**Observations of Liege Airport on the Revised Draft Guidelines on State Aids to Airports and Airlines**

**Executive Summary**

A. Liege Airport urges the EC (EC) to gather sufficient and reliable data regarding mixed passenger-freight airports, especially with respect to mixed passenger-freight airports with a low passenger activity (or ‘all-freight airports’). This is necessary to provide unambiguous and sound rules regarding mixed passenger-freight airports, including all-freight airports, that are non-discriminatory, objectively and abstractly applicable and not leading to competition distortions. This will also contribute to increasing the long awaited legal certainty expected by the sector.

B. Liege Airport identifies that the draft guidelines as they currently stand (version of 3 July 2013) discriminate, thereby creating competition distortion and legal uncertainty, between:

- Passenger airports and mixed passenger-freight airports due to the use of a single (freight) threshold for mixed passenger-freight airports (200k tons of freight on a yearly average). This single threshold is not based on sound scientific evidences. So, this threshold should be removed. If not, the EC should use a double threshold. Indeed, it does not make sense to treat mixed passenger-freight airports like passenger airports (one single threshold) as the business model of mixed passenger-freight airports, in particular that of freight airport, is radically different than that of passenger airports, as Liege Airport demonstrates it in this note.

- Mixed passenger-freight airports themselves as the single (freight) threshold for these airports lead to treating four airports equally, while one of them, i.e. Liege Airport, is radically different than the three others due to a low passenger activity (all-freight airport).

- Further between passenger airports and mixed passenger-freight airports due to the use of a single catchment area definition for both types of airports. This fails to acknowledge the specificities of mixed passenger-freight airports and/or of freight airports, which are intermodal/interconnected in a wider transportation network.

- Possibly also between airports having cargo activities and airports having express freight activities (day + 1) due to the different needs of infrastructure the latter have.

C. Consequently, the draft guidelines put an undue burden on all-freight airports, as Liege Airport, by requiring them to notify State aids individually. In addition, the EC fails to demonstrate why these airports present ipso-facto a ‘threat to competition distortion’.

D. In addition, Liege Airports points out to the fact that the single (freight) threshold curiously applies to two airports in the EU only, that is Liege Airport and the airport of Luxembourg… Besides being curious, this questions the fact that the guidelines,
as rules of general application, should apply to categories of airports defined abstractly and objectively.

E. Liege Airport and the airport of Luxembourg are thus to be subjected to an unprecedented administrative burden resulting from the requirement for an individual notification. This results in an unprecedented legal uncertainty.

F. Liege Airport provides below some information on mixed passenger-freight airports and on freight airport, especially on their business model, which is totally lacking both in the 2002 study and in the 2011 consultation. But, Liege Airport urges the EC to gather sound scientific data regarding mixed passenger-freight airports and/or freight airports.

G. Liege Airport insists that the State aid rules yet to be developed/refined by the EC should rely on a better understanding of freight activities and how they interrelate with other transportation means (multimodality). These characteristics, that are specific to mixed passenger-freight airports and/or to freight airports in contrast with passenger airports, need to be reflected in the EC’s State aid policy towards mixed passenger-freight airports and/or all-freight airports. If not adequately addressed, the legal uncertainty generated by the draft guidelines for an airport like Liege Airport must be removed.

H. With that regard, Liege Airports urges the services of the EC in charge of State aids in the aviation sector to contact with: (i) the services of the EC in charge of merger control in the same sector to gather the insight collected by the EC in case M.6570 - UPS/TNT EXPRESS; and with (ii) those services of the EC who are responsible for the EC Communication on ports: an engine for growth dated 23.5.2013 (the ‘Communication on Ports’).

I. Indeed, when comparing the Draft Guidelines with the Communication on Ports, it appears that the Draft Guidelines blatantly fail to acknowledge the specificities of freight airports, especially regarding their inter-modality and their added value to an EU integrated transport policy. More emphasis should be put on the interaction of the EC state aid policy for airports with other policies of the EU, such as an integrated EU transport policy and the TEN-T policy, as the EC rightly does it in the Communication on Ports.

J. Finally, the Draft Guideline should take into account the necessity for Europe to stay competitive in the international air traffic market. Air traffic in Europe is expected to double by 2030. National airports are not sufficient to face this. Therefore, it is absolutely essential to preserve regional airports in order to increase the capacity on the ground. National and regional airports should be viewed as a part of a truly European airport network to be able to compete with the rest of the world. Hindrances to the development of regional airports, as the discriminations and competition distortions contained in the draft guidelines, should be removed.

K. Taking into account the shortcomings identified in the present note, the recommended solution should be to remove freight airports from the Draft Guidelines. Nonetheless, should the EC be willing to include them in the Draft Guidelines, it would create the first legislation on this sector and an in-depth research and data collection would need to be carried out to further develop the European legislation on the freight airports.
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I. **INTRODUCTION**

1. **Liege Airport welcomes the Revised Guidelines.** Liege Airport welcomes the revised draft guidelines on State aids to airports and airlines as submitted for consultation by your Unit on 3 July (the 'Revised Guidelines'). The Revised Guidelines generally clarify the EC's (EC) practice regarding State aids to airlines and airports. But, as they are currently drafted, they increase legal uncertainty for a couple of airports in the EU, rather than contributing to the long awaited need for legal certainty and clarity. Liege Airport has therefore a few important observations to formulate with respect to the Revised Guidelines, especially as far as mixed passenger-freight airports and/or all-freight airports (as defined below) are concerned.

2. **Liege Airport is a mixed passenger-freight airport according to the Revised Guidelines.** Liege Airport positions itself as a ‘business and travel center’, whose growth over the last fifteen years is a.o. due to the installation of the European hub of TNT Express NV ('TNT') for express cargo (day + 1) in 1996. Since this installation, Liege Airport has become the eighth European freight airport in terms of tonnage per year in the EU, with 674.470 tonnes of freight in 2011 and 576.664 tonnes of freight in 2012, thus an average of 625.567 tonnes of freight over the last two years. Besides, Liege Airport accommodates the European hub of two Israeli cargo companies, namely CAL and El Al Cargo as well as other companies such as AV Cargo and Ethiopian Airlines cargo. In addition to freight, Liege Airport counts an average of 306.351 passengers (last two year figures).

   Liege Airport can therefore be viewed as a true success story, especially when comparing these figures with the figures of the beginning. It appears from this that Liege Airports has both freight and passengers activities. As such, Liege Airports qualifies as a mixed passenger-freight airport under the Revised Guidelines.

3. **Yet, Liege Airport would rather qualify as an ‘all-freight airport’, which kind of airport is not acknowledged in the Revised Guidelines.** Although Liege Airport has some passenger activities, the annual average number of passengers at Liege Airport is very low, particularly when compared to other mixed passenger-freight airports, as it appears from the following (limited) sample:

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1. See table 1 below.
2. 163,807 tonnes of cargo and 172,938 passengers in 1998.
3. This sample is limited to those mixed passenger-freight airports that would have to notify under the Revised Guidelines on the basis of the single threshold of 200k of freight a year only. These airports, unlike other mixed passenger-freight airports (see below) do not have to notify on the basis of the threshold of 3 Mio passengers a year.
Table 1 – Comparison of Liege Airport, i.e. an ‘all-freight airport’, with other mixed passenger-freight airports

<table>
<thead>
<tr>
<th></th>
<th>PASSENGERS</th>
<th>FREIGHT</th>
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<tr>
<td></td>
<td>2011</td>
<td>2012</td>
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<td>years</td>
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<td>years</td>
<td></td>
<td></td>
<td>years</td>
</tr>
<tr>
<td>Hahn (HHN)</td>
<td>2,894,363</td>
<td>2,767,640</td>
<td>2,831,002</td>
<td>286,416</td>
<td>175,702</td>
<td>231,059</td>
</tr>
<tr>
<td>Liège (LGG)</td>
<td>309,206</td>
<td>303,495</td>
<td>306,351</td>
<td>674,470</td>
<td>576,664</td>
<td>625,567</td>
</tr>
<tr>
<td>Luxembourg (LUX)</td>
<td>1,790,791</td>
<td>1,912,806</td>
<td>1,851,799</td>
<td>656,653</td>
<td>614,906</td>
<td>635,780</td>
</tr>
<tr>
<td>Leipzig (LEJ)</td>
<td>2,263,668</td>
<td>2,279,221</td>
<td>2,271,445</td>
<td>743,980</td>
<td>846,086</td>
<td>795,033</td>
</tr>
</tbody>
</table>

Source: ACI Europe

Due to its low passenger activity, Liege Airport can consequently not be compared to the three other mixed passenger-freight airports, whose passenger activity is substantially more important than that of Liege Airport. Therefore, we consider that the category of mixed passenger-freight airports contains a sub-category of airports, i.e. mixed passenger-freight airport with a low passenger activity, namely ‘all-freight airports’.

4. Liege Airport plays a major local socio-economic role. As any small regional airport, Liege Airport plays a major socio-economic role in the Wallonia Region and in the Province of Liege, two state entities of the country whose traditional industrial industries (mining, steel, etc.) have steeply declined since the 1960s. The Belgian National Bank assesses the direct and indirect added value of Liege Airport as approximately 460 million €, representing 0.6% of the GDP of the Wallonia Region (2009 figures) \(^4\). In April 2012 Liège Airport generated around 7000 employments, representing 0.5% of the Walloon employment as indicated by the Belgian National Bank. This report shows that Liège Airport occupies the first place concerning the employment level in comparison with the other Belgian airports.

5. Liege Airport faces fierce competition from other airports as the failed acquisition of TNT by UPS illustrates it. All these benefits would have been impossible without the financial support of the Wallonia Region and of the EC’s European Regional Development Fund (ERDF) policy. Yet, the recent attempt of United Parcel Service Inc. (‘UPS’) to acquire the sole control of TNT demonstrates that Liege Airport remains in a fragile position. The concentration, should it have been approved, would have led to the concentration of all cargo express activities of the two merged entities in the airport of Cologne, placing Liege Airport in a difficult situation and generating substantial job losses for the region/the province. This is due to the fierce competition that now exists between airports following the liberalisation of the EU aviation market, as ACI testifies it\(^5\).


6. **The Draft Guidelines generate competition distortions and legal uncertainties because they fail to acknowledge the specificities of mixed passenger-freight airports, in particular those of all-freight airports.** This is why Liege Airport supports State aid guidelines/practice that would ensure that regional airports can play their role as economic engines, in line with its own success story. However, taking into account the existing competition between airports, such guidelines should not lead to distortions of competition between airports or increase legal uncertainty. Yet, as currently drafted, the Revised Guidelines will inevitably generate competition distortions between airports in the EU and legal uncertainty for a couple of airports in the EU, for the reasons explained below:

- Although the EC does not really acknowledge it while communicating on the consultation,
  the Revised Guidelines are a breakthrough as they contain specific provisions on mixed passenger-freight airports (**section II**);
- Yet the Revised Guidelines blatantly fail to take into account the specificities of mixed passenger-freight airports and/or of all-freight airport (**section 0**);
- This is why, Liege Airport provides, by submitting the present observations, some insight regarding the specificities of all-freight airports and of mixed passenger-freight airports (**section IV**);
- Taking these into account, Liege Airport draws the attention of the EC to the fact that the Revised Guidelines, as they currently stand, generate some (prohibited) discriminations and, in turn, some competition distortions and other incongruities (**section V**);
- This does not come as a surprise taking into account the questionable data used by the EC when preparing the Revised Guidelines (**section VI**).

7. **In addition, the Draft Guidelines do not take into account the future needs of the market due to the expected and forecasted airport congestion in the future.** The 2011 Airport Package of the EC shows that, in the near future, national airports will face a problem of congestion, due to the rise of the worldwide mobility. The regional airports constitute a solution to avoid the congestion by increasing the capacity of the airports. If these small airports have to comply with the formalities of notification, these burdens will impede their development and will create an obstacle in the evolution of the European air traffic (**section 7**).

Finally, the present analysis identifies additional issues not specifically related to the individual notification thresholds in a separate section (**section 8**). In a final section (**section 9**) we conclude.

II. **BREAKTHROUGH OF THE REVISED GUIDELINES: THEY DEPART FROM THE PAST BY PROVIDING RULES REGARDING MIXED PASSENGER-FREIGHT AIRPORTS**

8. **Unlike the 2005 Guidelines, the Revised Guidelines contain specific provisions on mixed-passenger freight airports specifically.** The Revised Guidelines follow the consultation on the guidelines on financing of airports and start-up aid to airlines departing from regional airports of 9 December 2005 (the ‘2005 Guidelines’) organised by the EC in 2011 (the ‘2011 Consultation’). The

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Revised Guidelines not only provide rules applicable to passenger airports, but also rules applicable to mixed passenger-freight airports. This departs from the rules embedded in the 2005 Guidelines, which provided rules/principles for four categories of passenger airports only, whose definition depends upon yearly passenger thresholds. This strikingly departs from the 2005 Guidelines that do not acknowledge at all mixed passenger-freight airports.\(^7\) This extension to mixed-passenger freight airports under the Revised Guidelines results from several provisions, including for the following ones:

\section{20 (scope of application): ‘Some airports and airlines are specialised in freight transport. The Commission does not yet have sufficient experience in assessing the compatibility of aid to airports and airlines specialising in freight transport to summarise its practice in the form of specific compatibility criteria. For these categories of undertakings, the Commission will apply the common principles of compatibility as set out in section 5 of the present guidelines through a case-by-case analysis’.

\section{100. (notification requirements for aid schemes and individual aid measures): ‘Due to a higher risk of distortion of competition, the following aid measures should always be notified individually: […] b) investment aid financing a mixed passenger/freight airport handling more than 200 000 tonnes of freight during the two financial years preceding that in which the aid is notified’.

\section{111. (Notification requirements for aid schemes and individual aid measures): ‘Due to a higher risk of distortion of competition, the following aid measures should always be notified individually: 1) operating aid financing a mixed passenger/freight airport handling more than 200 000 tonnes of freight during the two financial years preceding that in which the aid is notified’.

On the basis of the above provisions, Liege Airport would be obliged to notify \textit{individually} State aids ‘due to a higher risk of competition distortions’, while, under the 2005 Guidelines, Liege Airport qualifies as a ‘category D’ airport, i.e. a ‘small regional airport with an annual passenger volume of less than 1 million’,\(^8\) which does not have to notify State aids individually.

9. **Consequence – legal uncertainty for a couple of airports in the EU.** The fact that the Revised Guidelines are addressed to mixed passenger-freight airports for the first time, while leading to insidious consequences as demonstrated in this contribution (discrimination and competition distortions), creates some legal uncertainty for two airports in the EU, namely Liege Airport and the airport of Luxembourg, as explained below. This, combined to an increased administrative burden due to the single notification requirement, generates an intolerable burden for an airport like Liege Airport.

\(^7\) In fact, mixed passenger-freight airports are referred only once in the 2005 Guidelines, at §9, acknowledging that ‘passenger and freight services can be crucial for competitiveness and development in some regions. Airports that provide good services can act as a magnet for airlines and thus promote business activity as well as economic, social and regional cohesion within the EU’.

\(^8\) 2005 Guidelines, §15.
III. THE REVISED GUIDELINES BLATANTLY FAIL TO ACKNOWLEDGE THE SPECIFICITIES OF MIXED-PASSENGER FREIGHT AIRPORTS, INCLUDING THOSE OF ALL-FREIGHT AIRPORTS

10. Under the Revised Guidelines, the EC acknowledges that it lacks data related to mixed passenger-freight airports to specify its practice with regard to these. At § 20 of the Revised Guidelines, the EC specifies that it lacks ‘sufficient experience’ in assessing the compatibility of aid to airports and airlines specialising in freight transport. Therefore and unlike for (all-) passenger airports, the EC does not sum up its practice by providing specific assessment criteria. We believe this approach is wise, but we also believe that the EC should gather ‘sufficient data’ if it wants to have upfront sensible and reliable rules in the Revised Guidelines when it comes to mixed passenger-freight airports and, more specifically, when in comes to all-freight airports.

11. The Revised Guidelines apply to mixed-passenger freight airports ‘irrespective of the yearly passenger number’ – yet passengers do matter. Under the Revised Guidelines, mixed passenger-freight airports handling an average of 200k of freight yearly over the last two years must notify. This is so irrespective of the number of passengers dealt a year on average. In the following section (section 4), we explain why this is wrong; we explain why ‘the yearly number of passengers’ does matter when it comes to mixed passenger-freight airports, which is particularly true for all-freight airports.

IV. YET, ALL-FREIGHT AIRPORTS DO NOT COMPARE WITH MIXED PASSENGER-FREIGHT AIRPORTS AND MIXED PASSENGER-FREIGHT AIRPORTS DO NOT COMPARE TO PASSENGER AIRPORTS

IV.1. All-freight airports do not compare to mixed passenger-freight airports

12. Mixed passenger-freight airports and specifically all-freight airports are capital intensive, differentiating them from passenger airports and mixed airports with high passenger figure. First, mixed passenger-freight airports, including all-freight airports are facing substantial upfront investments in heavy infrastructure before being operational. In addition, where passenger airports and mixed passenger-freight airport can have substantial profits from sale to passengers, including duty free sales, all-freights airports do not derive substantial profits from these activities. All-freight airports derive their resources from landing fees, fees for the providing of groundhandling activities and fees for the use of infrastructures that are specific to freight handling (sophisticated conveyor belts for handling packages e.g.). These infrastructures, unlike souvenir shops e.g., are heavy and profitable over the long run only. All-freight airports therefore need external financial support upfront.

Therefore, and contrary to the approach followed by the EC in the Revised Guidelines (see n° 11 above), the yearly passenger number does matter when it comes to mixed passenger-freight airports, in particular as it differentiates all-freight airports from mixed passenger-freight airports (with an important passenger activity).

It follows from this that all-freight airports do not compare with mixed-passenger freight airports with substantial passenger activity.
13. **All-freight airports suffer from a competitive disadvantage compared to mixed passenger-freight airports due to the fact that they cannot accommodate freight-in-luggage aircrafts/fleets.** Second, all-freight airports, which are generally small regional airports, cannot accommodate airlines offering freight-in-luggage-area. This is so because:

- On all-freight airports or on mixed passenger-freight airports with freight activity being substantially superior to passenger activity, there is no offer for freight transport on passenger aircrafts;
- All freight airports are generally regional airports. Yet the activity of regional airports is short/medium haul, for which the offer in the hold is doubly limited: first by loading capacity of medium-haul aircraft (e.g. one ton for an Airbus A320, see table 2 below) and secondly, resulting in operating constraints that require rapid rotations which are incompatible with the treatment of a freight loading;
- Finally, the low-cost airlines (mainly established in regional airports) do not ship freight for the same reasons.

### Table 2 - freight airports accommodate smaller (passenger) aircrafts that cannot handle freight competitively

<table>
<thead>
<tr>
<th>Full passenger capacity</th>
<th>Belt</th>
<th>Freight in tonnes</th>
<th>Volume in m³</th>
<th>Density in Kg/m³</th>
</tr>
</thead>
<tbody>
<tr>
<td>A320</td>
<td>1</td>
<td>3.6</td>
<td>277.8</td>
<td></td>
</tr>
<tr>
<td>B737-300</td>
<td>2.3</td>
<td>21</td>
<td>107.1</td>
<td></td>
</tr>
<tr>
<td>B737-400</td>
<td>2.9</td>
<td>24</td>
<td>120.7</td>
<td></td>
</tr>
<tr>
<td>B737-800</td>
<td>3.6</td>
<td>28</td>
<td>128.6</td>
<td></td>
</tr>
<tr>
<td>A330-200</td>
<td>14.1</td>
<td>61.8</td>
<td>228.2</td>
<td></td>
</tr>
<tr>
<td>A330-300</td>
<td>15</td>
<td>80.2</td>
<td>187</td>
<td></td>
</tr>
<tr>
<td>B777-200</td>
<td>23</td>
<td>125</td>
<td>187</td>
<td></td>
</tr>
<tr>
<td>B747-400</td>
<td>20</td>
<td>73.4</td>
<td>272.5</td>
<td></td>
</tr>
<tr>
<td>A380</td>
<td>20</td>
<td>68</td>
<td>294.1</td>
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</tr>
</tbody>
</table>

Source: Data from aircrafts manufacturers

This lack of freight-in-luggage capacity generates a competitive disadvantage for all-freight airports. Indeed, passenger airlines increasingly offer freight-in-luggage capacity, as a way of diversifying income sources. For instance, the Air France/KLM Group has recently departed from its freight fleet to focus on freight-in-luggage capacity. This freight-in-luggage capacity directly competes against freight airlines. But all-freight airports cannot attract airlines offering freight-in-luggage capacity due to the constraints mentioned above.

**IV.2. Mixed passenger-freight airports do not compare to passenger airports**

14. **Unlike passenger airports, mixed passenger-freight airports are a node integrated in a multimodal logistic network.** As Boeing explains it, air freight is not an airport-to-airport service but a single component of a broader transport infrastructure linking the shipper to the consignee. In other words, air freight is
coupled to truck traffic, which is especially true in Europe where distances are short. As Boeing explains it, trucking offers door-to-door and factory-to-distribution center services, which air freight alone will never offer.\textsuperscript{9}

**Scheme 1 – Air-truck is integrated in the EU**

This has a direct impact on the position of mixed passenger-freight airports on the market, when compared to passenger airports: they are a node integrated in a multimodal logistic network. Therefore, some freight airports, such as the airport of Cologne, offer fully integrated air/road transport services resulting from the possible use of the Airway Bill (AWB) in continuity of air transport, known as ‘truck-flight pair’ airports (‘TFP airports’). The number of TFP airports has dramatically increased over the last ten years, as it appears from scheme 1 below. It appears from this that freight airports need external financial support upfront.

**Scheme 2 - Increase of TFP airports over the last ten years**

\textsuperscript{9} BOEING, ‘World Air Cargo Forecast 2012-2013’, p. 12, available on the website of Boeing.
15. The investments necessary for mixed passenger-freight airports are radically different than those for passenger airports. Some of the land infrastructure necessary for freight handling relate to land distribution network for freight transportation, such as e.g. train stations attending the airport (Leipzig e.g.) or specific liaisons between airports and given market places (the flower market place of Amsterdam e.g.) or specific liaisons with maritime ports (Amsterdam), as the CAREX projects currently flourishing in the EU as a result of EU transportation policies illustrate it. These infrastructures, although necessary for mixed passenger-freight airports to compete against each other and/or against mixed passenger-airports, do not generate direct profits for the airport.

16. It appears from the above that mixed passenger-freight airports must be viewed as being integrated into a broader land distribution network, meshed with (high speed) train transport, truck transport, maritime transport, and so on. The Revised Guidelines, as they currently stand, fail to acknowledge this.

17. This is curious because the EC takes into account the nodal position of ports as part of a larger logistic network in the EC Communication on ports dated 23.5.2013. The Commission Communication on ports: an engine for growth dated 23.5.2013 (the ‘Communication on Ports’) does take into account the specificities of ports as a node part of a larger logistic network, where the Revised Guidelines fail to do so for airports. For instance, in the Communication on Ports:

- The EC acknowledges that ports are nodes where multimodal logistic flows of the trans-European network can be organised. This is why, in the Communication on Ports, the EC is of the opinion that ports should be ‘encouraged to act as enablers of inter-modality, for instance by taking the necessary arrangements in order to provide information on traffic flows allowing the better organisation of intermodal logistics’. The EC therefore acknowledges that ‘insufficient attention has been given to the coordination with hinterland access infrastructure’.\(^\text{10}\) As demonstrated in this note, this is equally true with respect to freight airports, especially small regional ones;
- The EC acknowledges that ports are not only about ports infrastructure ‘as such’ but are further about their hinterland (as freight airports). So, according to the EC, with the congestion of a few most important/most successful ports in the EU, such hinterland becomes congested, in particular with respect to road congestion, ‘to the detriment of citizens living there’.\(^\text{11}\) As demonstrated in this note, this is equally valid for freight airports;
- The EC recognises that ports need to adapt to new technical requirements resulting e.g. from an increased size and complexity of the fleet, environmental performance criteria, value added services, etc.\(^\text{12}\) This is equally true for freight airports, especially for small regional ones, as pointed out in this note.

\(^\text{10}\) Communication on Ports, p. 6.
\(^\text{11}\) Communication on Ports, p. 4.
\(^\text{12}\) Communication on Ports, p. 5.
IV.3. The catchment area of mixed passenger-freight airports cannot be the same as that of passenger airports

18. The Revised Guidelines contain a blatant mistake when it comes to the definition of catchment area as applicable to mixed passenger-freight airports. We draw your attention to the fact that the Revised Guidelines define the catchment area of an airport as ‘a geographic market boundary that is normally set at around 100 kilometers or around 60 minutes travelling time by car, bus, train or high-speed train’ (our highlight). We observe from this definition that the Draft Guidelines do not provide for any (explicit) difference when it comes to passenger vs. freight activities/airports. So, this definition is also applicable to mixed passenger-freight airports. But the catchment area of the definition can not refer to (any kind of) freight activity at all. Indeed, by its very wording, it obviously only refers to passenger activities. Freight does not travel ‘by car, bus, train or high-speed train’ (sic)... Freight activities are handled very differently from passengers, as demonstrated in this section. Likewise, the Draft Guidelines do not provide for differences between different types of freight activities, such as e.g. between general cargo and express cargo (day + 1).

19. The catchment area for freight activities cannot be the same than that for passengers. Freight transportation is more mobile than passenger transportation and distances cannot be measured in km. By way of example, the airport of Hahn, Germany, has put into place shuttle services for freight with the airport of Frankfurt, i.e. within a distance of 100 km, but also well beyond 100 km, such as e.g. with Hamburg, Bremen, Munich, Luxembourg and Milan, for a transport duration of 12h, as scheme 2 below illustrates it.

Scheme 3 - catchment area for freight of the airport of Hahn, Germany

This was confirmed by the EC during the M.6570 - UPS/TNT EXPRESS merger control procedure. As the prohibition decision of the EC is not publicly available yet, Liege Airport recommends the EC to take contacts with the Case Handler of the

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13 That said, the Revised Guidelines knowledge that ‘however, the catchment area of a given airport may be different and needs to take into account the specificity of each airport [...], including its business model, location and the destinations it serves’. See: Draft Guidelines, Annex 1, p. 28.

14 Where Liege Airport qualified as a third party having an interest to be heard.
case, Mr. Stefan Simon, so as to benefit from the insight gathered by the EC during this procedure, notably with respect to the definition of catchment area of (express) freight airports.

In addition, the catchment area definition does not take into account:

- The geographical specificities of some regions of Europe, especially those of the most densely populated area of Europe that is the Paris-Amsterdam-Frankfurt triangle, as the example below illustrates it (see n° 28 below); nor the
- Interconnection with other transport means, especially with those relevant when it comes to (express) freight activities, as explained above (see n° 14 above).

By way of example, to/from Liege Airport, transit times are amongst the shortest comparing to competing hubs. Within less than half a trucking day, approximately 60 million customers are accessible from Liege Airport, while approximately 240 million customers are accessible within a trucking day. In addition, Liege is the most used highway crossroad in Europe, connecting 128 main cities of North-West Europe. So, Liege Airport’s location is second to none when it comes to (express and/or regular) freight/cargo activities.

V. **BY NOT ACKNOWLEDGING THE SPECIFICITIES OF MIXED PASSENGER-FREIGHT AIRPORTS, INCLUDING THOSE OF ALL-FREIGHT AIRPORTS, THE REVISED GUIDELINES ARE DISCRIMINATORY AND, IN TURN, LEAD TO COMPETITION DISTORTIONS**

20. In this section, we point out some issues resulting from the failure to take into account the specificities of mixed passenger-freight airports, in particular those of all-freight airports, including discriminations, competition distortions and incongruities. These result from the single freight threshold applicable to mixed passenger-freight airports (section 0) and from the definition of the catchment area under the Draft Guidelines (section 0).

V.1. **Discriminations resulting from failing to acknowledge the specificities of mixed passenger-freight airports, specifically those of all-freight airports**

21. **Failing to acknowledge the specificities of mixed passenger-freight leads to treating equally two situations that are yet different.** By ignoring the yearly average number of passengers for mixed passenger-freight airports (section 0), the EC puts on a same footing (i.e. requires an individual notification for all) airports that are yet different. As it appears from above (section 4), all-freight airports are under a very different economic situation than that of mixed passenger-freight airports with a substantial passenger activities. If this is so, then the situation of Liege Airport15 is *radically different* than that of other mixed passenger-freight airports under an obligation to notify individually under the Draft Guidelines, as it appears from the following table:

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15 And that of the airport of Luxembourg.
Table 3 – average passenger-freight over the last two years

<table>
<thead>
<tr>
<th></th>
<th>PASSENGERS</th>
<th></th>
<th>FREIGHT</th>
<th></th>
<th></th>
</tr>
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<tbody>
<tr>
<td></td>
<td>2011</td>
<td>2012</td>
<td>Average for the last two years</td>
<td>2011</td>
<td>2012</td>
</tr>
<tr>
<td>Vienne (VIE)</td>
<td>21.106.3</td>
<td>22.165.6</td>
<td>21.635.9</td>
<td>199.810</td>
<td>178.128</td>
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<tr>
<td></td>
<td>30</td>
<td>50</td>
<td></td>
<td>90</td>
<td></td>
</tr>
<tr>
<td>London (STN)</td>
<td>18.046.7</td>
<td>17.463.7</td>
<td>17.755.2</td>
<td>203.830</td>
<td>214.904</td>
</tr>
<tr>
<td></td>
<td>77</td>
<td>94</td>
<td></td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>Hahn (HHN)</td>
<td>2.894.36</td>
<td>2.767.64</td>
<td>2.831.00</td>
<td>286.416</td>
<td>175.702</td>
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<tr>
<td></td>
<td>3</td>
<td>0</td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>East Midlands (EMA)</td>
<td>4.259.81</td>
<td>4.086.84</td>
<td>4.173.33</td>
<td>266.498</td>
<td>267.350</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>9</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Munich (MUC)</td>
<td>37.763.7</td>
<td>38.360.6</td>
<td>38.062.1</td>
<td>286.201</td>
<td>272.203</td>
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<tr>
<td></td>
<td>01</td>
<td>04</td>
<td></td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>Madrid (MAD)</td>
<td>49.644.3</td>
<td>45.175.5</td>
<td>47.409.9</td>
<td>393.431</td>
<td>359.360</td>
</tr>
<tr>
<td></td>
<td>02</td>
<td>01</td>
<td></td>
<td>02</td>
<td></td>
</tr>
<tr>
<td>Brussels (BRU)</td>
<td>18.756.2</td>
<td>18.943.6</td>
<td>18.849.9</td>
<td>418.898</td>
<td>394.870</td>
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<tr>
<td></td>
<td>03</td>
<td>88</td>
<td></td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Milan (MXP)</td>
<td>19.291.4</td>
<td>18.522.7</td>
<td>18.907.0</td>
<td>440.258</td>
<td>405.858</td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>60</td>
<td></td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>Liège (LGG)</td>
<td>309.206</td>
<td>303.495</td>
<td>306.351</td>
<td>674.470</td>
<td>576.664</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Luxembourg (LUX)</td>
<td>1.790.79</td>
<td>1.912.80</td>
<td>1.851.79</td>
<td>656.653</td>
<td>614.906</td>
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<td></td>
<td>8</td>
<td>0</td>
<td></td>
<td>4</td>
<td></td>
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<tr>
<td>Leipzig (LEJ)</td>
<td>2.263.66</td>
<td>2.279.22</td>
<td>2.271.44</td>
<td>743.980</td>
<td>846.086</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>1</td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>London (LHR)</td>
<td>69.433.5</td>
<td>70.038.8</td>
<td>69.736.1</td>
<td>1.484.48</td>
<td>1.464.59</td>
</tr>
<tr>
<td></td>
<td>65</td>
<td>04</td>
<td></td>
<td>85</td>
<td></td>
</tr>
<tr>
<td>Amsterdam (AMS)</td>
<td>49.754.9</td>
<td>51.035.5</td>
<td>50.395.2</td>
<td>1.523.80</td>
<td>1.483.45</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>90</td>
<td></td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Frankfurt (FRA)</td>
<td>56.436.2</td>
<td>57.520.0</td>
<td>56.978.1</td>
<td>2.133.33</td>
<td>1.986.53</td>
</tr>
<tr>
<td></td>
<td>55</td>
<td>01</td>
<td></td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Paris (CDG + ORY)</td>
<td>88.109.6</td>
<td>88.441.1</td>
<td>88.476.9</td>
<td>2.405.62</td>
<td>2.029.88</td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>97</td>
<td></td>
<td>12</td>
<td></td>
</tr>
</tbody>
</table>

Source: ACI Europe

All airports highlighted in green in the table above fall under the single notification threshold under the Draft Guidelines due to their average yearly number of passengers per year only. Out of only four airports that do not currently qualify on the basis of the individual notification threshold for passengers (highlighted in blue and in red in the table), Liege Airport would have to notify under the threshold for freight only, while its yearly average for passengers is significantly lower than that of the other three airports. The average yearly passenger number for the last two
years for the top three airports is 2,318,082, while that of Liege Airport is only 306,351, i.e. 7.5 times smaller than the other three airports.\footnote{16}

These figures demonstrate that all-freight airports as Liege Airport do not compare with the other three airports. Yet all of them would have to notify on the sole basis of the (single) freight notification threshold only, as if they were falling under some kind of similar/comparable category of airports, which is obviously not the case as table 1, read in the light of the economic considerations under section 4 above, clearly illustrates it.

It appears from these figures that these situations, although not comparable, are treated similarly under the individual notification threshold for freight activities/mixed passenger-freight airports.

22. **The single notification threshold for mixed passenger-freight airports is discriminatory.** Failing to do this without objective justifications (which the EC fails to provide when it comes to mixed passenger-freight airports, as explained above) would amount to treating similarly two situations that are different, which amounts to a discrimination prohibited by the Treaty.\footnote{17} The fact that the Guidelines are soft law does not mean the EC does not have to comply with the general principle of equal treatment. This is confirmed by the case law of the Court on ‘soft law’ of the EU, including on guidelines. It appears from this case law that the Court makes a link between the legal effects of soft law instruments and the *limitation of the power of the Commission to principles of law such as legal certainty, equality and legitimate expectations*. In *Dansk Rørindustri*, the Court stated that, after adopting and publishing the guidelines on fines, the EC cannot depart from the provisions under these:

> ‘Under the pain of being found, where appropriate, to be in breach of the general principles of law, such as *equal treatment* or the protection of legitimate expectations. (...) Furthermore, they ensure that alike cases are not treated in an unlike manner, and that the Commission follows the same criteria when it applies hard law instruments.’\footnote{18}

The importance of the principles of equality is further underlined by the judgments in the case *Archer Daniels Midland (ADM) v Commission*.\footnote{19} The Court of First Instance found that the fines were wrongly calculated by the Commission, *who took into account only the worldwide turnover of ADM, and not the EEA turnover*.

23. **Negative consequences of such discrimination.** This (prohibited) discrimination has two practical consequences from the viewpoint of Liege Airport/for Liege Airport:

- This discrimination challenges the view of the EC according to which *mixed* passenger-freight airports with a yearly average freight\footnote{20} number over 200,000 tonnes of freight present *ipso facto* – and all of them\footnote{21} – a ‘higher risk of distortion of competition’. This premise has not ground and is incorrect.

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\footnote{16}{We observe that while under the 2005 Guidelines, Liege Airport qualifies as a small regional airport (category D airport), the three others do not qualify as such.}
\footnote{17}{Case C-217/91, Spain vs. Commission.}
\footnote{18}{Case C-189/02 P, Dansk Rørindustri.}
\footnote{19}{Case C-511/06 P of Case C-397/03 P of Case C-329/01 of ..., Archer Daniels Midland Co. v Commission, § (T329/01, § 107).}
\footnote{20}{And only freight!}
\footnote{21}{Thus also all-freight airports.}
• All-freight airports as Liege Airport will find it excessively burdensome to having to notify individually, taking into account their specificities. Liege Airport is certainly a smaller airport than the other mixed passenger-freight airports in table 3 above and we do not see why Liege Airport will have to notify individually as the three others will have to.

In addition, the single freight threshold of mixed passenger-freight airports leads to partial consequences. Guidelines are sources of (soft) law of general nature. It is constant case law of the Court of Justice that guidelines are of general scope. This means that they apply to situations determined objectively and have legal effects with regard to categories of persons referred to in a general and abstract manner. With this respect, the case law of the Court regarding the general application of Regulations is relevant. According to the Court, the fact that Regulations have general scope means that they apply to objectively determined situations and produce legal effects ‘with regard to categories of persons regarded generally and in the abstract’. According to the Court:

22. 'The nature of a measure as a regulation is not called in question by the possibility of determining more or less precisely the number or even the identity of the persons to whom it applies at a given moment as long as it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to the objective of the latter.'

As mentioned above, it is doubtful that the individual notification threshold for mixed passenger-freight airport is objectively justified. It therefore applies to individual situations targeted by the Draft Guidelines which are not in relation to the objective of the Guidelines.

24. Curiously, the single threshold for mixed passenger-freight airports only targets two airports in the EU, i.e. Liege Airport and the airport of Luxembourg. Indeed, the airports of Hahn and of Leipzig, highlighted in blue in table 3 above, fall short of the 3 Mio passenger threshold and are expected to meet this threshold in a short time span. Therefore, the single threshold for freight would have the consequence that only two airports, i.e. Liege Airport and the airport of Luxembourg, would have to notify on this basis. These airports compete against the airport of Brussels and of Cologne, which already have to notify on the basis of their yearly average number of passengers, which is curious... Besides, it is doubtful that, by providing this threshold, the EC complies with the case law of the Court on the general application of guidelines.

The figures therefore show that the Draft Guidelines fail to apply in an objective and abstract fashion. It appears from the above table that the individual notification threshold for mixed passenger-freight airports does not apply to a category of airports defined objectively and abstractly. The Draft Guidelines are therefore highly disputable on this specific point.

25. For all these reasons, the single notification threshold for mixed passenger-freight airports must be discarded and, if not, must be replaced by a double threshold (passenger and freight). As it is discriminatory towards mixed passenger-freight airports, the single threshold of 200k of freight a year must be discarded/deleted.

22 Case C-189/02 P, Dansk Rørindustri, § 213.
23 Indeed, under Article 288 TFEU, ‘A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States’ (our highlight).
24 Case C-101/76, Koninklijke Scholten Honig/Raad en Commissie, §§ 21 and 23.
If the EC acknowledges a new type of activity under the Draft Guidelines – i.e. freight activities – the EC, should it be willing to maintain a separate threshold for mixed passenger-freight airports – must further reflect this in the thresholds it sets in the Guideline. It was fine, in the past, to refer to passengers only (single threshold), as freight was not acknowledged at all. But now that freight is acknowledged, it is not fine anymore to refer to one type of activity only when it comes to mixed activities. In other words:

- When it comes to passengers only airports, the EC can stick to one (single) threshold by type of activity only (passenger activity); but
- When it comes to mixed passenger-freight airports, the EC, should it be willing to maintain a separate threshold for mixed passenger-freight airports at all, must require a double threshold so as to have one threshold for passenger activities (one million passengers a year e.g.) and, cumulatively, one additional threshold for freight activities.

V.2. Discrimination resulting from the catchment area definition

26. The definition of the catchment area under the Draft Guidelines leads to incongruous consequences – failure to take into account the specificities of densely populated areas. For instance, under §§ 99 and 112, the EC is of the opinion that ‘due to a higher risk of competition distortion’, ‘investment aid aimed at the creation or development of an airport located in the same catchment area of an existing airport’ must be subjected to an individual notification. This is absurd because this does not take into account the geographical specificities of some regions of Europe, especially those of the most densely populated area of Europe that is the Paris-Amsterdam-Frankfurt triangle.

Example 1 – notification obligation of the (very small) airport of Maastricht/Aachen

| Take the example of Liege Airport and of the airport of Maastricht/Aachen that are located only 51.5 km away. Over the last two years, the airport of Maastricht/Aachen had a yearly average of 311,500 passengers and an average of 91,250 tonnes of freight a year.25 | So, although it is undisputable that the airport of Maastricht/Aachen is a very small airport, any (investment and/or operational) aid granted to this airport would have to be notified on the basis of the catchment area notification threshold under §§ 99 and 112 of the Draft Guidelines... This notification criterion is absurd and will lead to undue burdens on small airports like Liege Airport and on very small airports, like the airport of Maastricht/Aachen... |

27. The definition of the catchment area under the Draft Guidelines leads to anticompetitive consequences – failure to take into account the specificities of (express) freight activities. Under § 79, the EC is of the opinion that there are in principle ‘doubts as to the medium term prospects for the use of new infrastructure at an airport located in the catchment area of an existing airport. The medium term prospects for use should be demonstrated on the basis of sound passenger and freight traffic forecasts incorporated in ex-ante business plan and must take into account the likely effect of the investment on the use of already existing infrastructure, such as another airport or other modes of transport, in particular high-speed train connection’. Again, this assumption does not take into account the specificities of freight activities; in particular those of cargo vs. express (day + 1) freight activities.

Take again the example of Liege Airport and that of the airport of Maastricht/Aachen. Among other things (see n° 2 above), Liege Airport is the European hub of TNT express activities in Europe. Carrying out express activities at a given airport implies very different kinds of infrastructure than carrying out cargo activities: – besides being treated manually, products/packages need to be treated automatically; – airports must be equipped with long and special conveyor belts; – interconnection with land transportation means; – and so on. So any kind of investment at Liege Airport is intrinsically different than investments at the airport of Maastricht/Aachen that does not specialise in express activities. By failing to recognise the specificities of freight activities in the catchment area definition, the EC therefore generates prejudices towards airports active in this segment of the market, as the one illustrated in § 79.

28. The failure to reflect the specificities of freight activities is however not a surprise as the 2011 Consultation does not provide for insight regarding it. From our review of 74 responses to the EC gathered during the 2011 Consultation, it appears that only 26 of these contributions mention mixed passenger-freight airports, as already mentioned above (n° 32). From these 26 contributions, only 13 deal with the catchment area for freight. The contributions of all French organisations specify for instance that the market for freight transportation is subjected to ‘access and multimodal constraints’. The contribution of the law firm Pavia e Ansaldo specifies that:

‘As regards the market definition, for the freight transport, it is based on different parameters, given the structural difference with the passenger segment. Here, the demand is represented by airlines only, which can decide where to locate their logistic base according to different parameters: the reduced congestion of an airport both air side and land side; a faster turn-around time; shorter bureaucratic times (for example for customs and sanitary controls); inferior airport fees; lower costs of storage of goods in the surrounding areas; greater space and inferior costs for stocks’.

Apart from the above few contributions, which confirm that the catchment area for freight activities must be different than that for passenger activities, the other contributions do not acknowledge freight at all when it comes to commenting on the catchment area...

29. The catchment area, as it does not account for the specificities of freight activities but yet applies to mixed passenger-freight airports, is therefore discriminatory. Failing to apply a specific definition without objective justifications (which the EC fails to provide when it comes to freight activities as explained in n° 28 above) would amount to treating similarly two situations that are different, which amounts to a discrimination prohibited by the Treaty. If the EC acknowledges freight activities, the EC must provide for a separate catchment area for freight as well.

30. Finally, the catchment area offered by the EC aims at combatting the perceived ‘overcapacity’ of (regional) airports. This is a very dangerous reasoning. Indeed, everyone agrees in the industry that there will be a shortage of capacity, be it for passenger and/or for freight activities, in the forthcoming years. Both Eurocontrol and ACI are of the opinion that the major airports in the EU will have to face problems of congestion due to shortages of capacity within the 10-20 time horizon. In such a context, small regional airports can offer additional capacity to carriers of both passengers and freight. This is so provided they have invested in the infrastructure necessary for accommodating these, especially when it comes to freight handling and, in particular, express freight handling, which

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requires specific infrastructure, as explained above (n° 27). The policy of the EC in the field of state aids should be coordinated with the needs of the development of the whole industry.

VI. LACK OF SUFFICIENT AND RELIABLE DATA WITH RESPECT TO MIXED PASSENGER-FREIGHT AIRPORTS

31. The Draft Guidelines are based on insufficient and disputable evidence regarding mixed passenger-freight airports. The issues identified in this note (section V) might be due to the lack of sufficient and reliable data with respect to mixed passenger-freight airports. This lack is acknowledged by the EC itself, who recognises at §20 of the Draft Guidelines that ‘the Commission has not yet gathered sufficient experience in assessing the compatibility of aid to airports and airlines specialised in freight transport to summarise its practice in the form of specific compatibility criteria’. This is why, unlike for passenger airports, the Draft Guidelines do not provide for maxima of investment and aid intensity by size of airports based on average annual passenger traffic.\(^27\) Yet, at §§ 99 and 112, the EC is of the opinion that mixed passenger/freight airports handling more than 200.000 tonnes of freight have a ‘higher risk of distortion of competition’. Liege Airport finds it curious that the EC is able to identify such a risk while the EC does not have sufficient experience with aid to mixed passenger-freight airports, as it acknowledges it... Rather, the EC should have sufficient and sound economic evidences regarding mixed passenger-freight airports before concluding that those with an annual average freight of 200.000 tones present higher risks of competition concerns than others.

32. The 2011 Consultation does not provide for sufficient evidence regarding mixed passenger-freight airports. The 2011 Consultation does not provide for sound economic evidence regarding mixed passenger-freight airports. Indeed, from our review of 74 responses to the EC (out of 89 in total)\(^28\) gathered during the 2011 Consultation, it appears that only 26 of these contributions mention mixed passenger-freight airports. All other responses are about passenger airports only. From these 26 responses, only 2 address the issue of thresholds regarding mixed passenger-freight airports specifically. The level of data generated by the 2011 Consultation regarding mixed passenger-freight airports is therefore very low... In itself, the 2011 Consultation does not provide sufficient indications/evidences regarding mixed passenger-freight airports. This is all the more true that the study carried out by the Cranfield University in 2002 does not provide much inside on competition between mixed passenger-freight airports. A review of this study shows it does not provide any indication at all regarding thresholds for mixed-passenger freight airports.

33. In fact, the 2011 Consultation provide for disputable evidence regarding the individual notification threshold for mixed passenger-freight airport. It is worth noting that the only threshold provided by respondents to the 2011 Consultation that may have lead the EC to opt for a 200k individual notification threshold for freight airports is the response from the Flemish Region (Belgium)

\(^{27}\) Under §92 airports with an annual average passenger traffic beyond 5 million EUR are not entitled to aid, while airports with an annual average passenger traffic below 1 million EUR are entitled to an aid up to 75% e.g.

\(^{28}\) We reviewed all responses provided to the EC in English, French, Dutch, German and Spanish. We did not review the responses provided to the EC in other official languages of the EU (such as e.g. in Hungarian).
In its response to question B.3.2, the Flemish Region is of the opinion that:

‘Het opstellen van een vrijstellingsverordening voor kleine luchthavens wordt sterk gesteund teneinde te vermijden dat telkens nieuwe aanmeldingen nodig zijn in analoge dossiers. De vrijstelling is dan best toepasbaar \textit{op luchthavens tot 250.000 MTON voor vrachtvervoer en tot 1 miljoen passagiers (categorie D) voor passagierstransport}’.\textsuperscript{29}

It is worth noting that the sole airport in the Flemish Region able to compete with Liege Airport in terms of freight transport, besides the airport of Zaventem, is the airport of Ostend, located 212 km from Liege Airport. While Liege Airport had an average of 625,567 tonnes of freight over the last two years, it is interesting to note that the average tonnes of freight of the airport of Ostend is 55,273,5 tonnes,\textsuperscript{30} thus \textit{well below} the threshold put forward by the Flemish Region...

It goes without saying that this contribution, which is the only contribution out of the 74 contributions analysed by us providing a thresholds for freight airports, is \textit{not credible} and must be discarded. The individual notification threshold for mixed passenger-freight airports put forward by the EC in the Draft Guidelines, as it is obviously based on very questionable evidence, is therefore \textit{not} credible.

VII. THE DRAFT GUIDELINES DO NOT TAKE INTO ACCOUNT THE FUTURE NEEDS OF THE MARKET RESULTING FROM AIRPORT CONGESTION

34. The necessity to face the important increase of the international air traffic. According to the 2011 Airport Package of the EC\textsuperscript{31}, airports are a vital part of the European variation system and economy. Europe’s major airports are facing a capacity crunch; air traffic in Europe will nearly double by 2030 and Europe is not in a position to meet large part of this demand due to a shortage of airport capacity as the EC indicates it in this Study. In order for Europe to stay competitive in the international market, the first necessity is to adapt the capacity on the ground. Indeed, tripling capacity in the air will be pointless without matching capacity on the ground. Airport capacity must be optimised and increased.\textsuperscript{32}

\textsuperscript{29} Working translation into English: ‘We strongly support the preparation/draw up of an exemption regulation for small airports in order to avoid that analogous files require new notifications each time. In so doing, the exemption should be applicable to airports until 250.000 tonnes for freight traffic and until 1 million passengers (category D) for passenger traffic’.


\textsuperscript{32} \textit{Ibidem}. 
Table 4 – Forecast airport congestion

<table>
<thead>
<tr>
<th>Airport</th>
<th>2010</th>
<th>2017</th>
<th>2025</th>
<th>Capacity assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amsterdam Schiphol</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Assumes annual movement cap raised to 510,000 in November 2010 but no further increase</td>
</tr>
<tr>
<td>Dublin</td>
<td>Sufficient capacity most of all day</td>
<td>Sufficient capacity most of all day</td>
<td>Sufficient capacity most of all day</td>
<td>Second runway built when needed</td>
</tr>
<tr>
<td>Düsseldorf</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Assumes a 10% increase in capacity in 2015 but no further increase</td>
</tr>
<tr>
<td>Frankfurt</td>
<td>Demand exceeds capacity most of all day</td>
<td>Sufficient capacity most of all day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>New runway (2011) and terminal (2015) allow increases from 83 to 126 movements/hour</td>
</tr>
<tr>
<td>London Gatwick</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Assumes no new runway but increase of 2-3 movements/hour on current runway</td>
</tr>
<tr>
<td>London Heathrow</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Assumes no third runway, or mixed mode, or relaxation of annual movement cap</td>
</tr>
<tr>
<td>Madrid Barajas</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Assumes ATC improvements increase capacity from 98 to 120 movements/hour by 2020 (increase phased in from 2014)</td>
</tr>
<tr>
<td>Milan Linate</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Assumes no amendment to Bersani Decree</td>
</tr>
<tr>
<td>Munich</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Sufficient capacity most of all day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Assumes third runway operational by 2017</td>
</tr>
<tr>
<td>Palma de Mallorca</td>
<td>Sufficient capacity most of all day</td>
<td>Sufficient capacity most of all day</td>
<td>Sufficient capacity most of all day</td>
<td>Assumes additional capacity added when required</td>
</tr>
<tr>
<td>------------------</td>
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<td>----------------------------------</td>
<td>----------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>Paris CDG</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Assumes increase from 114 to 120 movements/hour by 2015, but no further increase (e.g. fifth runway)</td>
</tr>
<tr>
<td>Paris Orly</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Demand exceeds capacity most of all day</td>
<td>Assumes no relaxation of annual slot cap</td>
</tr>
<tr>
<td>Rome Fiumicino</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Assumes improved ATC allowing 100 movements/hour but no new runway</td>
</tr>
<tr>
<td>Vienna</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Demand exceeds capacity during part of the day</td>
<td>Assumes third runway operational in 2020, initially allowing 80 movements/hour to 90 movements/hour by 2025</td>
</tr>
</tbody>
</table>

Source: Study prepared by steer Davies Gleave “Impact assessment of revisions to regulation 95/93

35. Regional airports present one of the main solutions to reduce the congestion at national airports by increasing the capacity on the ground. It is important to develop these small airports in order to stay competitive in the international air traffic. Imposing heavy formalities on these airports will impede them to develop fast and provide Europe the necessary capacity to face the international air traffic changes. In so doing, the Draft Guidelines are written in opposition with the European policy concerning air traffic.33

VIII. OTHER ISSUE: REMOVAL OF THE SGEI EXEMPTION FOR SMALL REGIONAL AIRPORTS BETWEEN 200K AND ONE MIO PASSENGERS A YEAR

36. The Draft Guidelines raises the bar when it comes to the SGEI exemption. Under the 2005 Guidelines, the public service compensation constituting State aid granted to category D airports (entrusted with a mission of economic interest), i.e.

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33 For another example of the EC actions to solve the problem of the airports congestion and allow Europe to compete in the international air traffic market, see: EC Press Release ‘Airports: Up to 28 million additional passengers could travel each year with more efficient use of European airport slots’, http://europa.eu/rapid/press-release_IP-11-659_en.htm?locale=en (accessed in September 2013).
airports with an average of 1 Mio passengers a year, were exempted from prior notification obligation provided they would comply with the SGEI Decision. The Draft Guidelines raises the bar when it comes to this exemption; under § 68, the public service compensation granted in the form of State aid is exempted from the notification obligation for airports where the average annual traffic does not exceed 200,000 passengers on a yearly average for the duration of the SGEI contract.

34. Yet, this is totally unrealistic and prejudicial to small airports taking into account the economic slowdown following the economic crisis. By raising the bar for benefitting from the SGEI exemption, the EC fails to recognise the economic specificities of small regional airports. Indeed, as the EC paradoxically itself recognises it in the Draft Guidelines, one million passengers a year is the minimal threshold for profitability. This is all the more true following the 2008 crisis, which has considerably slowed the growth of small regional airports. A study of ACI, based on 427 airports (which is more representative than the sample of 245 airports of the EC) indeed reveals that the historical growth of small regional airports since 2001, which was predicted to reach the million passenger threshold in 2010, cannot be duplicated in the forthcoming future. Out of the 114 airports that were identified in 2001 as reaching this threshold in 2010, 42 to 45 of them have reached this bar between 2001 and 2006, i.e. well before the 2008 crisis. The expected slowdown of economic growth in the forthcoming decade, coupled to a market that is now mature will lead to a slower growth of traffic in the next ten years. This is confirmed by Eurocontrol, who estimates that the air traffic peak known in 2008 will only be outgrown in 2016.

35. Raising the bar today will thus lead to the shutdown of numerous small regional airports tomorrow. As it is generally recognised (also by the EC) that small regional airports between 200k and one Mio passengers a year ‘are usually not able to cover to a large extent their capital costs [and/or part of their operational costs, including specifically] their maintenance costs’ and as the growth perspectives of these airports for the next ten years is expected to be seriously limited, numerous small regional airports are due to disappear should the Draft Guidelines be enacted as such. This would have disastrous economic and social consequences for the affected regions.

It is therefore necessary to maintain the SGEI exemption for all category D airports, including for small regional airports with an average of 200k to one Mio passengers a year.

IX. CONCLUSIONS

39. Taking the above into consideration, Liege Airport first urges the EC to remove the discriminations generated by the Draft Guidelines with respect to mixed passenger-freight airports, in particular with respect to freight airports, potentially also regarding those dealing with express freight (day + 1). This will contribute removing the anticompetitive effects of the Draft Guidelines. Liege Airport second urges the EC to gather a better understanding of freight activities and how they

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36 Draft Guidelines, § 82, b).
interrelate with other transportation means (multimodality) and to have this reflected in its state aid policy towards mixed passenger-freight airports and/or freight airports. To that effect, the EC should gather sufficient and reliable information/data regarding mixed passenger-freight airports/freight airports, including from the Case Handler of case M.6570 - UPS/TNT EXPRESS, Mr. Stefan Simon and from what follows.

40. **Failing to do this would generate legal uncertainty** for two airports in the EU specifically, including Liege Airport.

41. **More emphasis should be put on the interaction of the EC state aid policy with other policies of the EU.** It appears from the above that, when compared to the Communication on Ports, the Draft Guidelines blatantly fail to address small regional airports and/or freight airports as a part of an integrated EU transport policy and/or with the TEN-T policy. This is why, Liege Airport urges the EC to follow the same approach than that followed by the services of the EC responsible for the Communication on Ports. More emphasis should be put on the relationship between the state aid policy/the Draft Guidelines and the TEN-T policy.

42. **Moreover the Draft Guidelines should take into account the necessity to stay competitive in the international environment.** To compete on the international market Europe should have enough national but also regional airports, which help to raise the capacity on the ground and to avoid national airports congestion.

43. **Recommended solution taking into account the shortcomings identified in the present note. De deux choses l’une:**

   • Should the EC be of the opinion that the data it gathered are ‘sufficient’, then the EC should remove freight airports from the Draft Guidelines.

   • Should the EC be willing to include them and, in so-doing, to create the first legislation on this sector referring to mixed passenger freight-airport, considering the lack of information and data necessary to understand this specific sector, the EC will need to carry out in-depth research and data collection and to further develop the European legislation on the freight airports.

The fact that airports as Liege Airport are so specific cannot, in itself, justify an individual notification. It indicates that policies and positions of the EC need to be adequate and non-discriminatory, taking into account the sector specificities, but nothing more than that.

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