third aid that does not adversely affect trading conditions to an extent contrary to the common interest, fourth aid to promote the preservation of cultural heritage where it is not disturbing trading conditions and fifth other categories of aid that may be specified by a decision of the European Council by proposal from the Commission (Treaty of the Functioning of the European Union, 2010). This means that Article 107 TFEU in general prohibits state aid in the common European market however in times of extreme poverty or unforeseen events it might be allowed in order to overcome those problems.

Article 108 TFEU follows this line but gives more specific detail about the monitoring, notification and enforcement of the European Union State aid laws. Article 108 (1) TFEU states that the European Commission should keep all systems of existing aid under review and shall propose appropriate measures required for a functioning of the internal market. Article 108 (2) TFEU describes what

powers the European Commission has when a Member State is granting aid that is not compatible with the internal market. The European Commission then shall decide that the Member State concerned with it shall abolish or alter the aid within a period of time determined by the European Commission. The European Commission even has powers when a Member State does not comply with the decisions. It can then refer the matter to the European Court of Justice. However Article 108(2) TFEU gives the Council the powers to decide, by unanimous vote, that aid granted by a Member State is compatible with Article 107 or 109 TFEU in exceptional circumstances. Article 108(3) TFEU establishes that the European Commission has to be notified in sufficient time to submit its comments on any plans of altering or granting aid. This is also known as the notification procedure. It is then only after approval of the European Commission that an aid measure can be implemented. Moreover the European Commission has also the power to recover incompatible aid. Article 108(4) TFEU then states that the European Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109 TFEU, determined may be exempted from the procedure provided for by Article 108(3) TFEU.

Article 109 TFEU provides that the Council, on a proposal from the European Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 TFEU and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure. (Treaty of the Functioning of the European Union (TFEU), 2009)

To conclude the hard law of the European Union lays down certain important things; first of all that state aid except for only few exemptions is generally forbidden, second that the European Commission has certain powers if the Member States do not comply (also including a power to recover incompatible aid) and third that the European Commission needs to be notified in advance in any undertaking that might be in conflict with those laws (known as the notification procedure).

2.3 Soft law

As the section above explains it the hard law of the European Union in general regulates the financial stimulation of enterprises to the minimum in order not to interfere with the internal common market. However due to bureaucratic aspects not in every case the European Commission can deal with a notification as well as some financial stimulation might not interfere with the internal common market. Therefore the European Commission issues soft law that does not forbid practices, like the hard law, but gives exemptions for practices that are seen as not interfering with the internal common market and therefore need to be explicitly allowed; this is described as positive integration. In the following the specific guidelines, the soft law, which determines the regulation of the financial stimulation of regional airports in the European Union will be explained.

2.3.1 Commission guidelines

As in many other fields, the question of regulation of financial stimulation of regional airports is framed by a Community guideline. The latter is a form of soft law and has the legal status of a non-binding Commission recommendation. The Commission refers to these State aid frameworks and guidelines as “appropriate measures” in the context of Article 108(1) and formally only binds itself in its decision-making on state aid cases by the guidelines. The less precise these guidelines are, the

more loopholes for distortive State aid are possible for Member States (Blauberger, 2008). However to the extent that the guidelines are precise, the Member States are in general bound by these because in a possible notification process and compatibility testing they would have no stand against the Commission. It is also possible for the Commission to revise its soft law, thus the guidelines, whenever this is seen to be required by the progressive development in the specific field or by the functioning of the common market (Article 108 (1)). This means that they can revise or rewrite the guidelines as there are recent cases in front of the European Court of Justice or some other general developments that might necessitate a change in the State aid policy in some specific fields. In the case of nonbinding Commission recommendations the Commission only gives its own assessment and general interpretation of the issues at the time of drafting the specific guideline. The Commission indicates that in a possible lawsuit in front of the European Court of Justice or the Court of First Instance the interpretation of the European Union law might differ from what was earlier interpreted by the Commission. A Commission guideline is a measure of soft law and in therefore is not one-on-one legally binding. However in practice in most of the cases, the courts are arguing in line with the interpretation of the Commission. The Community guideline regarding regional airports shall be closely examined and analyzed in the following as they give more specific interpretations of the articles laid down in the TFEU on financial stimulation for regional airports. This means that the guideline gives exemptions to the Treaty law, the hard law. It should be noted that the guideline is having as a background the general prohibition of State aid in the European Union under Article 107 TFEU. This means that public owned airports need to prior notify the European Commission when financially stimulating if not stated otherwise. The guidelines explicitly give information about exemptions of this rule for regional airports.

The Community guidelines on financing of airports and start-up aid to airlines departing from regional airports were published on the 9th December 2005 in the Official Journal of the European Union. They acknowledge that the air transport industry has undergone severe changes in the last century; that ownership has changed “from State to regional control, in some cases to be operated by public companies, or even to the private sector”. Therefore a continuous reviewing of these guidelines is necessary.

2.3.2 Different types of airports within the EU

There are distinctions between the different airports within the EU. The seven largest airports in the EU account for more than one third of all EU traffic and the 23 largest account for more than two thirds (European Commission, 2001). These airports have become highly efficient commercial operators, whereas most of the smaller airports are still owned and operated by public authorities in the public interest. This leads to a severe distinction between different airports in the treatment regarding State aid. Research has shown that large international hubs compete with other large international operating airports whereas large regional airports may be competing with other large regional airports as well as large international airports. Small airports, those handling less than 2 million passengers per year, normally do not compete with other airports; only in the case of neighboring airports with the same size and with an overlap of the catchment area (Airtransport Group Cranfield University, 2002). This is especially important when assessing the distortive effects of State aid in the common market. This belief would assume that it would not distort the common market when small airports are subsidized expecting that there is no neighboring airport. There are

several definitions of large, national, large regional and small regional airports proposed by the different EU institutions. In the following the definition of the categories of airports of the European Commission will be used:

Under category A (large Community airports) fall airports with more than 10 million passengers a year, category B (national airports) contains all airports that have an annual passenger volume between 5 to 10 million, category C (large regional airports) see an annual passenger volume between 1 to 5 million and category D (small regional airports) are those who have less than 1 million passenger a year (European Commission, 2005).

In the sense of the Cranfield University (2002) study this would mean that financial stimulation for small regional airports under category D cannot distort the common market, whereas this is the case for some of the airports falling under category C. The study further suggests that an “average” airport becomes profitable once a passenger throughput of about 500 000 to 1 million passengers per year has been achieved (Airtransport Group Cranfield University, 2002) which would mean that an airport should survive without subsidies at this point entirely. Speaking in the categories used by the European Commission this would mean that only airports under Category D should be eligible for financial stimulation as airports with more passengers per year would not need it. In the following focus will be on the question if the European Commission takes the findings of the Airtransport Group Cranfield University (2002), that airports over the breakeven point of about 500 000 to 1 million passengers per year would not need subsidies at all, into account when drawing its policies.

2.3.3 Relevance of the guidelines

The relevance of these guidelines lies in the fact that they specify some exemptions to the general prior notification rule that public owned airports underlie in the European Union when it comes to financial stimulation, as ruled out in Article 108 TFEU. This is what is named positive integration as it gives the Member States room to do some undertakings rather than forbidding undertakings when the European Commission thinks it is in the interest of the European Union. This is in difference to negative integration which only forbids undertakings generally. The guidelines therefore give exceptions to the notification procedure, this is due to bureaucratic overload that might arise as well as in some cases the relevance of the financial stimulation in terms of the internal market is not given. Normally public owned airports need to inform the European Commission when it comes to bigger investments in order to overcome the threat of State aid. This is done in a notification procedure; this has the form that the enterprise informs the European Commission and their appraisal is then reviewed by the Commission itself and other Member States. The compatibility with European Union law is tested and the appraisal might be allowed or rejected; as described in Article 108 TFEU. (European Commission, 2005)

However, as said above public financial stimulation for smaller airports often does not threaten the common market. Therefore not each measure of financial stimulation needs to be prior notified to the European Commission; this is to overcome a huge bureaucracy.

In difference to public owned airports private owned airports can take any investment that is legally allowed within the existing laws. Therefore public owned airports underlie the private investor

principle; each measure should hold the private investor test, meaning that a public investment should not be done when it would not be done by a private investor. This is also emphasized in the following by the guidelines, some measures of financial stimulation are allowed for public owned airports if they would have been done in the same manner by a private owner.

2.3.4 Basic contents of the guidelines

In the guidelines the Commission allows several possibilities (which will be described in more detail in the following) of airport financing and start-up aid for new routes when it comes to regional airports. Some possibilities are only for small regional airports of category D, whereas others are also for airports falling under category C; this is due to the fact that those airports often face a less favorable situation in comparison to large international hubs. Airports falling under category C do generally not have a large reference airline, are often located in the outermost regions of the Community or in areas affected by the economic crisis.

The compatibility rules on which the Commission is building its guideline on financing of airports and start-up aid to airlines departing from regional airports are: Article 107(3a,b,c) when it comes to the general base of the assessment. This allows deriving from the general prohibition of State aid when the undertakings are entrusted with general economic interest, meaning not contrary to the interests of the Community. And it also provides for derogations for aid granted to promote or facilitate the development of certain areas and/or economic activities. The European Commission (2005) states that “Operating aid granted to airports or airlines (such as start-up aid) can only be declared compatible under exceptional circumstances and under strict conditions in underprivileged regions, i.e. regions covered by the derogation set out in the most remote and sparsely populated areas”. The Commission sees the strong connection in this field to the compatibility of regional aid within the common market principles.

2.3.5 Public – Private ownership

Those principles are the same for public as well as for private ownership of the airport. The essential point is whether the beneficiary is engaged in an economic activity. It is accepted without discussion that airports are engaged in economic activity. Furthermore, the Commission states that once an airport engages in economic activities, regardless of the legal status or the way in which it is financed, the Treaty rules should apply. This means that there is no exception for any airport from the State aid rules by the European Union, regardless its legal status. The Commission states that Member States “cannot penalize or give more favorable treatment to public authorities who subscribe to the capital of certain companies”. This means that the Commission will treat public as well as private investors on the same basis, and there is no favorable treatment in regard to public undertakings. The Commission will assess if public funding benefits airports in another way than a private shareholder would have financed the airport regarding the foreseeability of obtaining a return and leaving aside the issue of social, regional-policy and sectoral considerations. Benefits of airport operators or airlines granted from state resources by Member States or public authorities are going to be assessed under this principle. In case they act as private economic investors would act, the funding is not considered State aid, whereas if this is not the case the Commission considers the funding as State aid. This is the same for airports of any size, large as well as small airports, and is called the private investor principle (European Commission, 2005).

2.3.6 Services of non-economic nature

However, there are several limitations as not all activities of an airport operator are of an economic nature. Activities such as safety, air traffic control, police, customs, etc. are not activities of an economic nature (European Commission, 2010). This is a principle, regardless the size and ownership of an airport. However, the financing of these activities must be restricted to the pure compensation of the costs and may not be used instead to fund other economic activities. These services of a non-economic nature are allowed to be funded by public money in all of the four categories of airports, no matter the size of the airport, as long as they are benefiting the whole society and not generating profit for the airport operator. When it comes to state aid for compensation of public services it is allowed as long as the following criteria imposed by the ECJ are met: the obligations must be actually carried out and be clearly defined, the size of the State aid must be calculated in advance and transparent, the State aid cannot exceed the actual costs of the public service and the costs must be based on a undertaking about the cheapest costs possible (European Commission, 2005). When these criteria are not met, and the aid for the undertakings of the common interest is used for other things, the public financing constitutes State aid.

2.3.7 Services of economic nature

Furthermore, as mentioned above, the size of the airport is crucial when it comes to the allowance of public funding of activities of economic nature. Generally, public funding of activities of economic nature falls under the private investor principle and in order to check whether the conditions of the private investor principle are met the European Commission has established a prior notification system. If an airport wants to engage in activities of economic nature it needs to notify the European Commission and ask for its approval (European Commission, 2005). This is only valid for projects under public funding, if a private investor from its own resources is doing an undertaking the European Commission does not need to be notified. This is due to the fact that public funding should not disturb the internal market, thus no favorable treatment for undertakings in one Member State. However private investors are allowed to invest their money in projects they would like to. In the following few examples of services of economic nature and the regulation thereof by the European Commission guideline are given.

2.3.7.1 Charge level

As the first example of a service of economic nature the charge level will be used. The Commission guideline on financing of airports and start-up aid to airlines departing from regional airports states that the charge level (the charge level is the money that is asked by the airport from the airlines for landing at the airport) is a key factor as it may be that it is hold on an artificial low level in order to attract more airlines to the airport in question and therefore distort the competition. This is related to public funding in so far as the charge level can only be hold on an artificial low level, which means deficits for the airport, if it is buffered by public funding. But when it comes to airports mentioned under category D, the Commission assumes that they will not distort competition to an extent contrary to the common interest. Therefore if those airports are entrusted with a mission of general economic interest then they are exempted from the prior notification ruling, in difference to the airports falling under the categories A, B and C. Mission of general economic interest means in this context that those airports serve an ever closer European Union and bring mobility to the citizens.

To sum up, airports falling under category D may use charge levels that are significantly lower than the charge levels of bigger airports. This is due to the fact that airports falling under category D are not competitors to other airports as they are too small in size to be distortive for bigger airports. The European Commission is tolerating this as it wants to increase the mobility of its citizens and the reachability of all areas within the European Union. Small regional airports might be only maintainable through financial stimulation like this, as suggested by the Cranfield University study (2002) which sees the breakeven point of airport between 500 000 and 1 million annual passengers. As said above, this is only valid for public airports and public funding as private airports are not regulated by the guideline.

2.3.7.2 Infrastructure

The Commission guideline pays special attention to the matter of infrastructure. As this is a field which is often subject to public financing through regional economic development planning, land-use policy, transport policy, etc. It is also the basis for the economic activities carried out by the airport operator and therefore crucial for the economic success of the airport. Airport operators should finance the costs of using or building infrastructure by its own resources. If a Member State, through regional or local authorities, is the operator, it should act as a private investor with adequate financial considerations; this is what is referred to in 2.3.5 the private investor principle. In case of non compliance with this it is regarded as State aid. Similar principles underlie the sale of land or buildings and the privatizations of an undertaking. They need to be made at market prices with a price as an outcome of a sufficiently well-publicized, open, unconditional and non-discriminatory bidding procedure. If this is not the case, they are considered State aid. If it is not possible to rule out the possibility of State aid the measure must be notified to the European Commission in order to evaluate the case. This means that in critical cases, where the airport operator can expect the claim of State aid, the European Commission should be notified about the action and approval by them is sought. This is the same for all categories of airports; there are no exceptions for small airports.

2.3.7.3 Start-up aid

In the issue of Start-up aid the Commission continues to make a distinction between small and larger, international airports, their argument is that small airports often do not have the annual numbers of passengers that are necessary to reach the breakeven point. According to the Cranfield study (2002) the breakeven point is reached at an annual passenger volume between 500 000 and 1 million. Airlines are mostly not willing to run the risk of opening routes from these unknown airports, therefore the Commission allows the start-up aid for new airlines for airports falling under category D, stating that they “can accept that public aid be paid temporarily to airlines under certain conditions, if this provides them with the necessary incentive to create new routes or new schedules from regional airports and to attract the passenger numbers which will enable them to break even within a limited period” (European Commission, 2005). However, the new route must not compete against a high-speed rail link and must be reconcilable with the following compatibility criteria: first, a public investors of an airport must act like private investors when it comes to financial start up incentives (private investor principle); second, there must be no relocation of an already existing route from a Community airport to a regional one; third, new routes must increase the volume of passengers; fourth, the aid must be declining and of limited duration and the operation of the route should not stop after the distribution of the aid; fifth, the aid must not be spend for standard operating costs like aircraft, fuel, crew salaries or catering costs; sixth, start up aid cannot be

combined with another type of aid (European Commission, 2005). If these criteria are not met, the Commission must be notified and can decide whether the aid constitutes State aid or not. If the aid is evaluated as unlawful by the Commission then the recipient must recover it.

2.4 Conclusion

The guidelines by the Commission on the financing of airports and start-up aid to airlines departing from regional airports show a positive attitude towards developing regional airports by the Commission, but simultaneously it is ensured that strict compliance with the principles of transparency, non-discrimination and proportionality are given in order to prevent any distortion of competition which would not be in the common interest in terms of public funding to regional airports and state aid to airlines. The guidelines ensure that public airports or airports within the ownership of a public institution are treated equally to privately owned airports. This means that when public owners finance an undertaking they need to act, if not stated otherwise, like private investors (private investor principle). Furthermore do the guidelines distinguish services of non-economic and economic nature. Services of non-economic nature, for example safety and police are allowed to be publicly funded as long as they serve the designated interest only and cover the actual costs of the undertaking. This is in difference to undertaking of economic nature, which have to hold against the private investor principle, as long as no exemptions are defined by the guidelines.

In general it can be said that the European Commission holds the stand that financial stimulation by Member States for large airports, is most of the time doubtful in terms of the common market principle. Large airports compete with other large airports in other Member States and therefore need to be closely monitored. This is done by the notification procedure which the large airports, falling under category A and B have to do for every investment, when under public ownership. This is due to the fact that they compete with large airports in other Member States and it would discriminate those airports when the other airport is treated favorably. Financial stimulation for airports of category A and B falls under the notification procedure all the time and have to prior notify the European Commission of any investment. The chances are low that some undertaking will be granted lawful if the private investor principle is not met.

The same applies for airports falling under category C. Even though those airports are labeled as regional airports with no large reference airline, they are not exempted from the prior notification procedure and the private investor principle in order to establish a fair and open common market within the European Union. They are treated by the guideline similar to large airports.

The only exceptions that are really granted are to airports falling under category D, however also airports under category D are not exempted from the notification procedure and the private investor principle in general. They are only exempted in cases that are specifically mentioned in the guidelines. The guidelines allow airports under category D to have artificial low charge levels and also under certain conditions to give start-up aid to airlines. This is due to the fact that the European Commission takes up the stance that airports under category D are so small and have so little impact in the overall aviation sector that the European Commission thinks that they do not need to notify them before doing an investment; this is also in line with what is suggested by the Airtransport Group Cranfield University (2002) study which found that airports get profitable having between 500

000 to 1 million annual passengers. However airports under category D still have to act in line with the guidelines, as above mentioned, even though they are given the most leeway due to their size. It seems that the guideline makes sense in regard to the topic of regional aid. The European Commission takes the stand that regional airports falling under category D most of the time comply with the ideas of an even closer connected Europe. The latter is a strong vision of the European Commission and explicitly mentioned in its long-term strategies.

In general it can be said that the hard law of the European Union regulates the financial stimulation of regional airports in so far that it generally prohibits financial stimulation of regional airports. However it also defines that there are some areas where exemptions to this general prohibition might exist. Therefore it defined the notification procedure in order to check if those criteria are met. The soft law in the European Union, by help of the European Commission guideline, defines the regulation of the financial stimulation more specifically. One important aspect of them is the private investor principle. This means that whenever a public airport does engage in activities of economic nature it should act the same as a private investor would act. Therefore airports falling under category A, B and C (thus also large regional airports) need to prior notify the European Commission of its undertakings. The European Commission has also the power to recover incompatible aid. Small regional airports, falling under category D, have some areas where they are free in the financial stimulation. However this is limited to the charge level and start-up aid.

To conclude the European Union regulates the financial stimulation of regional airports in a rather strict way. It is worth mentioning that airports no matter their size, with only very few exceptions for category D, have to comply with the private investor principle and use the prior notification procedure. However the guidelines might sound stricter in theory than in practice. This is due to the fact that the European Commission might grant a lot of undertakings their permission that are brought forward to them by the notification procedure.

3. Münster-Osnabrück

3.1 How do the German national government and the sub-national German governments regulate the financial stimulation of the regional airport of Münster-Osnabrück?

Germany is not a centralized state but organized federally with respective sixteen federal states (*Bundesländer*). Those have far reaching competences in different policy fields. Therefore it is especially important to look at the German federal level (*Bundesregierung*) as well as the sub-national levels of government which are the federal state level (*Bundesland*) of government when it comes to the involvement of the regulation of the financial stimulation for the airport of Münster-Osnabrück. Those two levels are important but the sub-national regional level of government should not be forgotten. It is expected that on the regional level most of the financial stimulation is done, as the ownership structure of the airport indicates. The airport Münster-Osnabrück is a proprietary company where the public authorities provide the whole shareholders equity (Flughafenverband ADV, 2010). A closer look on the regulation and on examples of financial stimulation is taken in the following sections.

But first of all, a classification of the airport of Münster-Osnabrück should be done. Its annual passenger volume in the year 2009 was 1.5 million passengers (FMO, 2010). Therefore, according to the Commission guidelines, it falls under category C, large regional airports. As most exemptions to the general prohibition of State aid by the guidelines of the Commission are only granted to the airports falling under category D, small regional airports, a close look will be taken at the practices at the airport Münster-Osnabrück. The next chapter will compare the European Union level regulation and the German level regulation. The focus of this chapter will lie on some forms of subsidies whether other forms are not looked at. This is due to limitations of this thesis. However it is worth mentioning it that as well as the subsidies observed as well as those subsidies that are not mentioned here might be in place at the airport of Münster-Osnabrück. It would be highly interesting to gain also insight in other subsidies another study should clearly deal with it in order to get a full overview and answer to the main research question.

3.1.1 Federal level of government

On the federal level the *Bundesregierung* or more specific the Ministry of Transport (*Verkehrsministerium*) is the organ which can decide about State aid. In the case of airports they are indirectly advantaged because there is no tax on kerosene and no value added tax on international flights (Germanwatch, 2003: 8; Boss & Rosenschon, 2006). This gives the aviation sector a competitive advantage in comparison to rail-bound traffic and road traffic. However that is not a measure that is specific to Germany but that is common in all the Member States of the European Union.

Airports in Germany are organized on a cost-basis system. This is based on Section 43 of the *Luftverkehrszulassungsordnung* which states that the “airport operator must seek approval for the charges for take-off, landing, and parking of aircraft and for the use of passenger facilities from the regulation authority”. It is in so far cost-based that in theory arbitrary high charges would not be

approved. However this means that law does not exactly define how airport charges must be regulated but there has been a common practice developed over the last two decades (Niemeier, 2002). The federal states regulate the charges but the *Verkehrsministerium* (Department of Transport) can intervene; however in the last years there was almost no intervention by the *Verkehrsministerium* observable. This is in difference to what is discussed in Section 2 where the focus lies on too low charges which would constitute State aid. It is notable that the German federal level of government is not concerned with this issue but rather that the charges are not too high.

However the federal government has launched a *Flughafenkonzept* but in this it does not mention Münster-Osnabrück. This can be traced back to the fact that the airport of Münster-Osnabrück is neither a large international hub, like Frankfurt or München, nor an important airport for cargo. However, the non-mention does also mean that on the federal level no limitations for the airport of Münster-Osnabrück are defined (Verkehrsministerium, 2009). In his research, Malina (2005) holds the assumption that due to the mainly public ownership of airports in Germany there is only limited regulation of them. Münster-Osnabrück by the findings of Malina (2006: 5) is regarded as not possessing market power and therefore does not need special regulatory attendance in his eyes.

The above mentioned facts lead to the conclusion that there is no financial stimulation for airports on the national level at least in terms of observable monetary payments.

3.1.2 Federal state level of government

In Germany, the sixteen federal states are influential in many regulatory fields. In the case of airports and more specific the airport of Münster-Osnabrück the federal state government in question is Northrhine-Westfalia. As well stated in the section about federal level regulation, the federal state government regulates the charges for take-off, landing, etc. an airport can ask. Airport managers need to ask the federal government for approval of the charges they ask (Niemeier, 2002). However, there are no stimulations for airports laid down in federal law. The responsible authorities for airport charges are the *Landesluftfahrtbehörden*, and in case of dispute independent courts and cartel authorities decide about it (Flughafenverband ADV, 2011).

An example of the regulation of the financial stimulation of state aid for the airport of Münster-Osnabrück, can be the planned runway extension. The airport would like to extend the runway in order to be able to serve intercontinental destinations. In order to undertake this project an increase in shareholder capital of 60 million Euros was made by the share holders. This will be discussed in detail in the next section because it falls under the responsibility of the regional level of government. However, there are certain requirements in order to preserve the pristine and unique nature which is located in the area of the planned runway extension. The former federal state government assured the FMO aid of 11 million Euro. This aid would not be purely for the purpose of building the runway but to preserve the nature and therefore build a bridge over a stream that is the habitat of unique animals and plants. This is more costly than simply destroying the stream and building a normal runway. The former federal government did not see this money as form of subsidy but as an ecological measure. Therefore the money was accounted to the budget of the Ministry of Environment. This raises the issue of the polluter pays principle. The polluter pays principle states that the party responsible for producing pollution should be responsible for paying the damage done to the natural environment (OECD, 2006). Also in Article 191 TFEU it is stated that “the positive effects of aid must outweigh the negative effects in terms of distortions of competition, taking

account of the polluter pays principle". Therefore the above mentioned facts can be interpreted in the way that the *Landesregierung* (federal state government) is supporting the runway extension and pays money in order to make it possible. However according to the polluter pays principle the airport owners should pay for all costs involved in the project of runway extension. The *Landesregierung* is therefore hypothetically paying for expansion of the airport Münster-Osnabrück (*Landesregierung Nordrhein-Westfalen*, 2009). It is stated hypothetically because the *Landesregierung* (federal state government) changed recently and therefore it is not sure how the new federal state government will stand on this issue once the legal dispute is settled.

The above mentioned facts lead to the conclusion that the federal state government has not issued regulations that are concerned with the financial stimulation of airports. However in practice they are subsidizing regional airports by not taking into account the polluter pays principle, as determined by the TFEU, but giving aid to pay for the ecological measure. In the following the issue of state aid for ecological measures and the polluter pays principle is not further elaborated due to limitations of this study. However, it is a very interesting subject for further research.

3.1.3 Regional level of government

The regional level is of great importance because regional governments and regional public institutions are participating in the ownership of the airport actively. They are functioning as the owners in a limited liability company (*GmbH*). This means that they as the owners have to invest in new projects and maintenance and furthermore stimulate growth of the airport. For the *Kreis Steinfurt* (regional district government), the FMO is listed as an item of secondary participation (*mittelbare Beteiligung*). This means that the airport is in public ownership but the ownership is organized like a private company, but then, with public stakeholders; this is a common concept for German airports (Malina, 2006). Figure 3 shows that not all shareholders participate by the same amount of shareholder capital; this is to be discussed in more detail in the following. The amount of participation in shareholder capital is then reflected by the participation of profits or losses of the airport. Shareholders that participate with little shareholder capital are getting less profit or have to account for less debt. For example *Industrie- und Handelskammer (IHK) Nord-Westfalen*, *IHK Osnabrück-Emsland*, *Handwerkskammer (HWK) Münster*, *HWK Osnabrück-Emsland* and *Kamer van Koophandel Veluwe en Twente* are participating with share of capital stock but there is no participation in possible profits or losses of the airport Münster-Osnabrück for them at all. However, all other shareholders have a participation of possible profits or losses of the airport Münster-Osnabrück. This is remarkable as some of the shareholders are the regional governments that decide e.g. about possible subventions for infrastructure projects and prices for land. Of interest is in this case is the fact that three of the public shareholders of the FMO, *Stadt Münster* (municipality of the city Münster), *Stadt Osnabrück* (municipality of the city Osnabrück) and *Kreis Steinfurt* are also having an immediate participation (*unmittelbare Beteiligung*) in the AirportPark FMO GmbH. The AirportPark FMO GmbH which is the business park surrounding the airport. This implies that a well-being of the airport will probably lead to a more interesting business park which means more profit for the three shareholders.

As already mentioned in section 3.1.2 the shareholders increased the shareholder capital with 60 million Euros in order to gather enough capital for the planned runway extension. However this

measure was found legal by the European Commission with regard to Article 107 3c TFEU. This was done by a prior notification procedure. In 2009 after a prior notification procedure the European Commission decided that this does not interfere with EU law. And therefore they declared the increase in shareholder capital as lawful as they saw the necessity of this undertaking. This was due to the facts that no harm to the common market is expected and that the private investor principle is applicable according to Article 107(3c) TFEU. Article 107(3c) TFEU deals with aid that is compatible with the internal market due to the fact that this aid is meant 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 (Kompetenzteam Flughäfen der Rechtsanwälte Kapellmann und Partner, 2009). In the case of the airport of Münster-Osnabrück this means that the European Commission assumed that the airport runway extension does not adversely affect trading conditions to an extent contrary to the common interest.

As mentioned above the airport Münster-Osnabrück is in public ownership through public shareholders. The *Stadt Münster* is owner of 35,06 % of the shares through the *Stadtwerke Münster GmbH* (public utility company of the municipality Münster) which makes it an item of secondary participation, the equivalent share capital is an amount of 8 million €. For the *Stadt Osnabrück* it is similar; they are owner through the *Stadtwerke Osnabrück AG* (public utility company of the municipality Osnabrück) with 17,2 % which is 3.9 million € in share capital. The *Kreis Steinfurt* is listed as the *Beteiligungsgesellschaft mbH* with a share of 30,28 % and 6.9 million € in share capital. The total share capital was 22.7 million € in 2009, with the rest of the shares hold by other minor shareholders (for others see figure 3).

To see the involvement of the shareholders it is interesting to look at the annual profits or losses of the airport. To start chronologically, in the year 2001 the annual profit was 6.6 Million DM (correlating 3.3 Million Euro), in the year 2002 it was even 7.0 Million DM (correlating 3.5 Million Euro) (Amtsblatt Stadt Münster, 2002). From the following years onwards annual deficits were reported. In 2003 were these 3 million Euro and in 2004 the amount of 2.6 million Euro was reported as deficit (see figure 8). As figure 5 and 6 show, over the last five reported financial years (2005 to 2009) there were also always net losses for each respective year. This means that the shareholders have experienced deficits in the last seven financial years. Looking at these numbers it shows that the airport in overall terms incurred to be loss making in the past (see figure 5, 6 and 8). The annual deficit rose even more in the years 2008 and 2009 to respective 6.4 million € and 10.4 million € (see figure 6). The annual deficits were absorbed by the increase in shareholder capital due to the planned runway extension. Because of the increase in shareholder capital the shareholders were not forced to gather money from other sources like a bank loan.

As mentioned the surrounding business park around the airport is called *AirportPark FMO GmbH* and is a immediate participation of *Kreis Steinfurt*, *Kreis Greven* and *Stadt Münster* with each 33,33% (Kreis Steinfurt, 2010). Its task is to prepare, achieve and implement all planning of the regional business park at the airport and also develop, exploit and commercialization of the business park in order to strengthen the local economy (Stadt Münster, 2010). The *AirportPark FMO GmbH* as such was also running losses the past four year; in 2009 the annual deficit of it was 784.154,00 € (see

figure 7). As being accountable for the profits and deficits of the surrounding business park the shareholders have even more interest in growth and flourishing of the airport.

As described above the annual deficits of the *FMO Flughafen Münster-Osnabrück GmbH* and the *AirportPark FMO GmbH* are accounted only for those companies and not traced back to the budgets of the shareholders. For the elected heads of the shareholders, which are regional politicians, this is an advantage because they don't have to justify these deficits in their annual budgets. They can claim into public that the deficits are not the ones for the regional governments and therefore do not have to explain those deficits to their electorate. As public investors they can increase the shareholder capital through increases in share capital as often as they want and can. They might make profits with other undertakings and therefore able to shift those profits to the *FMO Flughafen Münster-Osnabrück GmbH* and *AirportPark FMO GmbH*.

The *FMO Flughafen Münster-Osnabrück GmbH* made losses over the last years. The annual deficits are bolstered by the shareholder capital and increases of it. If an airport is operated by a private investor this might not be possible, because a private investor might have not enough capital resources to increase share capital over seven deficit running years and no prospect of making profits in the short-term future. A private investor for example would have difficulties to obtain a loan for a new project if it runs a deficit the previous seven years. It is worth mentioning that the prospects for the short-term future are also not promising annual profits and a decrease in annual passenger volume is likely. This means that in the nearby future no profits are obtained to cover the annual deficits of the last seven years. A normal rate of return for a private investor is said to be lying at 10 %. In a business like an airport the rate of return is measured in the long-term than in a rather short-term like seven years, however as the nearby future does not promise profits this behavior of the *FMO Flughafen Münster-Osnabrück GmbH* might be a breach of the private investor principle. This means that the airport shareholders are not acting like a private investor would act.

This means that the shareholder capital increase for the planned runway extension is not used for the runway extension but to bolster current deficits. Therefore the European Commission should reconsider its allowance for the increase in shareholder capital and a possible fine should be determined. However the European Commission is not constantly reviewing the current practices until a complaint is delivered.

Another topic where the regional governments are involved is the enhancement of the accessibility of the airport; a new road *Kreisstrasse K1n* is built as a connection between the highway A1 and the FMO. This project is carried out by the *Kreis Steinfurt*. In order to build the road the land has to be bought. This was done by the *Bezirksregierung Münster* which is the authority enabled to do so and gave those properties to the *Kreis Steinfurt* (Bezirksregierung Münster, 2007). The project is financed by the public budget, the FMO GmbH and the AirportPark GmbH (APP GmbH). The whole estimated costs are 13.318.000 € wherein 75 % are expected to be financed by allocations of funds and/or grants. Of the costs the equity ratio of the Kreis Steinfurt is to be 2.135.585 €; the APP GmbH and the FMO GmbH are participating in the building costs with every 25 % and additionally the latter takes 50 % of the planning costs (Kreis Steinfurt, 2009). The new road is expected to bring more customers to the airport as a higher accessibility for people living in the *Ruhrarea* is expected.

With regard to this argument it should be noted that it is normal practice in Germany as well as in the European Union when it comes to industrial areas or business parks. In order to reach high and easy accessibility to those areas, governments, mostly on the regional level, are funding accession roads to attract companies and in the long-run benefit from the expected increased business taxes and increased employment. Though, with regard to the airport of Münster-Osnabrück it should be noted that there existed an access road coming from the same highway A1 and the new road only saves a few minutes time. The guidelines on financing of airports and start-up aid to airlines departing from regional airport are very specific on airport infrastructure and that in the case the owner of the airport is public it should act as a private investor. The guidelines are rather unspecific if airport infrastructure means infrastructure on the areal of the airport only or also roads that lead to the airport. However in general the infrastructure sector is highly liberalized and deregulated within the European Union (European Environment Agency, 2007). Therefore it is doubtful that in a lawsuit the regional level of government would be found guilty for their behavior, as it is common practice within the European Union to build access roads like the new road *Kreissstrasse K1*. It could be an interesting subject to go into further depth if the common practice in the European Union of building infrastructure to industrial areas and business parks is illegal in an European context. Due to limitations we will not go into depth how to interpret the guidelines in terms of infrastructure; therefore this point stays vague in terms of compatibility with European Union law. It could be highly interesting to make a follow-up research that is concerned with the matter of infrastructure.

3.2 Conclusion

On the federal level of government, the regulation for Münster-Osnabrück is low. Of course federal law is not to be infringed by the airport but Münster-Osnabrück is not directly mentioned in the *Flughafenkonzept* of the *Bundesregierung* nor do the latter give state aid directly to the airport. Also Malina (2006) states that there is no/or little regulation for airports in Germany. This leads to the conclusion that on the federal level no regulation for state aid can be found; neither in the form of hard law nor in the form of soft law. As well as no regulation was found there is also no indication of financial stimulation by the *Bundesregierung* in the case of the airport Münster-Osnabrück. There was no visible financial support of any projects neither of the airport nor the connected infrastructure.

The level of regulation by the federal state level of government is low regarding state aid. When it comes to the charge level they are not concerned with too low charges that might constitute state aid in the European Union terms but rather with too high charges. Furthermore the federal state government can assign money to the airport which might not be classified as state aid like in the case of the runway extension. In fact, they are giving financial help to the airport to achieve some projects which are purely in the interest of growing and increasing profit and not securing the nature. However, there is financial stimulation for the FMO by the federal state government of Northrhine-Westfalia in terms of the costly ecological friendly measure for the runway extension. By the commitment to pay part of the runway extension, the federal state government of Northrhine-Westfalia makes it clear that it wants this runway extension and its making place for it in its budget. Even though according to the polluter pays principle the shareholders should bare these costs as well. This can be interpreted in the way that if the federal government would not be in favor of the runway extension of the airport in Münster-Osnabrück, then it would not promise money for it. As

mentioned for the runway extension the polluter pays principle should apply and the whole costs for the runway extension should be paid by the owners of the airport. Therefore the conclusion can be drawn that according to the above mentioned facts the federal state government of Northrhine-Westfalia is financially stimulating the airport of Münster-Osnabrück and is with this behavior not in line with EU law. However further research about the applicability of the polluter pays principle in the European Union should be done in order to come to a more valid conclusion.

The regional governments by ordinance cannot issue hard law in Germany. However, they could issue some form of soft law by practices and recommendations. This is not the case with financial stimulation for regional airports. Therefore, also on the lowest level of governance the regulation of financial stimulation is low in the case of Münster-Osnabrück. But as shareholders of the airport the regional governments are financially stimulating the airport. Through secondary participation they are owners of the airport and therefore having share capital in the *FMO Flughafen Münster-Osnabrück GmbH*.

When it came to the runway extension they in a prior notification procedure asked the European Commission for approval of an increase in the shareholder capital by 60 million Euros. However this increase in shareholder capital was found legal according to Article 107 3c TFEU. However the practice showed that the airport Münster-Osnabrück used the money from the shareholder capital increase not for building a new runway, as this is still in legal dispute, but to cover the deficits of the last years. Therefore the decision of the European Commission needs to be reconsidered.

Furthermore as owners it makes the shareholders especially interested in the fact that the airport is profitable and continues to grow on a considerable rate. During the last years the airport has not drawn any profits but deficits instead. The shareholders are participating in the losses and profits of the airport by different percentages. However they are participating by special holding companies and therefore do not have to take the deficits and account them as their own but can leave them with the *FMO Flughafen Münster-Osnabrück GmbH*. The shareholders as regional governments are headed by elected politicians and with this manner of accounting, they in fact do not have to take the public responsibility for losses of the FMO to their electorate. They can claim that their government authority and therefore the taxpayers do not have to pay for the deficits of the airports but that the *FMO Flughafen Münster-Osnabrück GmbH* is having the losses. For the public, with little economic knowledge it looks as if the public authorities were not accountable for the deficits. However, this is no acceptable rate of return on investments for any private owner in economic terms. For private owners the acceptable rate of return is not laid down specifically, but normally is around 10 %. If the FMO would be operated by a private investor instead of a public one then they would probably not think about expanding and investing in the airport due to lack of financial resources. A private investor would want to shut down operations at unprofitable business at a certain point of running deficit over several years. Public owners can do this differently because they can use increase in share capital by capital obtained by other public undertakings. Private investors could not accumulate enough credits or own funds to run a deficit over multiple years. At least it would not think about further expansion and investing several million in new projects when the old projects did not show the expected results yet. However it has to be noted that seven years of deficits making are rather a short-term view on a long-term investment business like an airport and

that returns on investments might be expected to be back in the longer run. It is questionable if the practice at the airport of Münster-Osnabrück would hold against the private investor principle but as there is no prior notification procedure in the European Union for capital accumulation of business holders.

As owners of the airport the regional governments are also involved in the surrounding business park *AirportPark FMO GmbH* by immediate participate and therefore the profits resulting from selling the land are direct profit for them. Therefore, it is in their interest that the airport is as attractive as possible in order to attract potential business clients for the business park. This shows that they are not only acting for the public welfare when thinking about strategic decisions for the FMO but also think about profits for themselves in their capacity of co-owner of the business park.

The building of the *Kreisstrasse K1n* is maybe a good example of such. The building of the road was funded by regional level governments. The road is expected to bring more customers to the airport because of easier access for customers coming from the highly populated *Ruhrarea*. The airport already had a feeder street coming from the B219 which is connected to the A1. The new road only saved a few minutes for incoming traffic. However the guidelines on financing of airports and start-up aid to airlines departing from regional airport are rather unspecific if they mean with airport infrastructure only the infrastructure within the area of the airport or also access roads like the *Kreisstrasse K1*. If only the first is meant then the regional level of government did not act unlawfully but if the latter is meant then it is questionable if the building of the road might constitute state aid. This is because a private investor might not act this way as another road already exists. As mentioned above building supplementary infrastructure to industrial areas and business parks funded by governments is common practice in the European Union and therefore the whole subject of infrastructure constitutes another topic to be research on.

4. Consistency

4.1 Are the European Union, the German national and the sub-national German levels of government consistent when it comes to regulation of financial stimulation of regional airports in the case of the airport of Münster-Osnabrück?

As said above the European Union level regulation of financial stimulation has two different aspects, the hard law and the soft law. The hard law, the Treaty of the Functioning of the European Union, regulates the financial stimulation of regional airports in the way that it generally prohibits all financial stimulation of regional airports that are contrary to the goals of the internal market. The soft law, the European Commission guideline, defines the regulation of financial stimulation more specifically. Chapter 2 gives a clear overview about the guidelines and therefore in here they will not be elaborated on. However the consistency or difference of the German regulation of financial stimulation of the regional airport of Münster-Osnabrück will be tested in the following.

The federal level of government as well as the federal state level of government in Germany and in Northrhine-Westfalia respectively has not issued any hard or soft law that is different to the European Union law; that is shown by the above conducted analysis. However it needs to be noticed that they almost issue no law that concerns the regulation of financial stimulation of regional airports at all. It is worth mentioning that there is no regulation of financial stimulation of regional airports by the federal state level of government. Though the above made analysis shows that the federal level of government of North-Rhine Westphalia does support the runway extensions by the airport of Münster-Osnabrück by a subsidy that breaches the polluter pays principle and might therefore be in difference to what is regulated by the European Union. Due to limitations of this study it is only possible to focus on a limit reach of environmental regulations. However further research should be conducted on the issue of the polluter pays principle as it seems to be a controversy within the European Union policies.

When it comes to the regional level of government it has to be noted that there is no formal written regulation of financial stimulation of regional airports, this means that no laws are issued by the regional governments. Therefore the practice at the airport of Münster-Osnabrück was analyzed. Three different forms of financial stimulation were looked at; first the funding of the planned runway extension, second the funding of the airport by the shareholders in general and third the building of the new access road K1n. The findings for the three different undertakings varied considerably when it comes to whether they are consistent with European Union law. To look at the consistency with European Union law is important because in theory, laid down by the hard law, the treaty, Member State law needs to be consistent; otherwise it is considered unlawful.

When it comes to the question of the runway extension, it should be noted in the year 2009 the government aid of 60 million Euros was already approved by the European Commission after a prior notification procedure with regard to Article 107(3c) TFEU. This article is concerned with aid that is compatible with the internal market because this aid is 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 (Kompetenzteam Flughäfen der Rechtsanwälte Kapellmann und Partner, 2009).

When it comes to the funding of the airport of Münster-Osnabrück in general a look should be taken at the guidelines by the European Commission that state that if a public owner “act as a private economic investor would then the undertakings of the public owner do not consider state aid”. As the above mentioned analysis showed the airport Münster-Osnabrück made deficits the last seven consecutive years. As applying the private investor principle, which means that a public investor needs to act after the same free market economy principles than a private investor, it is questionable that a private investor could have increased the share capital in the same way. By increasing the share capital without paying any dividend as well as by not getting 10% return on investment in the last seven years the public owners of the airport Münster-Osnabrück are acting in more favorable circumstances than any private owner would be able. As the European Union level of regulation of financial stimulation shows there is not prior notification procedure for capital accumulation of business holders in general. However there was a prior notification procedure for the 60 million for the planned runway extension. This got the blessing from the European Commission, but in reality it was not spend on the indented cause but to buffer deficits. Therefore as long as the practice of the airport of Münster-Osnabrück is not challenged by anyone they will continue using this practice.

A similar argument applies when it comes to the issue of infrastructure. Infrastructure is crucial for economic success. Therefore public authorities should act as private investors with financial considerations; the same is valid for land or buildings. In the case of the airport of Münster-Osnabrück, especially when it comes to the building of the new road K1n this is not the case. There is little to no information available on how much this road has cost and how it was funded. However it is questionable if the European Commission guidelines are also applicable for infrastructure outside the airport area. If this would be the case then a private investor would be unlikely to build another road which saves only a few minutes in regard to another already existing road.

4.2 Conclusion

To conclude whether the European Union and German level of regulation of financial stimulation of regional airports are consistent in the case of the airport of Münster-Osnabrück the different levels were analyzed in terms of their formal written regulation but also towards their practices. The formal written regulation showed that the German level of regulation is consistent with the European Union level of regulation; this means that there are no laws or other regulations that are different to what is defined on the European Union level. However when it comes to the practice in the case of the airport of Münster-Osnabrück, the findings vary.

The above made comparison of the European Union and German level of regulation of financial stimulation leads to the conclusion that according to the three undertakings by the German regional level of government the consistency differs.

The issue of the runways extension shows that the European Commission sees the public investment made there as compatible with the internal market. They confirmed the notification they got by the

airport of Münster-Osnabrück about this topic. This means that in this regard the European Union level and the German government are consistent in their regulation of financial stimulation. However, issues might arise according to the polluter pays principle of the more costly ecological measure which is sponsored by the federal state level of government. If this aid will be given, it will not be in line with what is established in the TFEU. As this research suggests it is likely that in a possible lawsuit the *Landesregierung* and the shareholders of the airport of Münster-Osnabrück could not hold stand. As said earlier this research focused on the regulation of financial stimulation and therefore does not go into depth in the ecological questions that this undertaking arises. However the issue of the polluter pays principle and its enforcement is of interest to come to a valid conclusion for this measure.

The issue of increase of share capital and accepting annual deficits over a period of seven consecutive years is rather unlikely to hold against the private investor principle. This is especially due to the fact that the money of the shareholder capital increase was supposed to pay for the planned runway extension. A private investor would not be able to get loans without interest for a long term. Especially if the airport is running deficits in the coming years it is likely that it is not acting after the private investor principle. Therefore in this regard the German regional level of government acting is inconsistent to the law issued by the European Union. As far as I can see, this implies that in a possible lawsuit this measure taken by the regional level of government would not stand against complains by the European Commission in the light of the Treaty of the Functioning of the European Union and the guidelines on financing of airports and start-up aid to airlines departing from regional airports.

The issue of the new *Kreisstrasse K1* is rather unclear as building access roads to industrial areas and business parks by public investors is common practice within the European Union. However, the guidelines by the European Commission are also rather unclear if they focus on infrastructure on the area of the airport only or also roads leading to the airport. In the case they would also focus on infrastructure leading to the airport then the building of the new *Kreisstrasse K1* would not hold for the private investor test, as there already was another road. It would be an interesting topic itself to conduct research on but due to limitations in this research it cannot be focused on. Therefore the answer whether this practice is consistent with European Union regulation stays unclear.

The above made analysis shows that two measures need further research on the specific areas they concern; the polluter pays principle and the matter of infrastructure in the European Union. Due to limitations this cannot be done here. However it would be necessary to come to a valid conclusion. The third measure of bolstering the annual deficits with the money acquired by the shareholder capital increase is likely not to hold against the private investor principle. This is due to the fact that a private investor could not accept long-term deficits and no returns on their investments.

When it comes to consistency of levels of regulation of financial stimulation it can be said that the formal regulation does not show any differences and is therefore consistent. However in the practice some measures are found that are, or are likely, to be different between the European Union and German level.

5. Conclusion

This research focuses on the topic of regulation of financial stimulation of regional airports in the European Union. It is a highly interesting subject due to the conflict that is arising in this field. On the one hand the European Commission wants to increase traffic by air in order to create an ever closer Union. But on the other hand if the national governments boost the airports too hard then the issue of distortion of the internal common market might arise. Additional to this the ecological sustainability of air transport is questionable; keeping in mind that the European Commission also wants to decrease air pollution. In order to draw some valid conclusions the broad topic of regional airports was narrowed down to a case study of the airport of Münster-Osnabrück as it was expected to give extensive information about a regional airport in Germany. It should be a case which extensive enough to obtain excessive information. In order to derive valid conclusions for the topic of the regulation of financial stimulation of regional airports in the European Union the following research questions was asked:

How does the European Union, the German national government and the sub-national German governments regulate the financial stimulation of the regional airport in Münster-Osnabrück and are the policies of the different institutional bodies consistent?

In order to answer the main research questions, three sub questions are created and answered. The first sub question deals with the European Union level of regulation which is higher in rank than all Member State legislations and therefore applicable to all airports in all Member States within the European Union.

In order to come to a valid conclusion a look at the European Union level of regulation of financial stimulation for regional airports was taken. This is due to the fact that Member State law needs to be in accordance with European Union law. It was found that we can differentiate between hard law, e.g. the treaties, and soft law, amongst others Commission guidelines. Hard law in the European Union context is considered as creating negative integration because it forbids practices, like in this case state aid, in general. In the above conducted analysis the hard law, especially Article 107, 108 and 109 TFEU are explained and interpreted. In difference to hard law, soft law describes the regulation of financial stimulation of regional airports in the Union in more detail and also allows for some areas where financial stimulation might be allowed. Therefore soft law is associated with positive integration. For the research topic the applicable soft law is the Commission guideline on financing of airports and start-up aid to airlines departing from regional airports. The two most important concepts in the guideline are the prior notification procedure, where public investors have to notify the European Commission about financial stimulation that might not be in line with European Union law. In the cases the European Commission is of opinion that the investments in question do not infringe with any law on the Union level they get the permission for the financial stimulation. The second concept is the private investor principle which means that a public investor needs to act in the same way a private investor would act. This is a rather vague concept but the leading thought is that only as much money should be invested for an undertaking as minimal necessary as well as clear accounting should be accessible to the European Commission.

After having analyzed the European Union level of government regarding the regulation of the financial stimulation of regional airports, the following conclusions were drawn. First of all a distinction between four different kinds of airports can be made: Category A, large Community airports with an average passenger volume of more than 10 million per year; category B, national airports, that have an annual passenger volume of 5 to 10 million per year; category C, large regional airports, with an annual passenger volume of 1 to 5 million and category D, small regional airports, who have less than 1 million passengers a year. For all categories except for D, there were no exemptions to the prior notification procedure and the private investor principle made when it comes to the financial stimulation. For airports falling under category D those exemptions were made only when it comes to the charge level and start-up aid.

The next step was then about the German levels of regulation of financial stimulation of the airport of Münster-Osnabrück. First of all it was important that the airport of Münster-Osnabrück was categorized under category C. Then three levels of government in the case of the airport of Münster-Osnabrück were distinguished: the federal, the federal state and the regional level.

The analysis of some specific regulation of financial stimulation, at federal state and regional level, showed following results: at all three levels the formal regulation was not mentioning financial stimulation of regional airports at all. However certain practices of financial stimulation at the airport of Münster-Osnabrück were looked at. At the federal state level of government certain practices regarding a planned runway extension were found to be financial stimulation. The conclusion of the analysis is that they might breach the polluter pays principle; as the federal state level of government would pay for an ecological measure at the planned runway extension.

At the regional level of government two practices of financial stimulation were identified. The regional level of government is actively involved in the ownership of the airport by being shareholders. The one measure analyzed is the dealing with a deficit made by the airport each of the last seven consecutive years. These deficits were bolstered by an increase in shareholder capital by 60 million Euros for the planned runway extension; which was approved by the European Commission during a prior notification procedure. However this might be a possible breach of the private investor principle, as a private investor could not acquire so much money to bolster deficits over a long-term. The other measure is the building of the access road Kn1; which is a substitute for an already existing road and therefore not what a private investor would do. In this matter it is questionable whereas infrastructure outside of the airport is meant with the section about infrastructure in the Commission guidelines or not. In general in the European Union the issue of infrastructure and especially access roads to industrial areas seems to be a little regulated area.

In the above mentioned three practices of financial stimulation at the airport of Münster-Osnabrück different results were found regarding the consistency or differences between European Union level and German level of government regarding the regulation of financial stimulation. This was analyzed in detail by the third sub question of the research. The analysis conducted in the first and second sub question delivered enough information to come to an answer. The level of regulation of financial stimulation is consistent; this is due to the fact that on German level there is no formal regulation of financial stimulation. The results for the practice of financial stimulation showed different results. To come to a valid conclusion whether the certain measures are constituent to European Union law it was found that it needs further research on the fields of the polluter pays principle and the matter of

infrastructure within the European Union. However for the matter of the increase in shareholder capital by 60 million Euros for the planned runway extension it was found that its real usage was for bolstering annual deficits of the last seven consecutive years. It is likely that this would be interpreted as measure against the private investor principle.

After having analysed these measures and interpreted them it can be concluded that two measures of financial stimulation at the German level of regulation need further research in order to come to a conclusion whether they are consistent or different with the European Union level of regulation. And one measure is very likely to be different. However it needs to be noticed that only the practice of financial stimulation might be different as the formal regulation of financial stimulation of regional airports is consistent.

The answer to the main research question therefore should be that the European Union level of government does most of the formal regulation of financial stimulation whereas the different German levels carry out financial stimulation but do little in regards to formal regulation. Therefore the regulation of financial stimulation is constituent with the European Union level however the practice might differ.

When it comes to consistency and differences this depends on the measures, as the above conducted analysis shows, two measures need further research in order to come to a valid conclusion but might be different to the regulation that is proposed by the European Union and one measure is likely to be not in line with the guidelines of the European Commission. The cases where European Union level and German level of regulation of financial stimulation are found to be different it means that in case of a formal complaint the owners of the airport Münster-Osnabrück would have to pay back a certain amount of money for not complying with European Union rules as the European Commission has the power to recover incompatible aid.

To conclude the formal regulation of financial stimulation of regional airports do not differ between the European Union and German level in the case of Münster-Osnabrück, however the practice shows that there are measures taken that lead to a difference of the European Union and German level.

6. References

- Airportwatch. (2004). *Climate Change Briefing Sheets*. Retrieved 23th March, 2011, from: <http://www.airportwatch.org.uk/briefingsheets/climatechange/index.php>
- Airtransport Group Cranfield University. (2002). *Study on competition between airports and the application of State aid rules*. Cranfield: United Kingdom
- Amtsblatt Stadt Münster. (2002). *Amtsblatt*, 45. Jahrgang, Nr. 1, 25. Januar. 2002. p. 7
- Bel, G. & Fageda, X. (2010). *Does privatisation spur regulation? Evidence from the regulatory reform of European airports*. Research Institute of Applied Economics: Barcelona
- Bezirksregierung Münster (2007). *Bodenordnungsverfahren Flughafen Münster-Osnabrück*. Retrieved 30th October, 2010 from: http://www.bezreg-muenster.nrw.de/startseite/abteilungen/abteilung3/Dez_33_Laendliche_Entwicklung_Bodenordnung/Bodenordnung_und_Flaechenmanagement/Flurbereinigungsverfahren/Flughafen_Muenster-Osnabrueck_-_4_07_02/Flughafen_MO.pdf
- Blauberger, M. (2008). *From Negative to Positive Integration? European State Aid Control Through Soft and Hard Law*. Max-Planck Institut für Gesellschaftsforschung, Discussion Paper 08/4
- Blauberger, M. (2009). Of “Good” and “Bad” Subsidies: European State Aid Control through Soft and Hard Law. *West European Politics*, Vol. 32, No. 4, 719-737
- Borkener Zeitung. (2010). *Neue Diskussion um FMO Finanzierung; es geht um 640 000 Euro*. Retrieved 20th October, 2010 from: http://www.borkenerzeitung.de/lokales/kreis_steinfurt/greven/1353334_neue_diskussion_um_fmo_finanzierung_es_geht_um_640_000_euro.html
- Boss, A. & Rosenschon, A. (2006). *Subventionen in Deutschland: Eine Bestandsaufnahme*. Kieler Arbeitspapier Nr. 1267. Institut für Weltwirtschaft: Kiel
- Bundesverband der Deutschen Industrie. (2009). *BDI zum Beschluss der Verkehrsministerkonferenz zum Flughafenkonzept*. Retrieved 24th October, 2010 from: http://www.bdi.eu/download_content/InfrastrukturUndLogistik/PM_Verkehrsministerkonferenz.pdf
- Cini, M. (2001). The soft law approach: Commission rule-making in the EU's state aid regime. *Journal of European Public Policy*, No. 8, 192-207
- DG Transport. (2010). *Overview*. Retrieved 5th November, 2010 from: http://ec.europa.eu/transport/index_en.htm
- EUR-lex. (n.a.). *Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector*. Retrieved 14th September, 2010 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31987R3976:EN:NOT>
- European Commission. (2001). *European Transport Policy: 2001: time to decide*. Retrieved 20th September, from: http://ec.europa.eu/transport/strategies/2001_white_paper_en.htm

European Commission (2003). Exemptions from consultations on passenger tariffs and slot allocation. Retrieved 20th February 2011, from:
http://europa.eu/legislation_summaries/competition/specific_sectors/transport/l26093_en.htm

European Commission (2009). Application of EU law – Exercise your rights. Retrieved 19th April, 2011, from: http://ec.europa.eu/eu_law/your_rights/your_rights_en.htm

European Commission. (2010). *State aid control – An overview*. Retrieved 20th September, 2010 from: http://ec.europa.eu/competition/state_aid/overview/index_en.html

European Environment Agency. (2007). EEA Technical Report: Size, structure and distribution of transport subsidies in Europe. Retrieved 19th April, 2011, from:
http://www.google.de/url?sa=t&source=web&cd=2&ved=0CCoQFjAB&url=http%3A%2F%2Fwww.eea.europa.eu%2Fpublications%2Ftechnical_report_2007_3%2Fat_download%2Ffile&rct=j&q=EEA%20Technical%20report%20No%203%2F2007%20Size%2C%20structure%20and%20distribution%20of%20transport%20subsidies%20in%20Europe&ei=i9C2TcW5BJCgOt79mKkP&usg=AFQjCNHhCQch0APFcCv_QwgQ6Q07iolyog&cad=rja

European Union. (2003). *Exemptions from consultations on passenger tariffs and slot allocation at airports*. Retrieved 20th September, 2010 from:
http://europa.eu/legislation_summaries/competition/specific_sectors/transport/l26093_en.htm

European Union. (2004). *Commission proposes new rules to increase legal certainty for services of general economic interest*. Retrieved 20th, September, 2010 from:
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/235&format=HTML&aged=1&language=EN&guiLanguage=fr>

European Union. (2010). *Competition – A fair deal for all*. Retrieved 20th September, 2010 from:
http://europa.eu/pol/comp/index_en.htm

European Union. (2010). *Summaries of legislation: Rules applicable to state aid*. Retrieved 14th September, 2010 from:
http://europa.eu/legislation_summaries/competition/state_aid/index_en.htm

Finanzministerium des Landes Nordrhein-Westfalen. (2010). *Haushaltspläne*. Retrieved 4th November, 2010: from:
http://www.fm.nrw.de/haushalt_und_finanplatz/haushalt/03_haushaltsplaene/index.php

Flughafen Münster-Osnabrück. (2010). *Overview*. Retrieved 20th September, 2010 from:
<http://www.flughafen-fmo.de/index.php?page=33>

Flughafenverband ADV (2011). Flughafenentgelte. Retrieved 20th February, 2011, from:
<http://www.adv.aero/flughafenentgelte.html>

Flughafenverband ADV (2010). *Gesellschafter und Beteiligungsverhältnisse – international Verkehr*. Retrieved 20th February, 2011, from:
http://www.adv.aero/fileadmin/pdf/Wirtschaft_u_Recht/Gesellschafter_und_Beteiligungsverhaeltnisse_-_internationale_Verkehr_April_2010.pdf

Germanwatch. (1998). *Infrastrukturelle Anbindung der Flughäfen*. Retrieved 23rd October, 2010 from: <http://www.germanwatch.org/rio/apfluinf.htm>

government. (n.d.). *Merriam-Webster's Dictionary of Law*. Retrieved September 26, 2010, from Dictionary.com website: <http://dictionary.reference.com/browse/government>

Gröteke, F. & Kerber, W. (2004). *The case of Ryanair – EU state aid policy on the wrong runway*. ORDO – Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft, Lucius & Lucius, Stuttgart, Bd. 55

Kompetenzteam Flughäfen der Rechtsanwälte Kapellmann und Partner. (2009). *Airport News*. Retrieved 19th April, 2011, from: http://www.kapellmann.de/sixcms/media.php/610/AIRPORT_NEWS_0209.pdf

Kreis Steinfurt. (2010). *Beteiligungsbericht des Kreises Steinfurt 2009/2010*. Retrieved 14th October, 2010 from: [http://www.kreis-st.de/C12573D40046BB0C/files/beteiligungsbericht_2009_2010.pdf/\\$file/beteiligungsbericht_2009_2010.pdf](http://www.kreis-st.de/C12573D40046BB0C/files/beteiligungsbericht_2009_2010.pdf/$file/beteiligungsbericht_2009_2010.pdf)

Kreis Steinfurt. (2010). *Kreisentwicklungsprogramm 2020 – Controlling Bericht 2009*. Retrieved 10th November, 2010 from: [http://www.kreis-steinfurt2020.de/C12574240036A3D1/files/kep-controllingsbericht-2009.pdf/\\$file/kep-controllingsbericht-2009.pdf](http://www.kreis-steinfurt2020.de/C12574240036A3D1/files/kep-controllingsbericht-2009.pdf/$file/kep-controllingsbericht-2009.pdf)

Kreis Steinfurt. (2008). *Beteiligungsbericht des Kreises Steinfurt 2007/2008*. Retrieved 14th October, 2010 from: [http://www.kreis-steinfurt.de/C12573D40046BB0C/files/beteiligungsbericht_2007_2008.pdf/\\$file/beteiligungsbericht_2007_2008.pdf](http://www.kreis-steinfurt.de/C12573D40046BB0C/files/beteiligungsbericht_2007_2008.pdf/$file/beteiligungsbericht_2007_2008.pdf)

Malina, R. (2006). *Market power and the need for regulation in the German airport market*. Discussion paper no. 10. Institute of Transport Economics: Münster

Niemeier, H.M. (2002). Regulation of airports: the case of Hamburg airport – a view from the perspective of regional policy. *Journal of Air Transport Management*, Vol. 8, p. 37-48

OECD. (2006). Fact Sheet: Extended Producer Responsibility. Retrieved 19th April, 2011, from: http://www.oecd.org/document/53/0,3343,en_2649_34395_37284725_1_1_1_1,00.html

Oxera (2009). *Overruled: the state aid case against Ryanair and the Charleroi airport*. Retrieved 20th February, 2011; from: http://www.oxera.com/cmsDocuments/Agenda_January09/The%20Ryanair%20case.pdf

Snyder, F. (1993). *“Soft law and institutional practice in the European Community”*. European University Institute Working paper, LAW No. 93/5

Stadt Münster. (2010). *Beteiligungsbericht 2009*. Retrieved 20th February, 2011, from: http://www.muenster.de/stadt/finanzen/pdf/beteiligungsbericht_2009.pdf

Treber, M., Kirchmair, A., Kier, G. (n.a.) *Die Subventionierung des Flugverkehrs: Eine Bestandsaufnahme*.

Welt Online. (2008). *Flughafen darf Billigflieger subventionieren*. Retrieved 20th September, 2010 from:

http://www.welt.de/wirtschaft/article1628174/Flughafen_darf_Billigflieger_subventionieren.html

7. Annex



Figure 1: Catchment area FMO



Figure 2: Shareholders FMO

Gesellschafter	Stammkapitalanteil		Anteil am Gewinn/ Verlust
	in €	in %	in %
Stadtwerke Münster GmbH	7.945.800	35,06	35,87
Beteiligungsgesellschaft des Kreises Steinfurt mbH	6.862.400	30,28	30,98
Stadtwerke Osnabrück AG	3.897.650	17,20	17,59
Grevenener Verkehrs GmbH	1.334.800	5,89	6,03
BEVOS Beteiligungs- u. Vermögensgesellschaft mbH	1.150.700	5,08	5,19
Landkreis Osnabrück			
Kreis Warendorf	552.800	2,44	2,50
FMO Luftfahrtförderungs-GmbH	464.000	2,05	0,00
Kreis Borken	102.300	0,45	0,46
Kreis Coesfeld	102.300	0,45	0,46
Landkreis Grafschaft Bentheim	102.300	0,45	0,46
Landkreis Emsland	102.300	0,45	0,46
IHK Nord Westfalen	15.350	0,08	0,00
IHK Osnabrück/Emsland	7.700	0,03	0,00
HWK Münster	7.700	0,03	0,00
HWK Osnabrück/Emsland	7.700	0,03	0,00
Kamer van Koophandel Veluwe en Twente, NL	7.700	0,03	0,00
Gesamt	22.663.500	100,00	100,00

Figure 3: Participation in the ownership of the airport Münster-Osnabrück

2. Beteiligungsverhältnisse

Stammkapital:	22.663.500 Euro	
Anteil Beteiligungsgesellschaft mbH:	6.862.400 Euro	(30,28 %)
Stadtwerke Münster GmbH	7.945.800 Euro	(35,06 %)
Stadtwerke Osnabrück AG	3.897.650 Euro	(17,20 %)
Verkehrsgesellschaft der Stadt Greven mbH	1.334.800 Euro	(5,89 %)
BEVOS Beteiligungs- und Vermögensges. LK OS	1.614.700 Euro	(7,12 %)
Kreis Warendorf	552.800 Euro	(2,44 %)
Kreis Borken	102.300 Euro	(0,45 %)
Landkreis Grafschaft Bentheim	102.300 Euro	(0,45 %)
Kreis Coesfeld	102.300 Euro	(0,45 %)
Landkreis Emsland	102.300 Euro	(0,45 %)
IHK Nord Westfalen	15.350 Euro	(0,07 %)
IHK Osnabrück-Emsland	7.700 Euro	(0,03 %)
Handwerkskammer Münster	7.700 Euro	(0,03 %)
Kamer van Koophandel Veluwe en Twente, NL	7.700 Euro	(0,03 %)
Handwerkskammer Osnabrück/Emsland	7.700 Euro	(0,03 %)

Figure 4: Proportional ownership airport Münster-Osnabrück

FMO Flughafen Münster/Osnabrück GmbH *)						
BILANZ (in Tausend Euro)						
	2007	in %	2006	in %	2005	in %
A. Aktiva						
Immat. Vermögensgegenst.	291,3	0,21	278,1	0,21	192,4	0,16
Sachanlagen	112.016,7	82,34	113.528,0	87,35	107.015,4	89,14
Finanzanlagen	10.596,8	7,79	10.598,6	8,16	8.984,7	7,48
Summe Anlagevermögen	122.904,8	90,3	124.404,7	95,7	116.192,5	96,8
II. Umlaufvermögen Vorräte	242,5	0,18	268,3	0,21	259,2	0,22
Forderungen u., sonst.						
Vermögensgegenstände	6.178,8	4,54	3.272,2	2,52	3.034,5	2,53
flüssige Mittel	6.581,0	4,84	1.813,9	1,40	365,7	0,30
Summe Umlaufvermögen	13.002,3	9,6	5.354,5	4,1	3.659,4	3,0
Rechnungsabgrenzungsposten	136,2	0,10	203,4	0,16	203,5	0,17
Bilanzsumme	136.043,2	100,00	129.962,6	100,00	120.055,4	100,00
B. Passiva						
I. Eigenkapital						
Gezeichnetes Kapital	22.663,5	16,66	22.663,5	17,44	22.560,8	18,79
Kapitalrücklagen	18.223,1	13,40	11.368,8	8,75	1.326,8	1,11
Gewinnrücklagen	0,0	0,00	0,0	0,00	0,0	0,00
Bilanzgewinn/-verlust	-6.398,0	-4,70	-3.608,6	-2,78	-1.990,3	-1,66
Summe Eigenkapital	34.488,6	25,35	30.423,7	23,41	21.897,3	18,24
Rückstellungen	3.823,6	2,81	2.777,6	2,14	2.681,6	2,23
Verbindlichkeiten	97.725,8	71,83	96.746,4	74,44	95.471,2	79,52
Rechnungsabgrenzungsposten	5,2	0,00	14,9	0,01	5,3	0,00
Bilanzsumme	136.043,2	100,00	129.962,6	100,00	120.055,4	100,00
Gewinn- und Verlustrechnung GuV						
Umsatzerlöse, sonstige Erträge	27.162,1	88,25	25.545,2	89,76	25.065,8	91,81
Erträge aus EAV u. Beteiligungen	3.617,9	11,75	2.915,6	10,24	2.227,7	8,16
sonstige betriebliche Erträge	0,1	0,00	0,1	0,00	7,0	0,03
Zwischensumme	30.780,1	100,0	28.460,9	100,0	27.300,5	100,0
Materialaufwand	-3.972,4	11,90	-3.741,6	12,61	-3.524,6	12,16
Personalaufwand	-10.506,6	31,47	-10.189,6	34,35	-10.273,9	35,45
Abschreibungen	-4.505,0	13,49	-4.286,9	14,45	-4.093,8	14,12
sonstige betriebliche Aufwendungen	-9.489,8	28,42	-6.305,4	21,26	-5.747,2	19,83
sonst. Erträge, Zinsen	92,3	-0,28	81,9	-0,28	16,5	-0,06
Aufwendungen Verlustübernahmen	-242,9	0,73	-605,9	2,04	-609,9	2,10
Zinsen u. ähnliche Aufwendungen	-4.764,0	14,27	-4.618,0	15,57	-4.750,6	16,39
Ergebnis der gewöhnlichen Geschäftstätigkeit	-2.608,2		-1.204,5		-1.683,0	
Entn./ -Einst.aus/ in Rücklage	0,0		0,0		101,3	
Steuern v. Einkommen, sonst. Steuern	-181,1		-413,7		-408,6	
Jahresüberschuss/-fehlbetrag	-2.789,4		-1.618,3		-1.990,3	
Ergebnisvortrag aus dem Vorjahr	-3.608,6		-1.990,3		0,0	
Bilanzgewinn/-verlust	-6.398,0		-3.608,6		-1.990,3	

*) Der FMO-Jahresabschluss mit den verbundenen Unternehmen: Luftfahrtförderungs-GmbH, Airport Services GmbH, Parking Services GmbH, Security Services GmbH sowie den Beteiligungen: Passenger Services GmbH, AHS Aviation Handling Service GmbH u. Cargo Services GmbH enthält die Erträge und Aufwendungen aus EAV.

Figure 5: Balance sheet FMO Flughafengesellschaft

GuV -Positionen	Jahr	2006 €	2007 €	2008 €	2009 €
Umsatzerlöse		21.154.633	22.344.855	21.733.327	22.676.938
Erträge aus Ergebnisabführungsverträgen		2.760.062	3.428.917	4.312.903	2.978.940
Sonstige betriebliche Erträge		4.390.560	4.817.244	6.638.057	6.384.991
Sonstige Zinsen und ähnliche Erträge		82.050	92.403	203.235	73.179
Erträge aus Beteiligungen		155.518	188.954	171.224	0
Erträge		28.542.823	30.872.373	33.058.746	32.114.048
Materialaufwand		3.741.571	3.972.385	6.567.672	5.860.582
Personalaufwand		10.189.588	10.506.630	10.685.348	10.699.100
Abschreibungen		4.286.874	4.504.968	4.518.228	4.273.270
Sonstige betriebliche Aufwendungen		6.305.443	9.489.786	10.000.731	8.654.117
Zinsen und ähnliche Aufwendungen		4.617.964	4.763.955	4.914.556	4.890.972
Aufwendungen aus Verlustübernahme		605.920	242.893	181.699	79.159
Aufwendungen		29.747.358	33.480.619	36.868.235	34.457.202
Erträge		28.542.823	30.872.373	33.058.746	32.114.048
Aufwendungen		29.747.358	33.480.619	36.868.235	34.457.202
Steuern/-Erstattungen		413.745	181.127	146.472	346.619
Jahresergebnis		-1.618.280	-2.789.373	-3.955.961	-2.689.773
Gewinn-/Verlustvortrag		-1.990.345	-3.608.625	-6.397.998	-10.353.959
Einstellung in die Gewinnrücklagen		0	0	0	0
Entnahme aus der Gewinnrücklage		101.307	0	0	0
Bilanzgewinn/-verlust		-3.507.318	-6.397.998	-10.353.959	-13.043.733

Figure 6: Result situation airport Münster-Osnabrück in a four year comparison

GuV -Positionen	Jahr	2006 €	2007 €	2008 €	2009 €
Umsatzerlöse		0	0	0	12.000
Bestandsveränderung Grundstücke		78.633	2.528.528	1.726.947	2.799.611
Sonstige betriebliche Erträge		9.054	12.100	20.768	14.299
Sonstige Zinsen und ähnliche Erträge		35.401	42.227	49.119	13.258
Erträge		123.088	2.582.855	1.796.834	2.839.168
Materialaufwand		125.153	2.559.822	1.726.947	2.802.611
Personalaufwand		0	28.403	130.909	162.383
Abschreibungen		0	252	10.658	23.156
Sonstige betriebliche Aufwendungen		61.402	103.477	446.514	378.035
Zinsen und ähnliche Aufwendungen		35.055	37.211	146.186	235.644
Aufwendungen		221.610	2.729.165	2.461.213	3.601.828
Erträge		123.088	2.582.855	1.796.834	2.839.168
Aufwendungen		221.610	2.729.165	2.461.213	3.601.828
Steuern		-16.341	13.576	21.494	21.494
Jahresergebnis		-82.181	-159.886	-685.873	-784.154

Figure 7: Result situation of AirportPark GmbH in a four year comparison

	2004			Vorjahr		
	EUR	EUR	EUR	EUR	EUR	EUR
1. Umsatzerlöse		18.792.157,36			19.763.069,53	
2. sonstige betriebliche Erträge		4.428.509,65	23.220.667,01		4.609.474,91	24.372.544,44
3. Materialaufwand						
a) Aufwendungen für Roh-, Hilfs- und Betriebsstoffe und für bezogene Waren	365.154,18			284.183,05		
b) Aufwendungen für bezogene Leistungen	2.519.144,19	2.884.298,37		2.848.510,46	3.112.693,51	
4. Personalaufwand						
a) Löhne und Gehälter	7.922.104,87			8.051.895,25		
b) soziale Abgaben und Aufwendungen für Altersversorgung und für Unterstützung davon für Altersversorgung EUR 575.810,10 (Vorjahr: EUR 463.737,12)	2.129.432,59			2.039.920,72		
		10.051.537,46			10.091.815,97	
5. Abschreibungen - auf immaterielle Vermögensgegenstände des Anlagevermögens und Sachanlagen		4.145.077,14			5.927.249,03	
6. sonstige betriebliche Aufwendungen		5.381.809,43	22.462.722,40		5.493.098,94	24.624.857,45
			757.944,61			-252.313,01
7. Erträge aus Ergebnisabführungsverträgen		2.192.827,03			2.523.595,28	
8. Erträge aus Beteiligungen		0,00			0,00	
9. Erträge aus anderen Wertpapieren und Ausleihungen des Finanzanlagevermögens davon aus verbundenen Unternehmen EUR 30.363,29 (Vorjahr: EUR 52.685,25)		30.505,58			52.838,73	
10. sonstige Zinsen und ähnliche Erträge		29.435,11			60.914,50	
11. Zinsen und ähnliche Aufwendungen		4.775.677,30			4.987.605,65	
12. Aufwendungen aus Verlustübernahme		752.265,04	-3.275.174,62		197.090,37	-2.547.347,51
13. Ergebnis der gewöhnlichen Geschäftstätigkeit			-2.517.230,01			-2.799.660,52
14. Steuern vom Einkommen und vom Ertrag			0,00			90.987,00
15. sonstige Steuern			102.610,55			99.685,20
16. Jahresfehlbetrag			-2.619.840,56			-2.990.332,72
17. Entnahme aus Gewinnrücklagen			2.619.840,56			2.990.332,72
18. Bilanzgewinn			0,00			0,00

Figure 8: FMO Flughafen Münster-Osnabrück GmbH: Annual financial statement 1/1/2004 – 31/12/2004