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Contents

II Non-legislative acts

REGULATIONS

- ★ **Commission Implementing Regulation (EU) 2023/102 of 11 January 2023 amending Implementing Regulation (EU) 2017/39 as regards Member States' requests for Union aid** 1
- ★ **Commission Implementing Regulation (EU) 2023/103 of 12 January 2023 amending Implementing Regulations (EU) No 1242/2014 and (EU) No 1243/2014 as regards technical specifications and rules for the presentation of cumulative data on operations and information to be sent by Member States** 3
- ★ **Commission Implementing Regulation (EU) 2023/104 of 12 January 2023 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products following a report adopted by the World Trade Organization's Dispute Settlement Body** 7

DECISIONS

- ★ **Commission Decision (EU) 2023/105 of 26 July 2022 on the measures SA.33960 2012/C (ex 2012/NN) implemented by the French Republic in favour of the successive managers of Beauvais-Tillé airport and the airlines operating there (notified under document C(2022) 5076) ⁽¹⁾** 28
- ★ **Commission Implementing Decision (EU) 2023/106 of 11 January 2023 fixing the indicative allocations of Union aid to Member States for school fruit and vegetables and for school milk for the period from 1 August 2023 to 31 July 2029** 84

⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2023/102**of 11 January 2023****amending Implementing Regulation (EU) 2017/39 as regards Member States' requests for Union aid**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 25, first paragraph, point (d), thereof,

Whereas:

- (1) Pursuant to Article 3 of Commission Implementing Regulation (EU) 2017/39 ⁽²⁾, Member States wishing to participate in the Union aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments (the school scheme) are to submit to the Commission by 31 January each year their request for Union aid relating to the next school year. In accordance with that provision, Member States' requests for Union aid are to include information on the indicative allocation of Union aid for school fruit and vegetables and for school milk set out in Annex I to Council Regulation (EU) No 1370/2013 ⁽³⁾. That Annex sets out the annual indicative allocations of Union aid, per Member State, for school fruit and vegetables and for school milk for the period from 1 August 2017 to 31 July 2023.
- (2) In accordance with Article 5(4) of Regulation (EU) No 1370/2013, from 1 August 2023, the annual indicative allocation of Union aid, per Member State, for school fruit and vegetables and for school milk are to be fixed by the Commission by means of implementing acts. Commission Implementing Decision (EU) 2023/106 ⁽⁴⁾ fixes the annual indicative allocations for the period from 1 August 2023 to 31 July 2029. Therefore, the reference in Article 3 of Implementing Regulation (EU) 2017/39 to the indicative allocations of Union aid in Annex I to Regulation (EU) No 1370/2013 should be amended accordingly.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Implementing Regulation (EU) 2017/39 of 3 November 2016 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments (OJ L 5, 10.1.2017, p. 1.).

⁽³⁾ Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products (OJ L 346, 20.12.2013, p. 12.).

⁽⁴⁾ Commission Implementing Decision (EU) 2023/106 of 11 January 2023 fixing the indicative allocations of Union aid to Member States for school fruit and vegetables and for school milk for the period from 1 August 2023 to 31 July 2029 (see page 84 of this Official Journal).

- (3) To allow Member States to submit their annual request for Union aid relating to the school year for the period from 1 August 2023 to 31 July 2024 by the deadline of 31 January 2023 set out in Article 3 of Implementing Regulation (EU) 2017/39, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 3, first paragraph, point (a), of Implementing Regulation (EU) 2017/39, point (i) is replaced by the following:

‘(i) the indicative allocation of aid for school fruit and vegetables and for school milk set out in the Annex to Commission Implementing Decision (EU) 2023/106 (*);

(*) Commission Implementing Decision (EU) 2023/106 of 11 January 2023 fixing the indicative allocations of Union aid to Member States for school fruit and vegetables and for school milk for the period from 1 August 2023 to 31 July 2029 (OJ L 12, 13.1.2023, p. 84).’.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/103**of 12 January 2023****amending Implementing Regulations (EU) No 1242/2014 and (EU) No 1243/2014 as regards technical specifications and rules for the presentation of cumulative data on operations and information to be sent by Member States**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund ⁽¹⁾, and in particular Articles 97(2) and 107(3) thereof,

Whereas:

- (1) Regulation (EU) No 508/2014 on the European Maritime and Fisheries Fund provides for specific measures to alleviate the consequences of the military aggression of Russia against Ukraine on fishing activities and to mitigate the effects of the market disruption caused by that military aggression on the supply chain of fishery and aquaculture products (hereinafter 'specific measures').
- (2) In order to allow a reliable monitoring and reporting of operations related to the specific measures, adjustments should be made to the technical specifications and rules for the presentation of cumulative data on operations and information to be sent by Member States pursuant to Commission implementing Regulations (EU) No 1242/2014 ⁽²⁾ and (EU) No 1243/2014 ⁽³⁾.
- (3) Since the deadline for providing cumulative data on operations by 31 March each year pursuant to Article 97(1)(a) of Regulation (EU) No 508/2014 is already passed for 2022, Member States should submit this information in the amended format only as of 2023, so as to ensure a consistent and harmonised reporting.
- (4) Implementing Regulations (EU) No 1242/2014 and (EU) No 1243/2014 should therefore be amended accordingly.
- (5) In order to ensure sufficient time is provided for Member States to report cumulative data on operations related to the specific measures by the deadline of 31 March 2023, this Regulation should enter into force as soon as possible.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the European Maritime, Fisheries and Aquaculture Fund,

HAS ADOPTED THIS REGULATION:

*Article 1***Amendments to Implementing Regulation (EU) No 1242/2014**

Annex I to Implementing Regulation (EU) No 1242/2014 is amended in accordance with Annex I to this Regulation.

⁽¹⁾ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

⁽²⁾ Commission implementing Regulation (EU) No 1242/2014 of 20 November 2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the presentation of relevant cumulative data on operations (OJ L 334, 21.11.2014, p. 11).

⁽³⁾ Commission implementing Regulation (EU) No 1243/2014 of 20 November 2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the information to be sent by Member States, as well as on data needs and synergies between potential data sources (OJ L 334, 21.11.2014, p. 39).

*Article 2***Amendments to Implementing Regulation (EU) No 1243/2014**

Annex I to Implementing Regulation (EU) No 1243/2014 is amended in accordance with Annex II to this Regulation.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

In Annex I to Implementing Regulation (EU) No 1242/2014, in the table, in entry 25, the text of the second column ('Content of field') is replaced by the following:

'Mitigation of the COVID-19 outbreak or measures to alleviate the consequences of the military aggression of Russia against Ukraine on fishing activities and to mitigate the effects of the market disruption caused by that military aggression on the supply chain of fishery and aquaculture products'.

ANNEX II

In Annex I to Implementing Regulation (EU) No 1243/2014, Part F is replaced by the following:

‘PART F

Mitigation of the COVID-19 outbreak and of the effects of the market disruption caused by the military aggression of Russia against Ukraine on the supply chain of fishery and aquaculture products and alleviation of the consequences of that military aggression on fishing activities

Field	Content of field	Comment	Data needs and synergies
25	Mitigation of the COVID-19 outbreak or measures to alleviate the consequences of the military aggression of Russia against Ukraine on fishing activities and to mitigate the effects of the market disruption caused by that military aggression on the supply chain of fishery and aquaculture products	Code 0 = non-related to COVID-19 or to measures to alleviate the consequences of the military aggression of Russia against Ukraine on fishing activities and to mitigate the effects of the market disruption caused by that military aggression on the supply chain of fishery and aquaculture products Code 1 = COVID-19 related Code 2 = related to the measures to alleviate the consequences of the military aggression of Russia against Ukraine on fishing activities and to mitigate the effects of the market disruption caused by that military aggression on the supply chain of fishery and aquaculture products	EMFF specific'

COMMISSION IMPLEMENTING REGULATION (EU) 2023/104**of 12 January 2023****amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products following a report adopted by the World Trade Organization's Dispute Settlement Body**

THE EUROPEAN COMMISSION,

Having regard to Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports ⁽¹⁾ and in particular Articles 16 and 20 thereof,

Having regard to Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries ⁽²⁾, and in particular Articles 13 and 16 thereof,

Whereas:

Background

- (1) By Commission Implementing Regulation (EU) 2018/1013 ⁽³⁾ ('the Provisional Regulation'), the Commission imposed a provisional safeguard measure on certain steel products. By Commission Implementing Regulation (EU) 2019/159 ⁽⁴⁾ ('the Definitive Regulation'), the European Commission imposed a definitive safeguard measure on certain steel products ('the safeguard measure').
- (2) On 13 March 2020, Türkiye requested consultations with the European Union pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ('DSU'), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 14 of the Agreement on Safeguards ('AoS').
- (3) Consultations between the European Union and Türkiye were held on 29 April 2020 but did not resolve the dispute.
- (4) On 16 July 2020, Türkiye requested the establishment of a panel. A panel was established on 28 August 2020. The Panel Report was circulated on 29 April 2022. Since none of the parties appealed the panel report, it was adopted by the Dispute Settlement Body ('DSB') on 31 May 2022 ⁽⁵⁾.
- (5) By communication to the WTO of 5 August 2022 ⁽⁶⁾, Türkiye and the European Union informed that, pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, they had agreed that the reasonable period of time for the European Union to implement the recommendations and rulings of the DSB in the dispute *European Union – Safeguard Measures on Certain Steel Products* (DS595) will expire on 16 January 2023, which is seven months and sixteen days from the day of adoption of the DSB recommendations and rulings on 31 May 2022.
- (6) As a result of these events, the Commission published on 24 August 2022 a Notice of Initiation ⁽⁷⁾ informing of its intention to implement the Panel Report by bringing the original measure into conformity with WTO rules in those instances where the Panel had found inconsistencies, and inviting interested parties to submit comments.
- (7) Several parties submitted comments within the stipulated deadline, which were duly taken into account.

⁽¹⁾ OJ L 83, 27.3.2015, p. 16.

⁽²⁾ OJ L 123, 19.5.2015, p. 33.

⁽³⁾ Commission Implementing Regulation (EU) 2018/1013 imposing a provisional safeguard measure against imports of certain steel products (OJ L 181, 18.7.2018, p. 39).

⁽⁴⁾ Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing a definitive safeguard measure against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

⁽⁵⁾ WT/DS595/R *European Union – Safeguard Measures on Certain Steel Products*, 29 April 2022.

⁽⁶⁾ WT/DS595/13, 9 August 2022.

⁽⁷⁾ OJ C 320, 24.8.2022, p. 47.

Submissions from interested parties

- (8) Several interested parties submitted comments following the publication of the Notice of Initiation. As a preliminary observation, the Commission noted that some of the comments made by interested parties were mere repetitions of the Panel's findings.
- (9) The Commission first analysed the specific comments from the Government of Türkiye ('GOT'), as it was the party challenging the safeguard measure before the WTO DSB, and then it analysed the comments submitted by the other interested parties.
- (10) Regarding unforeseen developments GOT claimed that there is no evidence in the record that would allow the Commission to link the unforeseen developments with the increase in imports. It noted that there was a lack of coincidence in time between overcapacity and the increase in imports, that the Commission did not do the necessary examination of the TDI measures in third countries and their link to increase in imports, and that the US Section 232 were introduced after the increase in imports into the Union took place. GOT further claimed that if the Commission were to use new information should also consider the changes in the conditions that occurred during the period of time that the measure was in force, such as exclusion of several countries including the EU itself from Section 232 measures.
- (11) The Commission disagreed with GOT's views that this aspect of the measure could not be repaired. As shown in detail in Section 1.1 of the Annex, there was sufficient information available prior to the imposition of the Definitive Safeguard that showed clearly that imports into the Union had increased as a result of unforeseen developments. The Commission did not use any data that was not available at the time of imposing the definitive measure for the purpose of the Annex to this Regulation.
- (12) Regarding the findings pertaining to the threat of serious injury, GOT considered that the anti-dumping and countervailing measures could not be the reason of the recovery of the domestic industry. As regards the other factors that the Commission had relied on to explain the partial improvement of the performance of the Union industry in 2017, GOT noted that the Panel had concluded that those factors affected the domestic industry and imports in similar ways and therefore, they could not be used as an explanation of such improvement and that there was no indication to show that changes in these factors would benefit the imports more than domestic industry.
- (13) In this respect, the Commission referred to its findings in sections 1.2.1 and 1.2.2 of the Annex that contradict GOT's claims.
- (14) Lastly, GOT noted that the Panel had concluded that even if imports were set to increase in 2018, this does not automatically lead to the conclusion that there is a significant overall impairment in the position of the domestic industry, which is clearly imminent.
- (15) In this regard, the Commission explained in the Annex to this Regulation all the elements it took into account to determine that: i) imports were likely going to continue increasing; ii) such increase would have negative effects on the economic situation of the Union industry in light of the recent and expected future developments of key factors in the steel market in the Union and worldwide. Therefore, the substantive analysis carried out by the Commission did not assume that an increase in imports would, in itself and without considering other pertinent elements, cause serious injury to the Union industry in the absence of a safeguard measure. Rather, the Commission conducted a detailed analysis of the relevant elements that led it to reach the conclusion that if no measure was adopted, the Union industry would suffer serious injury. Therefore, GOT's claims were rejected.
- (16) Concerning the comments received from other interested parties, some of them argued that the Commission should terminate the measure altogether because the Panel's findings were of such nature that it made it impossible to implement the measure in a different way.

- (17) With respect to this general claim, the Commission noted that under WTO rules it has the right to implement the measure and bring it into conformity with the rules in those few aspects that the Panel found to be inconsistent with them. As shown in the Annex to this Regulation, the findings of the Panel were of a kind of nature that allowed the Commission to bring the measure into conformity with the relevant WTO provisions, and therefore, the termination of the measure was not warranted as a result of the Panel Report.

Increase in imports as a result of unforeseen developments and effects of obligations

- (18) An interested party noted that several changes had occurred to the US Section 232 measure and that the risk of trade diversion did no longer exist or would be much smaller, and as a result, the safeguard measure should be terminated.
- (19) The Commission noted that developments that took place after the imposition of the definitive measure fall outside the scope of data that can be relied upon for the implementation of the DSB report. The purpose of this investigation, as mentioned in the Notice of Initiation is to supplement the original findings with data already available at the time the original investigation was conducted. No ex-post facts were taken into account.
- (20) An interested party claimed that the increase in imports into the Union did not occur as a result of any of the obligations undertaken by the Union under GATT 1994 and that the Commission did not mention any of these obligations in its original determination.
- (21) The Commission referred to its explanations in section 1.3 of the Annex, which rebut this argument.
- (22) An interested party considered that there had not been unforeseen developments resulting in an increase in imports and because of this, the Commission could not implement this aspect of the Panel Report.
- (23) The Commission noted that this statement was factually incorrect as the Panel had confirmed ⁽⁸⁾ the unforeseen developments described by the Commission in the definitive safeguard. Therefore, this claim was rejected as unfounded.
- (24) An interested party noted that the risk of trade diversion and increased imports as a result of US Section 232 were not pertinent to its country for a number of reasons.
- (25) The Commission noted that the analysis of increased imports and risk of trade diversion was not done individually for each exporting country, but rather, as a whole, because the safeguard measure is to be applied erga omnes. In any event, the Commission wanted to point out that this interested party was focused not only on the specific situation of one exporting country but also on the specific situation of one steel-using industry, thus ignoring the performance from this exporting country in all the other steel-using segments. The Commission thus rejected this claim.

Threat of serious injury

- (26) Some interested parties considered that the findings of the Panel regarding this aspect of the measure were of such nature that did not allow the Commission to implement the measure without terminating it.
- (27) The Commission disagreed with this type of claim for the reasons set out in the Annex to this Regulation, where it proved that the original findings were valid and their justification was strengthened by the additional data and explanations supplied in the Annex to this Regulation.
- (28) Some interested parties recalled the Panel's finding that the Commission's explanation of the role of the anti-dumping and countervailing measures in the partial recovery of the Union industry was flawed.

⁽⁸⁾ See Panel Report, para. 7.117.

- (29) In this regard, the Commission acknowledged that the Panel took issue with the explanations provided in the definitive regulation. However, the purpose of the implementation exercise is precisely to allow the investigating authority to improve those aspects of the measure that the Panel considered flawed to some extent, such as the one referred to by these interested parties. Thus, the Commission provided the necessary additional information and explanations in Section 1.2.2 of the Annex as far as this finding of the Panel was concerned.
- (30) An interested party argued that if the Commission did not explicitly refer to some factors as having an impact on the state of the Union industry, it could not use them in their reasoning when implementing the measure.
- (31) The Commission noted that the Panel had taken issue with the level of details provided in some instances of the original measure. In the Annex to this Regulation, the Commission put forward those elements that it had considered when making the original decision but which were not spelled out in the definitive regulation. In the Commission's view, accepting the interested party claim would amount to saying that whenever an investigating authority is condemned for not providing sufficient level of detail in its explanations or reasoning, it could no longer have the opportunity to remedy it by means of implementation. The Commission disagreed with this view, as it considered that precisely the purpose of an implementation is to allow an investigating authority to bring its measure into conformity by e.g. providing a better and more complete reasoning than in the definitive regulation, as those were the findings by the Panel. Accordingly, it rejected the claim.
- (32) Some interested parties claimed that the mere prospect of a further increase in imports would not necessarily lead to a situation of serious injury for Union producers.
- (33) The Commission performed a detailed analysis of how a further increase in imports would take place and the reasons whereby such increase would lead to a situation of serious injury to the Union industry. Therefore, this claim was rejected.
- (34) Lastly, some interested parties brought up arguments such as performance of the Union industry in years after the imposition of the safeguard measure or developments that took place after such event, such as the situation of Union producers and other third countries under the US Section 232 measure, the evolution of imports or the 'energy crisis'.
- (35) The Commission rejected all these claims as they fell outside the substantive and timely scope of the implementation exercise, because they concerned events unrelated to the imposition of the definitive measure in early 2019.
- (36) For the reasons contained in the Annex of this Regulation, the Commission considered that it fully implemented the WTO ruling. Implementing Regulation (EU) 2019/159 should be amended by adding the reasoning included the Annex of this Regulation, which supplements the findings made in the original investigation.
- (37) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Safeguards established under Article 3(3) of Regulation (EU) 2015/478 and Article 22(3) of Regulation (EU) 2015/755 respectively,

HAS ADOPTED THIS REGULATION:

Article 1

The text set out in the Annex to this Regulation is added as Annex V to Regulation (EU) 2019/159.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply as of 2 February 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

‘ANNEX V

Attractiveness of Union market

- (1) In its original determination, the Commission explained that the Union steel market was attractive for imports in terms of size and prices ⁽¹⁾. In this respect, according to OECD data ⁽²⁾, in the years prior to the initiation of the investigation that led to the imposition of a safeguard measure, the Union market was the largest importing territory in terms of volumes, accounting from 13,8 % to 18,4 % of the global share of imports throughout this period.
- (2) In addition to the volumes, the Union market was also very attractive in terms of prices. In fact, an analysis of the relevant data ⁽³⁾ showed that the main steel exporting countries to the Union achieved, for a large proportion of their exports (from 46 % to 78 % of the CN codes concerned), a higher price in the Union market as compared to the export prices achieved in other third markets for the same CN codes. For these countries, the Union market also represented an important share of their exports, being the main or among their main export destinations, in some cases reaching more than 25 % share and even reaching 32 % in a given year ⁽⁴⁾.
- (3) The attractiveness of the Union market was also confirmed by the fact that while the main steel exporting countries ⁽⁵⁾ were reducing exports to third countries, they were increasing their exports to the Union at a fast pace. In particular, exports to other third countries from these origins decreased by more than 11 million tonnes (-8 %) in 2018 ⁽⁶⁾ when compared to 2017 ⁽⁷⁾. On the other hand, in the same period, imports into the Union from these origins increased by more than 3 million tonnes (+14 %) ⁽⁸⁾. These opposite trends showed that while imports to other third countries decreased generally, in a context of increasing overcapacity and increased restriction to access markets worldwide (see Sections 1.1.1 and 1.1.2 below), and in the absence of any major positive developments in their domestic consumption, exporting producers seized the opportunity to dispose of ever larger volumes into the Union market.
- (4) Therefore, the above set of data shows that, unequivocally, the Union market was attractive for exporting producers in terms of both volumes and prices.

1. ANALYSIS**1.1. Increased imports as a result of unforeseen developments**

- (5) The subsections below thus provide with additional information and a more detailed explanation linking each of the unforeseen developments identified with the increase in imports that took place, thereby supplementing the original findings.

1.1.1. Increase of imports to the Union due to global overcapacity in the steel sector

- (6) In the original determination, the Commission established that overcapacity existed in the steel sector and that despite efforts aiming to reduce it; it had nevertheless increased over the period of investigation ⁽⁹⁾.

⁽¹⁾ See recital (35) of the Provisional Regulation, and Section 4 of the Definitive Regulation.

⁽²⁾ See OECD, ‘Recent Developments in Steel Trade and Trade Policy Measures’, DSTI/SC(2018)3, p. 9, table 3.

⁽³⁾ Source: DG TRADE calculations on Global Trade Atlas data (<https://ihsmarkit.com/index.html>) – raw data available upon subscription – period analysed: 2014-2017. For details see Note to the file dated 30 November 2022, table 1.

⁽⁴⁾ *Ibid*

⁽⁵⁾ These countries were: China, India, Russia, South Korea, Taiwan, Türkiye and Ukraine, and represented around 75 % of total imports into the Union in 2018.

⁽⁶⁾ Data for full year 2018 extrapolated based on the data available for the period January-November 2018.

⁽⁷⁾ Source: Global Trade Atlas (<https://ihsmarkit.com/index.html>) – available upon subscription.

⁽⁸⁾ See recital (32) of the Provisional Regulation.

⁽⁹⁾ See recitals (31) and (32) of the Provisional Regulation, and recitals (51) to (54) of the Definitive Regulation.

- (7) Several sources have consistently confirmed the direct link between excess capacity in the steel sector and its effects on exports. For instance, the OECD noted, “Excessive levels of steelmaking capacity have important implications for the steel industry, often associated with over-supply, low prices, and weak profitability” ⁽¹⁰⁾. It also noted that “At the global level, the effects of excess capacity are transmitted through trade; excess capacity can lead to export surges, leading to price declines and market share losses for import-competing domestic producers” ⁽¹¹⁾.
- (8) Similarly, other studies point into the same direction. A 2014 “Economic Policy Institute” paper ⁽¹²⁾, which noted, “Excess capacity means that steel production facilities have the capacity to produce much more steel than the market demands. High fixed costs, capital intensity, and the large scale of steelmaking encourages to export the surplus at below-market rates. [...] “Excess capacity leads to overproduction and surges of exports” and that “[t]he high capital intensity of the industry leads producers to maximize production to cover fixed costs, and this in turn leads them to dump excess production on foreign markets—particularly the attractive U.S. market—when domestic demand lags. This has led to repeated surges in unfairly traded steel over the years.”
- (9) In the same vein the European Commission, in a 2016 Communication, also stated, “The excess production of steel has recently led to a dramatic increase of exports, the destabilisation of global steel markets and depression of steel prices world-wide.” ⁽¹³⁾.
- (10) Therefore, there is a generally accepted economic rationale explaining the action of exporting producers of offloading their excess capacity into third country markets (usually at lower prices) to at least contribute to covering part of their costs.
- (11) The Commission then assessed in further detail the direct link between the confirmed existing (and increasing) overcapacity in the steel sector, and the increase of imports into the Union.
- (12) In a situation of overcapacity, and having an incentive to offload their excess capacity, exporting producers would target those markets which allow them to sell, in principle, higher volumes at, ideally, better prices (as compared to other third markets). In this respect, the Commission explained in recitals (1) to (4) that the Union was an attractive market for exporting producers both in terms of size and price levels. The import data available also showed that imports into the Union had increased rapidly and in great volumes in the period where overcapacity was also increasing ⁽¹⁴⁾ and that they did it at much faster pace than Union consumption ⁽¹⁵⁾, and it also showed that imports to the Union continued to increase while the trend of exports to other third countries was the opposite. In addition, data in the Provisional Regulation showed that exporting producers were consistently undercutting Union producers (in some cases significantly), showing their determination to remain benefiting from the attractive conditions of the Union market ⁽¹⁶⁾. The magnitude and pace of imports into the Union at consistently lower prices than those of the Union industry, in a context of a much slower consumption growth, could have hardly been reasonably explained in the first place if it were not for a context of increasing overcapacity, which was at the core of exporting producers’ behaviour.
- (13) Accordingly, the Commission concluded that imports into the Union increased as a result of overcapacity in the steel sector in the original period of investigation.

⁽¹⁰⁾ See OECD “Excess Capacity in the Global Steel Industry: The Current Situation and Ways Forward”, 2015, p. 3.

⁽¹¹⁾ See OECD “Evaluating the Financial Health of the Steel Industry”, DSTI/SU/SC(2015)12/FINAL, 9 June 2017, p. 25.

⁽¹²⁾ Available at: <https://www.epi.org/publication/surging-steel-imports>

⁽¹³⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank – “Steel: Preserving sustainable jobs and growth in Europe”; COM (2016) 155 final, 16.3.2016.

⁽¹⁴⁾ See OECD “Excess Capacity in the Global Steel Industry: The Current Situation and Ways Forward”, 2015, table at p. 2.

⁽¹⁵⁾ Throughout the investigation period imports increased by 71 % while consumption increased by 14 %.

⁽¹⁶⁾ Specifically, undercutting was established for 17 product categories, with ranges between 1,2 % and 23 %.

1.1.2. Increase of trade defence measures and trade restrictive measures in third countries

- (14) In recitals (33) and (34) of the Provisional Regulation, the Commission explained that there had been a significant increase in the use of trade defence instruments in the steel sector in particular in the years prior to the initiation of the EU safeguard investigation. The Provisional Regulation stated that “whereas during 2011-2013 on average around 77 steel-related investigations had been initiated per year, during 2015-2016 this average increased to 117”. Furthermore, third countries continued throughout 2017 to impose trade restrictive measures ⁽¹⁷⁾.
- (15) In overall terms, the Commission observed from the data ⁽¹⁸⁾ it analysed that more than 300 trade defence measures on steel products ⁽¹⁹⁾ had been imposed in the period 2013-2017.
- (16) A breakdown of these figures revealed that these measures had been imposed by a large number of countries (at least 24 jurisdictions), and among them, all the main steel importing countries ⁽²⁰⁾. These countries had imposed 157 measures in the period 2013-2017, i.e. more than 52 % of the total.
- (17) At the same time, the top exporting countries to the Union were, in this period, subject to a large amount of measures in numerous jurisdictions. Taking as an example the top seven exporters to the Union ⁽²¹⁾, the Commission observed that they were subject to around 200 measures, this is, around 66 % of the total measures in place in at least 24 different third countries.
- (18) Therefore, the Commission confirmed that the magnitude of the TDI measures, in terms of number of individual measures and countries affected (both imposing and subject to the measures) was very significant. The Commission further noted that data on the original file suggested that these figures could be even rather conservative ⁽²²⁾. In addition, the duties imposed pursuant to those measures appeared to be sufficiently high to impact the level of imports entering those markets as compared to the period before these measures were in place. This was reflected in an overall decrease in exports from countries subject to TDI measures into third markets (see recital (19)), despite the fact that the overall market conditions had not changed significantly ⁽²³⁾ and thus would not, in principle, justify a reduction of volumes exported of such magnitude if it was not for the effects of the level of the measures.
- (19) In this respect, the Commission confirmed based on the data analysed that a common effect of the imposition of trade defence measures was the reduction (in many cases significant) of imports into the countries subject to measures in the period subsequent to their imposition. In this regard, the Commission observed that, based on an analysis of its own TDI investigations on steel products ⁽²⁴⁾, imports decreased on average by up to 82 % when compared to the level of imports in the investigation period that lead to the imposition of measures. In those cases,

⁽¹⁷⁾ See recital (33) of the Provisional Regulation.

⁽¹⁸⁾ Source: WTO, Integrated Trade Intelligence Portal (I-TIP) - Extraction made on 28/11/2018, 10:58.

⁽¹⁹⁾ Covering those steel products under the safeguard measure and excluding the measures imposed by the European Union, and those imposed against imports from EU exporting producers. For an overview of the TDI measures imposed by the European Union on product categories subject also to the safeguard measure see Annex I.B. of Commission Implementing Regulation (EU) 2019/1382 of 2 September 2019, amending certain Regulations imposing anti-dumping or anti-subsidy measures on certain steel products subject to safeguard measures (OJ L 227, 3.9.2019, p. 1).

⁽²⁰⁾ For reference of the main steel importing countries in the period of investigation, see OECD, “Recent developments in steel trade and trade policy measures - A closer look at non-tariff trade measures”, DSTI/SC(2018)3, of 26 January 2018, page 9, table 3. Available at the following link. ([https://one.oecd.org/document/DSTI/SC\(2018\)3/en/pdf](https://one.oecd.org/document/DSTI/SC(2018)3/en/pdf))

⁽²¹⁾ These countries were (listed alphabetically): China (10 %), India (9 %), Korea (10 %), Russia (14 %), Taiwan (5 %), Türkiye (22 %) and Ukraine (7 %). They represented, on average, around 75 % of imports of the product concerned into the Union in the period 2013-2017.

⁽²²⁾ See recital (76) of EUROFER's submission of 16 April 2018 in the original investigation, linked to more granular information on each of the measures considered, provided in Annex A07 D.1. Source of the data: SBB Platts.

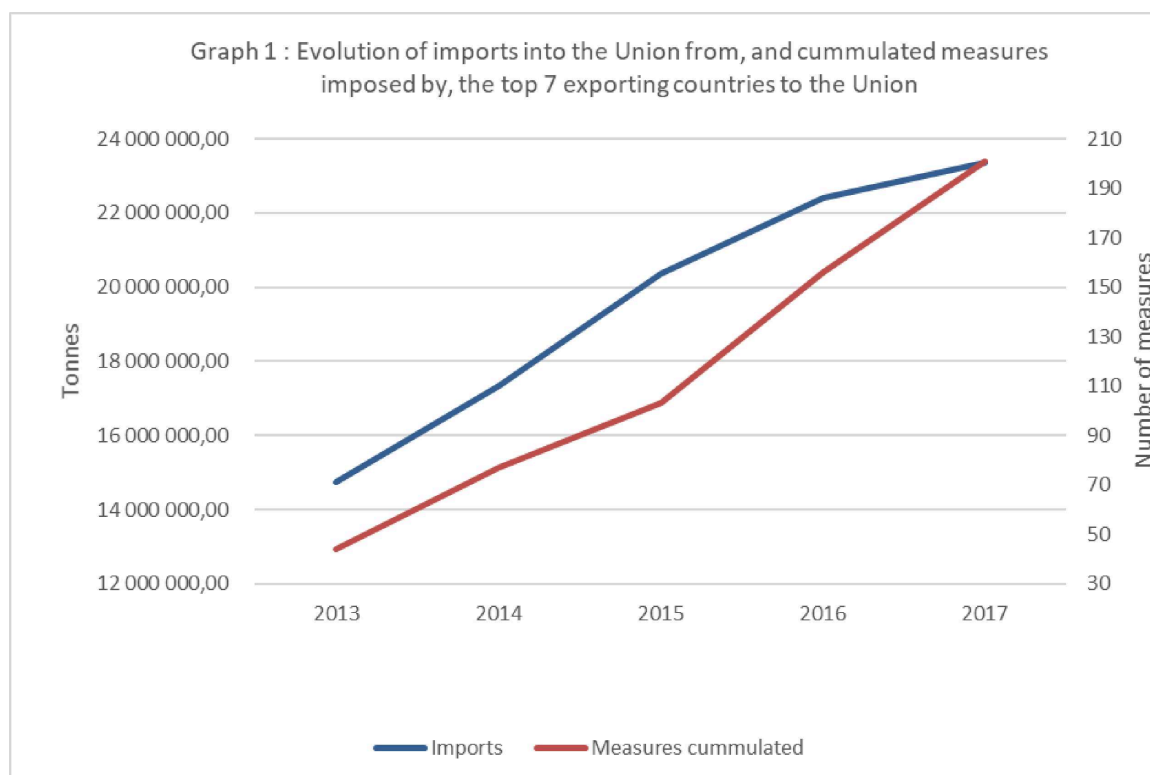
⁽²³⁾ See CRU data: consumption for years 2017 and 2018 was rather stable (only around 2 % increase).

⁽²⁴⁾ A similar trend was observed when assessing the impact of TDI measures on products other than steel.

the volumes of imports affected were significant ⁽²⁵⁾. The Commission also confirmed that TDI measures on steel had a similar effect when imposed by third countries. In a sample of 26 cases assessed ⁽²⁶⁾, the Commission confirmed that the reduction of imports was on average 73 %, and that the volumes affected were also relevant ⁽²⁷⁾. Therefore, the imposition of TDI measures by third countries reduced the volume of exports to those countries, which were, at least partially, directed to the Union market.

- (20) Furthermore, another set of data showing the clear connection between the increasing number of trade defence measures in third countries and the increase in imports into the Union market is the opposing trends of exports of the main steel exporting countries to the Union explained in recital (3) ⁽²⁸⁾. In view of the large amount of trade defence measures imposed by third countries and the effects they have on the volumes of imports into the countries imposing a measure (as detailed in recitals (18) and (19)), this trend confirms that their ability to export to third countries was significantly curtailed. Therefore, they sought to dispose of these additional volumes (also affected by overcapacity) into the attractive Union market, which as a result experienced a consistent increase in imports over the same period, at a pace substantially higher than the evolution of consumption.

- (21) The graph below ⁽²⁹⁾ illustrates these trends.



⁽²⁵⁾ Around 15 million tonnes of combined imports affected by these measures, out of which, only slightly more than 2 million tonnes continued entering the market after the measures. For details, see Note to the File, table 2.

⁽²⁶⁾ See Note to the File dated 30 November 2022, Table 3.

⁽²⁷⁾ To impose a TDI measure, the volumes concerned by each investigation need to be above *de minimis*. In addition, steel is usually traded in rather large volumes as seen in the examples from EU TDI practice and from the sampled cases of TDI measures in other third countries.

⁽²⁸⁾ These countries accounted consistently for around 75 % of total imports into the Union in the period of investigation.

⁽²⁹⁾ Source: For imports into the Union: Eurostat; for TDI measures: WTO, Integrated Trade Intelligence Portal (I-TIP).

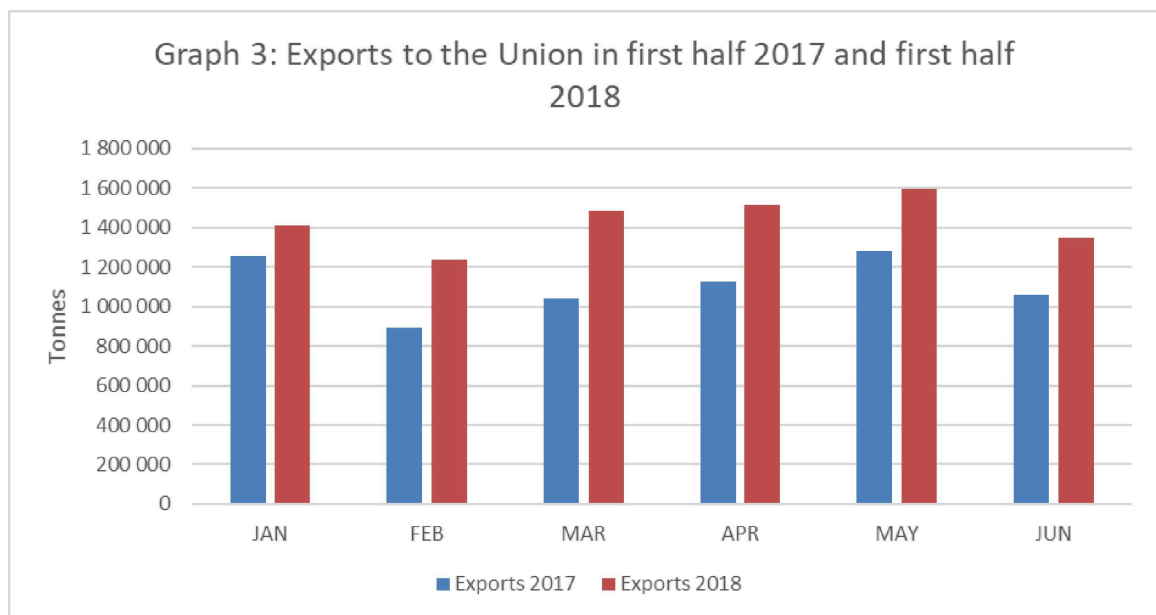
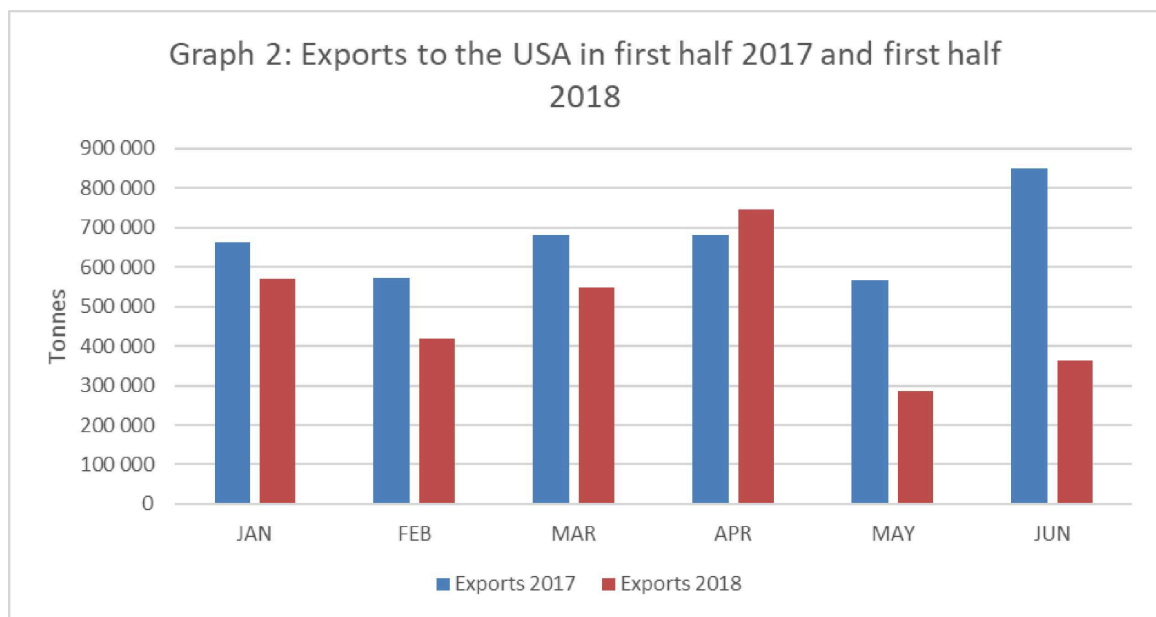
- (22) The Commission also observed that the overall steel consumption did not see any major reduction in that period that would explain such a decrease in exports to third countries. Hence, the reduction of exports to other third countries could only be reasonably explained by the limiting effect of the wide array of TDI measures or other trade restrictive measures imposed by a large number of jurisdictions.
- (23) Accordingly, the Commission concluded that the increase in TDI and other trade restrictive measures across third countries had resulted in increased imports into the Union during the period considered.

1.1.3. US Section 232 measure

- (24) In recitals (58) to (61) of the Definitive Regulation the Commission explained the link between the US Section 232 measures and the increase of imports into the Union. In addition, in recitals (101) to (110) of the Definitive Regulation, the Commission also assessed the evolution of imports into both the Union and US markets ⁽³⁰⁾.
- (25) Because the data assessed to determine an increase in imports stopped at the end of June 2018 (end of Most Recent Period or 'MRP'), it covered import trends into the Union and into the US for a relatively short period after the US Section 232 came into effect. Nevertheless, as explained in recital (58) of the Definitive Regulation, the investigation leading to the US measure had already been initiated in April 2017 and the report setting the basis for the later adoption of the measure was published in January 2018, and hence the first signs of trade diversion were already identified.
- (26) The data showed that while during the first half of 2018 imports into the US decreased by almost 1 million tonnes (-7 %) when compared to the same period in 2017, imports into the Union followed an almost identical opposite trend, with an increase in imports of 1,2 million tonnes (+7 %).
- (27) This trend is explained because the main steel exporting countries to the Union also exported relevant volumes to the US market. While export volumes to the US were decreasing (as a result of the effects of the 25 % duty under the US Section 232), the volume of exports of some of these countries to the Union increased in parallel. Furthermore, and as explained in recital (3) above, exports from these countries into other third markets generally decreased.
- (28) Therefore, the impossibility to export in the same amounts to the US after the US Section 232 measure entered into force put exporting countries in a situation where they were forced to seek other outlets for their steel. In this case, because the Union market was very attractive in terms of size and prices compared to other third markets, it was a natural target for exporting countries and this resulted in increased imports, notably from origins who lost export volumes to the US. These trends are shown in the graphs below ⁽³¹⁾.

⁽³⁰⁾ For the purpose of explaining the link of the US Section 232 and the increased imports, the Commission refers, within those recitals, only to the data until June 2018 included. The reason is that the increase in imports assessed in the Definitive Regulation covers up to that month.

⁽³¹⁾ Source: GTA, cumulated exports from Türkiye, Korea, Russia and Taiwan to the United States (graph 2); and cumulated exports from the same countries to the USA and the Union (graph 3).



- (29) In view of these facts, the Commission confirmed that the increase in imports into the Union that took place in the period of investigation was the result (together with the other unforeseen developments established) of the US Section 232 measure.

Cumulative assessment

- (30) The Commission also concluded that the increase in imports occurred as a result of the combination of all the identified unforeseen developments (global overcapacity, increase of trade defence measures and trade restrictive measures in third countries and the US Section 232 measure). The existence of several unforeseen developments at the same time reinforces the finding of a logical connection between the increase in imports into the Union, which was an attractive and major market for steel exports, and the identified unforeseen developments.

1.2. Threat of serious injury

- (31) The original determination established that if the Union did not impose a safeguard measure, there was a threat of serious injury for the domestic producers as imports were expected to continue increasing, notably due (but not limited) to trade diversion originating in the US Section 232 measure, and thus to add import pressure in terms of price and volumes ⁽³²⁾. This section of the Regulation will develop in further detail why a threat of serious injury existed and was well founded in light of the evidence available at the time of the imposition of the definitive measure. To do so, this section of the Regulation will provide additional explanations and clarifications on the following aspects leading to the finding of a threat of serious injury: i) situation of the Union industry and reasons explaining its partial recovery in 2017; ii) role of EU TDI measures in the situation of the Union industry; iii) impact of US Section 232 measure – including recent import evolution into the Union; iv) most recent evolution of steel and raw material prices; v) state of play of TDI measures in third countries and overcapacity; vi) market outlooks and forecasts.

Continuous attractiveness of the Union market

- (32) In recitals (1) to (4) above, the Commission explained how the Union market was attractive in terms of size and prices and how these features contributed to an increasing amount of imports into the Union market in the period of investigation.
- (33) The Commission's considered that these features remained the same at the end of the investigation that led to the imposition of the definitive safeguard, confirming that in 2018, the Union market continued to be an attractive market in terms of size ⁽³³⁾ and prices. The main steel exporting countries to the Union achieved a higher price in the Union market as compared to the export prices achieved in other third markets for 48 % to 81 % of the CN codes concerned ⁽³⁴⁾. Thus confirming the continuous attractiveness in terms of prices. Regarding size, the Union continued to be a relevant export market, representing for some exporting countries almost 40 % and for some of them around 25 % of their total exports, depending on the exporting country ⁽³⁵⁾.
- (34) Furthermore, the Commission concluded that there were no elements among the data assessed, including submissions from interested parties, indicating that the Union market would become any less attractive in the near future. In fact, as shown in this Annex (see as an example subsections 1.2.3 and 1.2.5 below) there was an increasing lack of alternative outlets where exporting producers could reach the same or similar volumes of exports as they did in the past, and as a result the import pressure on the attractive Union market would increase even further.

1.2.1. Situation of the Union industry and factors explaining its partial recovery in 2017

- (35) Section VI.1 of the Provisional Regulation and Sections 5.1 to 5.3 of the Definitive Regulation explained the situation of the Union industry at the end of the period analysed, and the evolution of the injury indicators since 2013, concluding that Union industry was in a fragile and vulnerable position.
- (36) The finding of vulnerability despite a partial improvement in 2017, was explained by a number of factors that allowed the Union industry to reach, only in 2017, overall healthier levels of profitability than in previous years despite continuous increasing imports ⁽³⁶⁾.
- (37) First, the profitability of the Union industry throughout the period analysed showed a generally poor performance, incurring losses (2013) or achieving very low level of profits (2014-2016). While in 2017 the industry achieved for the first time in a period of five years a healthier level of profitability, this did not reach a magnitude that would make up for the previous performance over a four-year period. Even on that year, for a large number of product

⁽³²⁾ See recitals (90) and (110) of the Definitive Regulation.

⁽³³⁾ See OECD Steel Committee – Recent developments in steel trade and trade policy measures, 17-18 September, 2018, p. 8, Table 2 (showing that in 2018 Union was consolidating further its position as main steel importing country worldwide).

⁽³⁴⁾ Source: DG TRADE calculations on Global Trade Atlas data (<https://ihsmarkit.com/index.html>) – raw data available upon subscription. For details, see Note to the file dated 30 November 2022, Table 1.

⁽³⁵⁾ *Ibid*

⁽³⁶⁾ Imposition of TDI measures on some product categories also contributed to this improvement, but their specific role is analysed in Section 1.2.2.

categories, profitability remained low. Three product categories remained loss making and 13 product categories close to break-even. Only seven product categories could recover to a level of profit above 6 % in 2017 ⁽³⁷⁾. In this respect, a key different factor in 2017 related to the evolution and level of its unit sales prices and the difference with the cost of production compared with that of previous years. Regarding the price, in 2017 it increased by around 18 % with respect to the previous year (106 EUR/tonne increase). At the same time, even if the cost of production also increased in that year (by 82 EUR/tonne compared with the previous year) ⁽³⁸⁾, the Union industry was able to achieve the biggest (positive) margin between the two in the period analysed (36 EUR/tonne), which resulted in higher profitability ⁽³⁹⁾. However, this exceptional ⁽⁴⁰⁾ situation was, according to the most recent developments analysed in the investigation not expected to be of a long-lasting nature and there were clear trends showing that it was already reversing (see Section 1.2.4).

- (38) Second, while the Union industry was able to increase its volume of sales in overall terms by 7 % in 2017 when compared to 2013 ⁽⁴¹⁾, contributing to improving partially its performance in that year, it was clearly unable to fully benefit from a much higher increase in consumption in the same period (+14 %) ⁽⁴²⁾ in the Union market although it continued to have sufficient capacity available in 2017 (76 % in 2017 of capacity utilisation compared to 75 % in 2016) ⁽⁴³⁾ to increase its domestic sales further. It is noteworthy that the Union industry barely improved its capacity utilisation in 2017 compared with the previous year. Such suppressed performance could be explained by the significant increasing import pressure (in terms of volumes and prices) that the Union industry suffered in the period assessed. In fact, imports benefitted to a much larger extent than Union producers from the increase in consumption. While Union producers lost market share consistently year-on-year (from 87,2 % to 81,9 %) ⁽⁴⁴⁾ imports experienced a drastic increase (+71 %) ⁽⁴⁵⁾, representing an increase in their market share from 12,7 % in 2013 to 18,8 % in 2017 ⁽⁴⁶⁾. The market share of imports in the MRP was 18,8 %, which was even higher than in 2017 (18,1 %). These trends could be explained by the consistent undercutting of imports ⁽⁴⁷⁾, which thus prevented the Union industry from realising either the full (or at least a greater) potential of market developments.
- (39) Third, while market conditions overall improved (with increased consumption, domestic sales and price levels), the Union industry was still unable to translate this into more employment, which had suffered the loss of nearly 10 000 workers in the Union in the period 2013-2017 ⁽⁴⁸⁾. In 2017 employment level even decreased very slightly compared to 2016. Lastly, stocks grew by 19 % over the investigation period and remained high in 2017 ⁽⁴⁹⁾.
- (40) Therefore, the Union industry improved partially its performance in 2017 as a result of a combination of factors, notably the increase in consumption and of domestic sales and the higher difference between steel and raw material price ⁽⁵⁰⁾ but this improvement was nevertheless limited by the degree of import pressure suffered in that year, which did not allow the Union industry to benefit to a greater extent from such existing factors. The continuous loss of market share and the persistent undercutting across product categories, or the jobs that it was not able to recuperate, were clear signs that its situation was not that of an industry that had fully recovered from the effects of previous negative performances in previous years, and that import pressure was playing a key role in impeding such recovery.

⁽³⁷⁾ Recital (53) of the Provisional Regulation.

⁽³⁸⁾ See Table 15 of the Definitive Regulation.

⁽³⁹⁾ These trends were assessed for the product concerned, and not for individual product categories.

⁽⁴⁰⁾ Based on a comparison of all the years in the period analysed.

⁽⁴¹⁾ See Table 4 of the Definitive Regulation.

⁽⁴²⁾ *Ibid*

⁽⁴³⁾ See Table 5 of the Definitive Regulation.

⁽⁴⁴⁾ See Table 4 of the Definitive Regulation.

⁽⁴⁵⁾ See Table 2 of the Definitive Regulation.

⁽⁴⁶⁾ *Ibid*

⁽⁴⁷⁾ See Annex III of the Provisional Regulation.

⁽⁴⁸⁾ See Table 7 of Definitive Regulation.

⁽⁴⁹⁾ See Table 5 of the Definitive Regulation.

⁽⁵⁰⁾ See Section 1.2.2. for the explanation of the role of recent TDI measures in the Union industry's performance in 2017.

- (41) Since some of these factors that developed positively in 2017 were reversing in 2018 (see below latest developments and expected performance for steel and raw material prices, as well as expected trends in consumption) in a situation where import pressure was expected to increase in terms of volumes and prices, the impact on the financial situation of the Union industry would be negative.
- (42) In other words, while the Union industry was able partially recover due to the cumulated positive developments of a series of key factors in the market and to slower increase of imports in 2017 compared with previous years ⁽⁵¹⁾, the negative turn that most of these factors were showing at the end of 2018 would necessarily result in a worsening of the Union industry's situation against the ongoing further increase of import pressure, which this time, due to its magnitude and the expected prevailing market context, the Union industry would not be able to sustain. As a result, the situation of the Union industry at the end of the investigation period was that of vulnerability to a further surge in imports.

1.2.2. Role of Union TDI measures in the situation of the Union industry in 2017

- (43) In this Section the Commission provides the necessary additional explanations and supporting data regarding the role played by TDI measures on the partial recovery of the Union industry in 2017.
- (44) In the first place, to carry out this exercise, the Commission selected those measures imposed in the years 2015 and 2016 because the Commission considered that those would be the measures whose effects on the Union industry's performance in 2017 could be partially attributed to ⁽⁵²⁾. Therefore, under these parameters, prior to 2017 the Commission had imposed six TDI measures on imports from product categories which were subsequently subject to the safeguard measure ⁽⁵³⁾.
- (45) These measures were the following ⁽⁵⁴⁾: Commission Implementing Regulation (EU) 2015/501 ⁽⁵⁵⁾, Commission Implementing Regulation (EU) 2016/181 ⁽⁵⁶⁾, Commission Implementing Regulation (EU) 2016/1778 ⁽⁵⁷⁾, Commission Implementing Regulation (EU) 2016/113 ⁽⁵⁸⁾, Commission Implementing Regulation (EU) 2016/1777 ⁽⁵⁹⁾ and Commission Implementing Regulation (EU) 2017/969 ⁽⁶⁰⁾.

⁽⁵¹⁾ Total imports increased by around 1 million tons and their market share went up from 17,9 to 18,1 % from 2016 to 2017, which is less than previous year-on-year increases both in absolute and relative terms.

⁽⁵²⁾ In this regard the Commission considered that, for instance, a TDI measure imposed in 2013 would be too far in time to be connected to the Union's improved performance in 2017, and therefore, the selected measures offer a more accurate and appropriate basis for the analysis.

⁽⁵³⁾ In some cases the scope of a TDI measure on a certain product, in terms of CN codes covered, may not Match entirely the product definition of the corresponding product category under the safeguard measure, thus this assessment is an approximation.

⁽⁵⁴⁾ These references to these regulations pertain to the regulations imposing a provisional measure, because for practical purposes, as long as a duty (provisional or definitive) was in place, it was assumed to have a similar impact on the volumes traded. In all these cases, the investigation resulted in the imposition of a definitive measure.

⁽⁵⁵⁾ Commission Implementing Regulation (EU) 2015/501 of 24 March 2015 imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ L 79, 25.3.2015, p. 23).

⁽⁵⁶⁾ Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 37, 12.2.2016, p. 1).

⁽⁵⁷⁾ Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

⁽⁵⁸⁾ Commission Implementing Regulation (EU) 2016/113 of 28 January 2016 imposing a provisional anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ L 23, 29.1.2016, p. 16).

⁽⁵⁹⁾ Commission Implementing Regulation (EU) 2016/1777 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 5).

⁽⁶⁰⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

- (46) The Commission observed that the profitability of Union producers in these product categories systematically improved in the year following the imposition of measures. In particular, the Commission found that, in 2017, profitability generally improved ⁽⁶¹⁾, although for a large number of category products profitability remained low, in particular for the product categories subject to recent TDI measures, and that import prices of third countries (other than those subject to the TDI measures in question) generally increased temporarily in 2017 following the imposition of the TDI measures ⁽⁶²⁾.
- (47) Furthermore, the volumes affected by the recent trade defence measures represented around 40 % of total imports within the product categories subject to recent TDI measures in the period considered ⁽⁶³⁾ and in the years following the imposition of those TDI measures their volumes in the Union market went down by more than 90 % ⁽⁶⁴⁾. Therefore, the substantial reduction of unfair traded imports that ensued the imposition of measures generally allowed Union producers and other exporting countries to increase their sales prices in 2017.
- (48) Moreover all product categories subject to recent trade defence measures experienced a significant improvement in profitability ⁽⁶⁵⁾, several of which exceeded 6 % in 2017 ⁽⁶⁶⁾. For the rest of categories, the picture was more diverse, with few categories exceeding or reaching close to 6 % profitability ⁽⁶⁷⁾, other categories improving but still showing weak or low profitability levels ⁽⁶⁸⁾, and others loss-making or around 1 % profitability ⁽⁶⁹⁾, irrespective of the recent trends. Thus showing that the picture in terms of evolution of profitability was not homogeneous among categories and that in overall terms, most categories ⁽⁷⁰⁾ were, in 2017, either loss making or with unhealthy levels of profitability, even if their situation had improved in some cases as compared to the previous year. Thus confirming the fragility of the overall situation of the Union industry despite the situation being better than the preceding year.
- (49) However, as explained below, the trend of increasing pricing in 2017 was temporary and started reversing in 2018 when the Union was faced with a surge in imports mainly from third countries not subject to trade defence measures and the trade diversion caused by the US Section 232 measure. This is shown by the volume of imports in the MRP that reached a record figure of 31 314 tonnes despite the imposition of recent trade defence measures in some product categories. This showed that while recent TDI measures contributed to the partial and temporary improvement of the Union industry, they also benefitted those exporting countries not subject to measures, which had also started to increase significantly their presence in the Union market ⁽⁷¹⁾.
- (50) Hence, the Commission confirmed that the imposition of TDI measures contributed to the overall performance of Union producers, insofar as these categories were concerned ⁽⁷²⁾.

⁽⁶¹⁾ Source: DG TRADE analysis of the injury indicators published in the relevant measures and analysis of the questionnaire replies provided by the Union industry per product category in the framework of the original safeguard investigation. For details, see Note to the File dated 30 November 2022, Table 4.

⁽⁶²⁾ Source: Eurostat

⁽⁶³⁾ The sum of imports subject to TDI measures by these investigations (although they concern different periods of investigation and different years, e.g. 2013 to 2015) was slightly above 5 million tonnes.

⁽⁶⁴⁾ Source: DG TRADE analysis of its own TDI cases for the volume of imports in the relevant investigation period, and Eurostat for import figures following the investigation period of each of these investigations for this implementation.

⁽⁶⁵⁾ Categories 1, 2, 7, 9, 12 and 13.

⁽⁶⁶⁾ Categories 1, 2 and 9.

⁽⁶⁷⁾ See categories 4, 8 and 14.

⁽⁶⁸⁾ See categories 5, 6, 15, 16 and 26.

⁽⁶⁹⁾ See categories 3, 17, 18, 20, 21, 22, 23, 25 and 28.

⁽⁷⁰⁾ At least fifteen categories out of a total of twenty three subject to a provisional measure (for which a breakdown was provided in Annex III of the Provisional Regulation).

⁽⁷¹⁾ For instance, Türkiye increased its presence in the Union market in category 1, where China was made subject to TDI measures in October 2016, from 1 062 247 tonnes in 2016 to 2 million tonnes in 2017 (and nearly 3 million tonnes in 2018). In the same vein, India increased from 443 551 tonnes to 1 121 334 tonnes in 2017, or Egypt, from 47 400 tonnes in 2016 to 409 432 tonnes in 2017.

⁽⁷²⁾ Section 1.2.1. explained the reasons behind the overall improvement of the Union industry regarding the product concerned.

- (51) In addition, the reasoning in sections 1.2.1 and 1.2.2 clearly showed that some factors explaining the partial recovery of the Union (e.g. consumption) did not affect or benefit Union producers and exporting countries equally or similarly, as the latter were able to increase greatly (+71 % in volumes) their presence in the Union market at the expense of Union producers which lost market share, and only saw a relatively modest increase in overall sales volumes (+7 %) when compared to the continuous growth of imports.

1.2.3. *Impact of US Section 232 measure*

- (52) In the Definitive Regulation ⁽⁷³⁾ the Commission reached the conclusion that the US Section 232 would be liable of significant trade diversion into the Union market.
- (53) In this respect, the Commission has conducted a more detailed analysis of the import patterns into the Union and the USA, both in overall terms and then further analysing the behaviour of certain exporting countries. This analysis showed that when comparing the imports into the US and into the Union in the first half of 2018 with the first half of 2017, imports into the US decreased by almost 1 million tonnes (-7 %) when compared to the same period in 2017, imports into the Union followed an almost identical opposite trend, with an increase in imports of 1,2 million tonnes (+7 %) (See recital (26) above). When assessing the developments in the second half of 2018 and the same period in 2017, these opposing trends become more acute. In fact, imports into the US decreased by 2,4 million tonnes (-19 %) while imports into the Union increased by more than 2 million tonnes (+15 %) ⁽⁷⁴⁾.
- (54) This resulted in an overall yearly reduction of imports into the US of 3,3 million tonnes (-13 %) and an increase of imports into the Union of 3,2 million tonnes (+11 %), out of which 72 % of the total volumes reduced into the US and 63 % of the imports increase in the Union took place in the second half of 2018 ⁽⁷⁵⁾.
- (55) Therefore, the pace and magnitude at which these trends of imports accelerated in the second half of 2018 showed that the impact of the US Section 232 measure was taking progressively more effect as it had been in place already for a few months, and that exporting countries were rapidly adjusting to the new market situation ⁽⁷⁶⁾.
- (56) Zooming in into the behaviour of exporting countries to both the US and EU market, the Commission confirmed this trend. For instance, countries like Türkiye, Russia, South Korea and Taiwan ⁽⁷⁷⁾, which accounted for significant volumes of exports to the US and to the Union, saw the following trends in 2018 when compared to 2017: Türkiye decreased its exports to the US by around 850 000 tonnes (-45 %) and it increased its exports to the Union by 2,6 million tonnes (+56 %). Similarly, Russia's exports to the US went down by more than 250 000 tonnes (-36 %) and

⁽⁷³⁾ See recitals (57) to (62), and Table 12 of the Definitive Regulation.

⁽⁷⁴⁾ To put this volume into context, a basic calculation taking the average steel price in the Union in 2017 shows that the EU industry could lose out on around 1,4 billion EUR worth of domestic sales as a result of these additional imports. Thus showing that the potential impact of these additional sales was relevant.

⁽⁷⁵⁾ Whereas the increase in imports into the Union from 2016 to 2017 was much smaller, around 1 million tonnes.

⁽⁷⁶⁾ See also OECD Steel Committee – Recent developments in steel trade and trade policy measures, 17-18 September, 2018, p. 8, Table 2.

⁽⁷⁷⁾ At the time of the adoption of the definitive safeguard measure, only the following four TDI measures affecting imports into the Union were in place (three against Russia and one against Taiwan): Commission Implementing Regulation (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Serbia (OJ L 258, 6.10.2017, p. 24). Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 1). Commission Implementing Regulation (EU) 2018/1469 of 1 October 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 246, 2.10.2018, p. 20). Commission Implementing Regulation (EU) 2015/1429 of 26 August 2015 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan (OJ L 224, 27.8.2015, p. 10).

increased by 870 000 tonnes (+23 %) in the Union, South Korea's exports to the US decreased by more than 880 000 tonnes (-27 %) while increasing in the Union by around 250 000 tonnes (+8 %), and lastly Taiwan's exports to the US went down by around 160 000 tonnes (-14 %) while increased by more than 500 000 tonnes (+40 %) in the Union ⁽⁷⁸⁾.

- (57) Therefore, these figures showed that exporting producers were generally able to ship, at least part of the volumes lost in the US, to the Union market, and in some cases to increase their presence in the Union market well above the volumes lost in the US. Given the size of the US market ⁽⁷⁹⁾, the fact that the US Section 232 measure was still in its first months of application and hence had not yet reached its full intended effects ⁽⁸⁰⁾, it was reasonable to expect that the exports to the US would continue to decrease in significant volumes and that exporting producers would be able to adapt to these circumstances and increase their presence in the Union market even further.
- (58) Therefore, the Commission confirmed that the US Section 232 measure was liable to cause an even greater trade diversion of exports into the Union market in the near future.

1.2.4. *Most recent evolution of steel and raw material prices*

- (59) In the Definitive Regulation the Commission noted that “steel prices in the Union started to follow a declining trend since the third quarter of 2018” ⁽⁸¹⁾.
- (60) In this respect the Commission observed in section 1.2.1 above, that one of the factors that explained a partial improvement in the Union industry's performance in 2017 was that the difference between steel price and raw material cost was higher than in any of the previous years of the period analysed. However, a further detailed analysis of the most recent developments prior to the imposition of a definitive measure showed that the trend was reversing and that the positive difference between the two was squeezing progressively, and therefore that would have a negative impact on the economic performance of the Union industry.
- (61) As shown in the graph 4 below ⁽⁸²⁾, steel prices in the Union saw a steady decline in the second half of 2018. This trend could be expected to continue in light of the uncertain market prospects (see Section 1.2.6) and as a result of the continuous and increasing import pressure in terms of volumes and prices, which against a worsening or uncertain market conditions, would likely have a downwards effect on prices, thus not allowing Union industry to adapt its prices to the increased costs. In the graph 5 ⁽⁸³⁾ it is observed how the price of some of the main steelmaking raw materials were increasing constantly over the same period.

⁽⁷⁸⁾ Source: for US imports (GTA); for EU imports (Eurostat).

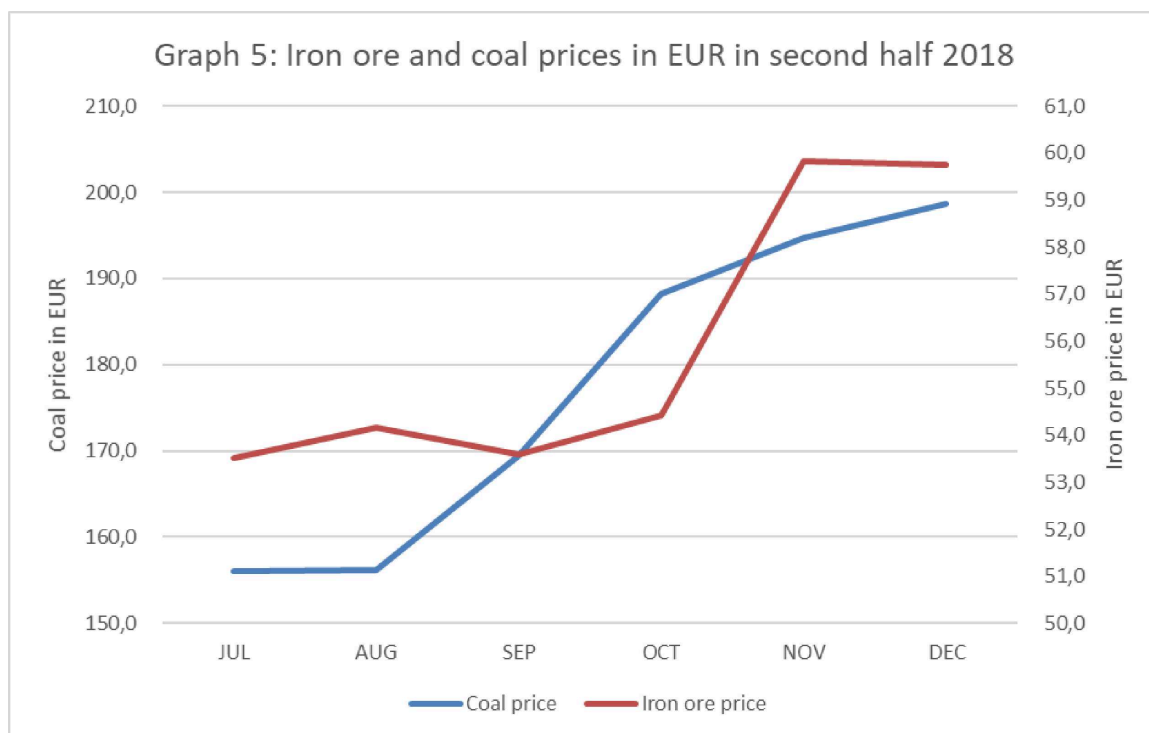
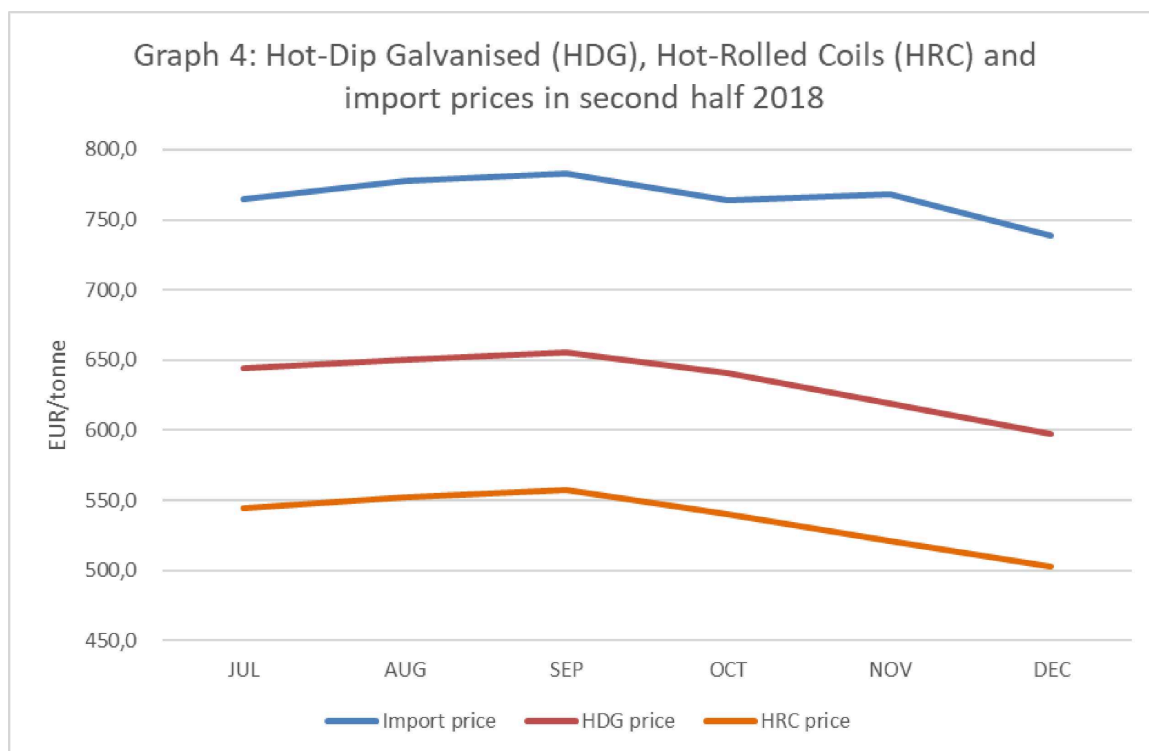
⁽⁷⁹⁾ The US steel market was among the top import destinations by size - See OECD, 'Recent Developments in Steel Trade and Trade Policy Measures', DSTI/SC(2018)3, p. 9, table 3.

⁽⁸⁰⁾ See recital (35) of the Provisional Regulation: “The U.S. have calculated that the imposition of a single across product tariff under the Section 232 measures with almost no country exclusion should decrease imports by approximately 13 million tonnes – corresponding to 7 % of Union consumption.”

⁽⁸¹⁾ See recital (89) of the Definitive Regulation.

⁽⁸²⁾ Source: Eurostat for import prices, and S&P Global Commodity Insights for prices of HDG and HRC.

⁽⁸³⁾ Source: S&P Global Commodity Insights.



- (62) Therefore, such combined trends, for which there were no signs of reversal in the near future, would put the Union industry in an even more strained financial situation.
- (63) In addition, the Commission considered that in a likely scenario of further import pressure and in a market that was not to experience any significant growth, the trends of undercutting domestic prices identified in the original investigation would exacerbate further. Thus creating additional difficulties to Union producers who would face the decision either to compete for market share, at the expense of more sustainable prices, or to preserve a higher level of prices at the expense of continuing to lose market share. In both scenarios, its financial performance would be negatively impacted.
- (64) Furthermore, the Commission noted that this evolution in prices coincided with the period when a provisional safeguard measure was already in place (since mid-July 2018). Therefore showing that exporting countries were having an even more aggressive import behaviour under the measure, and showing their continued interest to enter the Union market in large volumes despite a provisional safeguard measure being in place.

1.2.5. *State of play of TDI measures in third countries and overcapacity*

- (65) In Sections 1.1.1 and 1.1.2 the Commission explained the evolution and more recent situation of overcapacity and TDI measures in third countries. In view of that information, the Commission considered that it was highly unlikely that there would be a reversal of the existing situation in the near future. For instance, TDI measures are usually imposed for a period of five years, and they can be prolonged further. In particular, because many of the measures had been imposed within the few years prior to the adoption of the EU steel safeguard measure ⁽⁸⁴⁾, they were set to continue in place at least for the immediate future. Regarding overcapacity, the reports referred to by the Commission did not indicate that there were signs that overcapacity was going to go down to any significant extent, if anything, they suggested that the situation of global overcapacity in the sector could even deteriorate further ⁽⁸⁵⁾. In fact, the Global Forum of Steel Excess capacity was also very clear in concluding that overcapacity continued to be an ongoing problem in late 2018. It noted, “Excess steelmaking capacity – a global challenge that continues to plague the sector – creates significant difficulties for steel producers in advanced, emerging and developing economies alike” ⁽⁸⁶⁾.
- (66) The proven effects that these factors had caused in the Union market in the form of substantial increase in imports were detailed in Section 1.1 above, as well as in the Definitive Regulation. As they were set to continue in place in the near future, their effects were thus expected to be of the same nature and therefore, together with the U.S Section 232 measure would generate a further increase of imports into the Union, with ensuing negative effects on the Union industry, if no safeguard measure was imposed.
- (67) Therefore, the Commission concluded that these elements would continue to play an important role in the Union steel market in the near future and were thus pertinent for the analysis of a threat of serious injury.

1.2.6. *Market outlooks and forecasts*

- (68) Throughout the period analysed, consumption of steel in the Union market increased year-on-year ⁽⁸⁷⁾. This trend allowed the Union industry to, generally, also increase its volume of sales, which in turn allowed it to alleviate to some extent the effects of the import pressure it was subject to and showed by the persistent undercutting and steady loss of market share. As explained in Section 1.2.1, in 2017 this increase in sales in a context of a recovery

⁽⁸⁴⁾ Around 140 of the investigations that led to the adoption of measures were initiated in the year 2015 or later, hence their duration was set to be in place, in principle, until at least 2021 (this is, at least 2 years after the conclusion of the EU safeguard investigation). Source: WTO, Integrated Trade Intelligence Portal (I-TIP).

⁽⁸⁵⁾ See OECD, ‘Recent Developments in Steelmaking Capacity’, DSTI/SC(2018)2/FINAL: “the updated information on announced investment projects suggests that nearly 52 million tonnes of gross capacity additions are currently underway and could come on stream during the three-year period of 2018-20. An additional 39 million tonnes of capacity additions are currently in the planning stages for possible start-up during the same time period”.

⁽⁸⁶⁾ Global Forum on Steel Excess Capacity, Ministerial Report, 20 September 2018, paragraph 2.

⁽⁸⁷⁾ Definitive Regulation, table 4.

in prices (both in overall terms and when compared to evolution of costs) allowed to the Union industry to partially recover from a consistent negative financial performance in previous years. In Section 1.2.4, the Commission observed a downward trend in steel prices in the Union parallel to an increase in raw material prices.

- (69) The Commission then assessed the economic outlooks and forecasts for the period that would follow the conclusion of the investigation in order to assess the existence of a threat of serious injury, analysing a variety of specialized market sources.
- (70) In this regard, sources consistently pointed to a scenario of uncertainty and cooling down of worldwide steel demand in the near future. Worldsteel Association noted, “deceleration in steel demand will continue into 2019 (...). No deal Brexit and trade war pose risks” ⁽⁸⁸⁾. It also recalled, “While the strength of steel demand recovery seen in 2017 was carried over to 2018, risks have increased. Rising trade tensions and volatile currency movements are increasing uncertainty” ⁽⁸⁹⁾.
- (71) The OECD noted, “recovery (of steel market conditions) looks fragile because of persistent structural imbalances” ⁽⁹⁰⁾. Other market sources like S&P Global Platts echoed this uncertainty sentiment in its Global Market Outlook of December 2018.
- (72) Moreover, the Global Forum on Steel Excess Capacity concluded in September 2018 “While steel market conditions have shown some cyclical recovery in 2017, the underlying trend in global steel demand remains weak and excess capacity remains significant” ⁽⁹¹⁾.
- (73) In the same vein, Eurofer (an EU Steel Association), noted “(...) ongoing trade frictions with the US, and cooling global demand, suggest that external risks could continue to climb, which in turn would increase uncertainty and lead to weakening prospects for EU steel users” ⁽⁹²⁾.
- (74) Therefore, the data analysed from a variety of sources consistently showed that the expectation was that at best, a modest increase in steel consumption would take place although this was not even certain as prospects were deteriorating amid growing uncertainty. As a result, the stagnating global steel demand would make it even more likely that steel exporters would sell into the attractive Union market.

Conclusion on threat of serious injury

- (75) The data analysed in this Section confirmed that imports were very likely going to increase in relevant volumes and that import pressure was thus going to continue, both on volumes and prices, as a result of the persistent overcapacity and the increasing number of TDI measures in third countries, whose effects on exports would continue. In addition, the effects of the US Section 232 would very likely be felt more strongly as months passed by, thus adding further pressure to the Union market through an increased risk of trade diversion, the first signs of which had already materialised.
- (76) Against this background, the Commission also confirmed the opposing trends of steel and raw material prices in the second half of 2018, and the uncertain market outlook for the near future.
- (77) Therefore, in view of the elements analysed in this Annex, together with the findings in the original determination the Commission confirmed that there was a threat of serious injury and that such serious injury would have materialised if the Commission had not imposed a definitive safeguard measure.

⁽⁸⁸⁾ See Worldsteel Association – Global Steel Market Outlook – OECD Steel Committee Meeting, 17 September 2018.

⁽⁸⁹⁾ See Worldsteel Association - Worldsteel Short Range Outlook October 2018, Press Release.

⁽⁹⁰⁾ See OECD Steel Market Developments, 85th Session of the Steel Committee, September 2018. See also pages 7 and 8 of OECD Global Economic Outlook, 17 September 2018, showing a downwards revision of growth expectations (also in the Union), and that “global trade had slowed amid growing trade policy uncertainties”.

⁽⁹¹⁾ Global Forum on Steel Excess Capacity, Ministerial Report, 20 September 2018, paragraph 2.

⁽⁹²⁾ See EUROFER – Economic and Steel Market Outlook 2018-2019, 25 October 2018.

1.3. Obligations whose effect resulted in the increase in imports

- (78) Article XIX:1(a) of the GATT 1994 stipulates, in relevant part: “[i]f, as a result ... of the effect of the obligations incurred by a [Member] under this Agreement, including tariff concessions, any product is being imported into the territory of that [Member] in such increased quantities ...”.
- (79) The *product* in question comprises several tariff lines ⁽⁹³⁾.
- (80) On all of these tariff lines, the European Union has, as a result of tariff concessions made in past rounds of multilateral trade negotiations, the tariff commitments of ⁽⁹⁴⁾:
- 0 % ad valorem
- (81) These concessions were inscribed, at the time of the safeguard determination, in Part I, Section II of the European Union’s Schedule of Concessions and Commitments, certified as Schedule EU CLXXIII – European Union on 1 December 2016 ⁽⁹⁵⁾, as amended. The column for “other duties and charges” in that Schedule and regarding the above tariff lines was empty.
- (82) As a result of these concessions inscribed in the European Union’s Schedule of Concessions and Commitments, annexed to the GATT and incorporated pursuant to Article II:7 of the GATT 1994, the European Union had, at the time of the safeguard determination, *obligations incurred under the GATT 1994* notably as follows: Article XI:1, prohibiting non-tariff restrictions on the importation of the above-listed products, and, importantly, Article II:1(a) and Article II:1(b), first and second sentences, of the GATT 1994. Under Article II:1(b), first sentence, the EU is not allowed, absent an applicable exception, to impose ordinary customs duties on the product in question in excess of those set forth and provided in the relevant part of the EU’s Schedule of Concessions and Commitments, i.e. the zero rate pointed out above for each of the tariff lines covered. At the time of the original safeguard determination as well as of the imposition of the definitive safeguard measure, the EU’s applied import tariffs on the product covered by the safeguard was 0 %. In other words, for ordinary customs duties, these applied tariffs were already the maximum permitted under Article II:1(a) and Article II:1(b), first sentence, of the GATT 1994. As for other duties or charges, no flexibility existed under Article II:1(b), second sentence, for introducing additional other duties or charges than ordinary customs duties.
- (83) The product subject to the safeguard was being imported in increased quantities (as established in the definitive safeguard) *as a result* of the above obligations undertaken under the GATT 1994 (Article XI:1, Article II:1(a) and II:1(b), first and second sentences, of the GATT 1994), because those obligations, combined with the tariff concessions which the European Union made in the successive rounds of multilateral trade negotiations, enhanced and secured the conditions of market access for imports of the product subject to the safeguard on the market of the European Union. The above-mentioned tariff commitments of the European Union thus resulted in the increase in imports and gave no leeway for the EU to increase ordinary customs duties in lieu of introducing a safeguard measure. This simultaneously explains how the obligations in question resulted in the increase in imports that threatened to cause serious injury.
- (84) The GATT obligations specified simultaneously prevented the EU from increasing the applied import duties on the product at issue. These were thus, the European Union’s “obligations of the GATT 1994 [which] constrain[ed] its ability to prevent or remedy injury from an increase in imports”. Concomitantly, the European Union “suspend[ed] those obligations as a result” of its safeguard measure.’

⁽⁹³⁾ See Annex I to the Definitive Regulation.

⁽⁹⁴⁾ For further details see Note to the file dated 30 November 2022, Table 5.

⁽⁹⁵⁾ WTO doc. WT/Let/1220

DECISIONS

COMMISSION DECISION (EU) 2023/105

of 26 July 2022

on the measures SA.33960 2012/C (ex 2012/NN) implemented by the French Republic in favour of the successive managers of Beauvais-Tillé airport and the airlines operating there

(notified under document C(2022) 5076)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those articles ⁽¹⁾, and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letter dated 27 November 2009, the Commission received a complaint about advantages which the airline Ryanair was allegedly enjoying at a number of local and regional French airports. In respect of Beauvais-Tillé airport ('Beauvais airport'), the complaint also mentioned financial support allegedly received by the successive managers of the airport, namely the Chambre de commerce et d'industrie d'Oise (Oise Chamber of Commerce and Industry, 'Oise CCI') and the Société Aéroportuaire de Gestion et d'Exploitation de Beauvais (Beauvais airport managing and operating company 'SAGEB'). The complaint drew in particular on a report by the Chambre régionale des comptes de Picardie (Picardie regional court of auditors, 'CRC') dated 3 September 2007 ⁽²⁾.
- (2) By letter dated 16 March 2010, the Commission sent the French authorities a non-confidential version of the complaint and asked them for explanations concerning the alleged measures ('the measures'). The French authorities initially responded by letters dated 31 May and 7 June 2010, and provided additional information by letter of 2 November 2011. The Commission forwarded these comments to the complainant and asked France for additional information by letter dated 5 December 2011. The French authorities sent their comments and their replies by letter dated 31 January 2012.

⁽¹⁾ OJ C 279, 14.9.2012, p. 23.

⁽²⁾ Report on the final findings on the management of the Oise Chamber of Commerce and Industry, available at <http://www.ccomptes.fr/fr/CRC20/documents/ROD/PIR200714.pdf>

- (3) By letter dated 30 May 2012, the Commission notified France of its decision ('the opening decision') to initiate the formal investigation procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in respect of, first, the aid potentially disbursed in succession to Oise CCI and SAGEB between 2000 and 2008 and, second, the aid potentially paid by Oise CCI and SAGEB to various airlines between 1 January 1997 and 30 May 2012.
- (4) The opening decision was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on the measures in question.
- (5) By letter of 14 August 2012, the Commission received comments from France. On 25 October 2012, it then received comments submitted jointly by the Beauvais airport joint authority (Syndicat mixte de l'aéroport de Beauvais, 'SMABT'), Oise CCI and SAGEB. The airlines Ryanair and Wizz Air sent their comments to the Commission on 26 October 2012. By letter of 21 December 2012, France stated that it did not wish to submit any response to these comments.
- (6) In addition, by letters of 10 April 2013, 20 December 2013, 9 and 31 January 2014, 7 February 2014, 28 March 2014, 27 January 2015, 7 December 2015 and 1 April 2019, Ryanair submitted a set of general comments, all relating to several State aid cases initiated by the Commission and involving Ryanair. It also submitted economic analysis reports by the consultancy firm Oxera on 12 and 26 September 2014 and 6 November 2014.
- (7) Wizz Air also submitted comments on 21 March 2014, and likewise submitted economic analysis reports by Oxera on Beauvais airport on 4 November 2014.
- (8) The Commission forwarded the comments by interested parties to France and gave it the opportunity to respond ⁽⁴⁾. France answered by letters dated 13 July 2012, 21 December 2012, 7 June 2013, 29 January 2014, 23 May 2014, 18 December 2015 and 24 June 2019. In its letter of 13 July 2012, France informed the Commission that it had no observations to make in respect of the comments submitted, notwithstanding the remarks it had already sent in connection with the Marseille Provence airport case ⁽⁵⁾. In addition, by letters of 25 July 2012, 29 January 2014, 23 May 2014 and 18 December 2015, France informed the Commission that it did not wish to submit any observations on the comments by third parties.
- (9) By letter of 24 February 2014, the Commission informed France and the interested parties that had already submitted comments of its intention to assess the compatibility of the measures with the internal market under the Guidelines on State aid to airports and airlines ('the 2014 Guidelines') ⁽⁶⁾. The Commission invited the recipients of these letters to comment in this connection, if they so wished. In addition, on 15 April 2014 a notice was published in the *Official Journal of the European Union* ⁽⁷⁾ inviting France and interested third parties to submit their comments in this connection.
- (10) France submitted its comments on the 2014 Guidelines on 19 March 2014. SMABT, SAGEB and Oise CCI sent joint comments to the Commission on 14 March 2014. Wizz Air submitted its comments on 21 March 2014, Air France on 25 April 2014 and the NGO Transport & Environnement by letter of 13 May 2014. The various comments submitted were forwarded to France by letter of 28 May 2014. France chose not to submit any response.
- (11) By letters dated 16 April 2014 and 16 July 2014, the Commission asked France for additional information. France replied on 19 June 2014 and 18 August 2014 respectively.

⁽³⁾ OJ C 279, 14.9.2012, p. 23.

⁽⁴⁾ By letters of 30 May 2012, 15 June 2012, 3 May 2013, 9 January 2014, 23 January 2014, 4 February 2014, 2 July 2014, 12 September 2014, 16 December 2015 and 17 May 2019.

⁽⁵⁾ Commission Decision (EU) 2016/1698 of 20 February 2014 concerning measures SA.22932 (2011/C) (ex NN 37/2007) implemented by France in favour of Marseille Provence Airport and airlines using the airport (OJ L 260, 27.9.2016, p. 1).

⁽⁶⁾ Communication from the Commission – Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).

⁽⁷⁾ OJ C 113, 15.4.2014, p. 30.

2. BACKGROUND TO THE AID

2.1. Characteristics of Beauvais airport

- (12) Beauvais airport is a French civilian airport located in the municipality of Tillé in the Department of Oise, 3 km north of Beauvais and around 90 km from Paris. The airport is open to domestic and international commercial traffic. Beauvais airport is 68 km from Amiens-Glisly airport, 80 km from Roissy-Charles de Gaulle, about 90 km from Rouen airport and 106 km from Orly South.
- (13) As of 1 May 1997, Ryanair started operating several routes from Beauvais airport to European destinations. From 2002, a number of airlines (Goodjet, Volare, Air Horizons, Sterling, etc.) gradually started offering scheduled services out of Beauvais airport. Despite the increase in traffic and the arrival of new airlines, Ryanair remained the biggest airline at the airport: its traffic accounted for over 80 % on average of all business at the airport in terms of passenger numbers between 1997 and 2011. Low-cost traffic accounted for almost all the airport's business in 2011.
- (14) Passenger traffic at the airport between 1997 and 2011 is summarised in Table 1.

Table 1

Passenger traffic at Beauvais airport (passengers) 1997-2011 ⁽⁸⁾

	Passengers	Ryanair share	Blue Air share	Wizz Air share
1997	207 000	127 453 (62 %)		
1998	260 000	194 211 (75 %)		
1999	387 000	315 771 (81,5 %)		
2000	387 229	346 551 (89 %)		
2001	422 972	371 376 (87 %)		
2002	677 857	459 572 (68 %)		
2003	969 445	806 383 (83 %)		
2004	1 427 595	1 292 368 (91 %)		40 919
2005	1 848 484	1 528 405 (83 %)	4 023	162 465
2006	1 887 971	1 626 279 (86 %)	28 947	148 861
2007	2 155 633	1 907 662 (88,5 %)	69 795	138 256
2008	2 484 635	2 212 165 (89 %)	81 072	178 340
2009	2 591 864	2 210 078 (85 %)	79 414	300 088
2010	2 931 796	2 465 476 (84 %)	84 660	377 812
2011	3 677 794	3 185 327 (87 %)	90 083	401 370

⁽⁸⁾ According to annexes to the letter from the French authorities of 31 January 2012.

2.2. Operators of Beauvais airport

2.2.1. Management of the airport by Oise CCI (1960 - 31.5.2008)

- (15) Until 31 December 1992, Oise CCI managed Beauvais airport on the basis of a 30-year public equipment concession (*concession d'outillage public*) signed in 1960 with the State, which owned the airport at the time. Oise CCI then managed the airport under a temporary authorisation to occupy the public domain (*autorisation temporaire d'occupation du domaine public*, 'AOT') granted by prefectural order of 1 October 1997. This provided the legal basis for the management of the airport from 1 January 1993 to 31 December 1999. It was renewed several times up to 3 May 2002.
- (16) By concession agreement concluded on 30 January 2002, which entered into force on 4 May 2002, the State granted the concession for the construction, maintenance and operation of Beauvais airport to Oise CCI for a duration of 5 years.
- (17) By agreement of 1 March 2007, the State transferred the ownership and the powers to develop, maintain and manage Beauvais airport to SMABT, with effect from 1 March 2008.
- (18) SMABT, set up by prefectural order of 20 October 2006, brings together the Region of Picardie (38 % of SMABT's funding), the Department of Oise (38 %) and the Beauvaisis intermunicipal authority (*communauté de communes du Beauvaisis*, 'CCB', 24 %). SMABT operates by pooling the services previously provided separately by its members and to this end a service provision agreement was concluded with the Department of Oise so that members of its staff could be seconded to SMABT. SMABT is subject to State oversight of its budget ⁽⁹⁾ and of the legality of its decisions in accordance with the Local Government Code (*Code général des collectivités territoriales*, CGCT) in force when it was set up, and specifically Articles L. 1612-1 to L. 1612-20 and L. 3132-1 to L. 3132-4 thereof.
- (19) By decision of 7 June 2007, SMABT agreed in principle to delegate the public service of operating Beauvais airport and the bus service between Beauvais airport and Paris, and authorised the Chair of SMABT to launch a call for tenders. The following tasks were to be entrusted to the successful tenderer:
 - upkeep, maintain and operate Beauvais airport;
 - carry out certain works under a multi-annual investment plan, including in particular investments in maintaining installations and building commercial infrastructure (specifically building a second terminal);
 - operate bus services connecting the airport to Paris and other locations in the Île-de-France region.
- (20) Pending the conclusion of the award procedure referred to in recital 19, the concession agreement of 30 January 2002 with Oise CCI was renewed by the State until 1 March 2008 ⁽¹⁰⁾. By amendment to the agreement of 29 February 2008, SMABT, on behalf of the State, extended it again to 31 May 2008.
- (21) The operation of Beauvais airport by Oise CCI was booked separately from the activities carried out by Oise CCI's general arm. In addition, the accounts for Beauvais airport's commercial activities were kept separately from those for its activities falling under the remit of the State for the purposes of calculating the airport tax levied by the French Civil Aviation Authority (*direction générale de l'aviation civile*) to finance airport infrastructure and equipment connected with tasks incumbent on the State. Oise CCI's main accounting and commercial data relating to the management of the airport from 1997-2008 are summarised in Table 2:

⁽⁹⁾ Budgetary oversight is designed to ensure compliance with the rules in force on preparing, adopting and implementing the budgets of local authorities and the bodies they set up. It is the exclusive responsibility of the prefect, in accordance with Articles L.1612-1 to L.1612-20 CGCT and Article 72 of the French Constitution, in collaboration with the regional courts of auditors. Only prefects may modify budgetary documents by virtue of their power to act in place of the local authority (*pouvoir de substitution*), by which they can adopt and promulgate a budget on their own initiative. Budgetary oversight covers the date of adoption of the budget, real balance, the adoption of the accounts and administrative account deficit, and the entry and authorising of statutory expenditure.

⁽¹⁰⁾ Article 58 of the Amending Budget Law for 2006 of 30 December 2006.

Table 2

Main accounting data for Oise CCI's airport arm (000 €) ⁽¹¹⁾

	1997	1998	1999	2000	2001	2002
Bus revenue	459	657	1 295	1 403	1 749	3 546
Ryanair revenue	n/a	n/a	n/a	n/a	706	848
Total revenue	2 566	2 892	4 153	4 199	5 264	13 109
Payments to Ryanair	n/a	n/a	n/a	n/a	462	534
Total expenditure	2 417	3 413	3 631	4 675	5 704	13 069
Net income	149	- 521	522	- 475	- 440	40
Net fixed assets	2 679	3 146	27 126	2 595	2 550	2 887
Balance sheet total	3 121	3 933	3 301	3 411	3 808	8 163
	2003	2004	2005	2006	2007	2008 ⁽¹²⁾
Bus revenue	5 341	8 007	12 840	11 845	12 936	5 858
Ryanair revenue	1 502	2 379	2 777	2 904	3 425	1 643
Total revenue	16 915	18 934	26 982	30 525	33 264	17 933
Payments to Ryanair	834	1 146	1 272	1 348	1 558	765
Bus expenditure			6 078	6 210	6 403	2 821
Total expenditure	13 874	22 414	26 179	28 731	29 928	17 950
Net income	3 042	- 3 480	803	1 794	3 335	- 17
Net fixed assets	5 198	8 017	10 833	14 448	15 425	150
Balance sheet total	9 353	15 283	18 234	31 585	33 560	16 374

⁽¹¹⁾ Data from the French authorities, 31 January 2012. The Paris-Beauvais bus service started in May 1997. According to France, the drop in net income in 2004 is due to the very high volume of the provisions for renovation of fixed assets under concession (EUR 5 216 500) and the provision for major repairs (EUR 590 000). The renovation programme covered in particular the renovation of the main runway, aircraft stands and taxiways, access roads and the heating, electricity and plumbing installations.

⁽¹²⁾ 1 January 2008 to 31 May 2008.

2.2.2. Management of the airport by SAGEB (since 1.6.2008)

- (22) Following the award procedure referred to in recital 19, SMABT delegated ⁽¹³⁾ the operation of Beauvais airport to the Oise CCI-Veolia Transport consortium under a public service delegation agreement ('the PSD agreement') signed on 19 March 2008 (with effect from 1 June 2008) for a period of 15 years ⁽¹⁴⁾. Under the terms of the PSD agreement, as soon as it was set up, SAGEB automatically replaced the Oise CCI-Veolia Transport consortium as the entity to which the public service was delegated. The PSD agreement is still in force as at the date of adoption of this Decision.
- (23) SAGEB is a simplified joint stock company (*société par actions simplifiée*, SAS) whose capital was originally held by Oise CCI (51 %) and Veolia Transport (49 %), the latter in turn held by the majority privately owned group Veolia Environnement ⁽¹⁵⁾. In March 2011, Veolia Transport was replaced by Veolia-Transdev (50 % owned by the Veolia Environnement group and 50 % by Caisse des Dépôts et Consignations), which took over all the shares held by Veolia Transport in SAGEB. SAGEB's internal operation and organisation are described in recitals 291 et seq.
- (24) Table 3 contains an overview of the successive contracts for the operation of Beauvais airport.

Table 3

Operation of Beauvais airport – Overview

Owner	Period	Operator	Type of contract	Date of contract
State	1.1.1993-4.5.2002	CCI Oise	AOT	Prefectoral order of 1.10.1997
	4.5.2002-29.2.2008	CCI Oise	Concession agreement	30.1.2002
SMABT	1.3.2008-1.6.2008	CCI Oise		
	1.6.2008-31.5.2023	SAGEB	PSD agreement	19.3.2008

3. DETAILED DESCRIPTION OF THE MEASURES

- (25) The measures comprise, first, financial support granted by the local authorities to the successive managers of Beauvais airport and, second, financial support granted by the successive managers of Beauvais airport to a number of airlines.

3.1. Financial support to Beauvais airport

- (26) There are two types of support granted to Beauvais airport: funding for investment in airport infrastructure and contributions paid for the operation of the airport.

⁽¹³⁾ Decision by SMABT, 25 February 2008.

⁽¹⁴⁾ A more detailed description of the delegation procedure is provided in recitals 159 et seq.

⁽¹⁵⁾ In 2008 Veolia Environnement's capital was divided between the following: Caisse des dépôts et consignations (public-sector institution) (10 %), Groupama (5,55 %), Capital Research and Management Company (5,04 %), EDF (3,87 %), Veolia Environnement (3,17 %), and individuals and other private investors in the form of shares (72,37 %) (https://www.veolia.com/sites/g/files/dvc2491/files/imported-documents/2016/11/Rapport_financier_annuel_-_Document_de_reference_2008_20090406_0.pdf).

3.1.1. Contractual framework for the grants made to Beauvais airport

3.1.1.1. The temporary authorisation to occupy the public domain (1.1.1993-3.5.2002)

- (27) Under this authorisation, Oise CCI was entrusted, at its own risk, with installing, maintaining, renovating, operating and developing the works, land, buildings, installations, equipment and services needed for the operation of Beauvais airport ⁽¹⁶⁾. However, the State remained responsible for certain services connected with aviation safety, security and regularity ⁽¹⁷⁾, while Oise CCI provided fire-fighting and rescue services, bird hazard prevention and the aeronautical information service ⁽¹⁸⁾.
- (28) Oise CCI derived its income in principle from airport charges and operating income ⁽¹⁹⁾. Financial support could also be granted to cover expenses arising from the task of installing and maintaining infrastructure with which Oise CCI had also been entrusted ⁽²⁰⁾. For this expenditure, Oise CCI could also request funding from other public authorities under Article 3 of the AOT. In exchange, Oise CCI was required to pay the State a fee for occupying the public domain, which was set at FRF 1 000 per year.

3.1.1.2. The Beauvais airport concession agreement (4.5.2002-31.5.2008)

- (29) The concession agreement of 4 May 2002, some of the clauses of which referred to the application of the standard specification set out in the Decree of 29 May 1997 ⁽²¹⁾, divided tasks between the State and Oise CCI. As the authority awarding the concession, the State performed and funded all air traffic services ⁽²²⁾. Besides the commercial operation of the airport ⁽²³⁾, Oise CCI was responsible for performing and funding itself certain safety and security-related services, such as fire-fighting and rescue, bird hazard prevention, and security checks on passengers, hold baggage and access to restricted areas of the aerodrome ⁽²⁴⁾.
- (30) Oise CCI derived its income in principle from the airport charges set by the concession agreement and from operating income ⁽²⁵⁾. The safety and security-related services provided by Oise CCI as described in recital 29 were funded from the revenue from the airport tax and, if needed, by subsidies from the State ⁽²⁶⁾.

3.1.1.3. The public service delegation agreement (1 June 2008-2023)

- (31) The PSD agreement entrusts to SAGEB as its primary task the management and operation of Beauvais airport and, as its secondary task, the provision of bus links between Beauvais airport and Paris, both at the delegation holder's own risk ⁽²⁷⁾.

⁽¹⁶⁾ Articles 1 and 6 of the Order of 1 October 1997 granting the temporary authorisation to occupy the public domain.

⁽¹⁷⁾ Article 8 of the AOT refers to air traffic control services and meteorological services for air navigation.

⁽¹⁸⁾ Article 9 of the AOT.

⁽¹⁹⁾ Article 34 of the AOT.

⁽²⁰⁾ Article 10 of the AOT.

⁽²¹⁾ See Decree No 97-547 of 29 May 1997 approving the standard specification and the concession agreement for concessions granted by the State for the construction, maintenance and operation of aerodromes, as amended by Decree No 99-780 of 6 September 1999.

⁽²²⁾ Under Article 16 of the specification (to which Article 7 of the 2002 concession agreement refers), these services also included the purchase, maintenance and installation of equipment necessary for the provision of air traffic services, including the lighting control system, the purchase of radio landing aids and the purchase and installation of any visual approach slope indicators.

⁽²³⁾ Article 7.2 of the concession agreement.

⁽²⁴⁾ Articles 8 and 9 of the concession agreement.

⁽²⁵⁾ Articles 11 and 13 of the concession agreement.

⁽²⁶⁾ Articles 8 and 9 of the concession agreement.

⁽²⁷⁾ Article 1 of the PSD agreement of 19 March 2008. The bus service was in fact operated exclusively by SAGEB.

- (32) Under the PSD agreement, SAGEB is financially responsible for the performance of all activities relating to the operation of Beauvais airport, except for the safety of air navigation and meteorological services ⁽²⁸⁾. In addition, SAGEB is responsible for certain safety and security-related services ⁽²⁹⁾, in exchange for a financial contribution from the State set either by the legislation in force ⁽³⁰⁾ or in accordance with the type and volume of traffic at the aerodrome ⁽³¹⁾.
- (33) As for the financial terms of the PSD agreement, SAGEB collects the revenue from aeronautical charges and other operating income from the airport and the operation of the Paris-Beauvais bus link. Conversely, SAGEB has to pay a fee for occupying the public domain to SMABT, which comes to around EUR 10,8 million over the duration of the agreement. Moreover, Annex 14 to the agreement provides, 'in exchange for SMABT's contribution to the funding of airport infrastructure, the concession holder undertakes to pay SMABT a share in profits calculated on the basis of any profit surplus compared with the estimated internal rate of return of 10 %'. The right to profit-sharing is triggered in year (n) if net income is positive, if the cumulative net income of years (1) to (n) is positive and if the resulting internal rate of return is higher than 10 %. The share in profits is set at 50 % of the excess profit.
- (34) Furthermore, the PSD agreement requires SAGEB to make a series of investments during its validity ⁽³²⁾, estimated at EUR 68,2 million, which SAGEB is obliged to finance by any means and for which SMABT will make a maximum contribution of EUR 14,5 million ⁽³³⁾ (see recital 41)

3.1.2. The investment grants

- (35) Investment grants were paid to the successive managers of Beauvais airport under three investment programmes implemented in the periods 2001-2006, 2007-2008, and 2008-2023.

3.1.2.1. The 2001-2006 investment programme ('programme 1')

- (36) In 2001, Oise CCI applied for a financial contribution from the Department of Oise, the Region of Picardie and the Beauvaisis intermunicipal authority. In its application, Oise CCI outlined a programme to modernise and upgrade Beauvais airport at an estimated cost of FRF 53,3 million (EUR 6,825 million).
- (37) The Department of Oise ⁽³⁴⁾, the Region of Picardie ⁽³⁵⁾ and the Beauvaisis intermunicipal authority ⁽³⁶⁾ granted the application and awarded a total of EUR 4 311 395 ⁽³⁷⁾ to Oise CCI, the rest of the costs being borne by the latter (EUR 2,55 million) ⁽³⁸⁾. The grant was calculated not in relation to the specific costs set out in programme 1, but in relation to the overall cost estimate for the programme. The specific date for the start of the investments was set as 2 July 2001, and the investments had to be completed by 31 December 2006. This initial investment programme had to be modified during 2005 to take account, following a rise in passenger numbers, of regulatory constraints linked to the processing and safety of passengers ⁽³⁹⁾. The investments planned and implemented under this programme can be summarised as follows:

⁽²⁸⁾ Articles 6 and 7 of the PSD agreement of 19 March 2008.

⁽²⁹⁾ Under Article 27 of the PSD agreement, these services are principally safety and fire services, animal hazard prevention, security checks on access to restricted areas of the aerodrome, tasks related to carrying out security inspections, etc.

⁽³⁰⁾ In respect of the tasks of providing safety and fire services and animal hazard prevention.

⁽³¹⁾ In respect of all other safety and security-related services referred to in Article 27 of the PSD agreement.

⁽³²⁾ Article 9 of the PSD agreement. The investments concerned are listed further on in the Decision.

⁽³³⁾ Articles 11 and 79 of the PSD agreement.

⁽³⁴⁾ By funding agreement concluded between the Department of Oise and Oise CCI on 23 July 2002.

⁽³⁵⁾ By funding agreement concluded between the Region of Picardie and Oise CCI on 13 December 2002.

⁽³⁶⁾ By funding agreement concluded between the Beauvaisis intermunicipal authority and Oise CCI on 8 October 2002.

⁽³⁷⁾ The Department of Oise and the Region of Picardie each contributed EUR 2 060 000 and the Beauvaisis intermunicipal authority EUR 191 395.

⁽³⁸⁾ Oise CCI planned to finance its share by self-financing (airport service) and borrowing.

⁽³⁹⁾ Preamble to amendment 1 of 10 August 2005 to the funding agreement of 23 July 2002.

Table 4

Investments planned and implemented under programme 1 (EUR)

Type of investment	Estimated amounts	Revised estimates (2005)	Final amounts of investment
West concourse (departures): Baggage security hall Baggage sorting hall Airport offices Canopy roof	1 687 153	2 600 000	2 608 000
East concourse (arrivals) Baggage handling hall Passenger walkway	228 674	160 000	164 000
Terminal modernisation	762 250	600 000	649 000
Safety and security equipment: Fire station construction Security fencing Airport security gates Hold baggage screening equipment	914 690	900 000	922 000
Access roads and utility services Car park Fire station (access roads and services) Upgrading existing access roads Waste water connection	762 245	873 480	1 238 000 463 467
Miscellaneous works	304 900	0	0
Environmental studies and works	533 570	60 000	62 000
Fees	623 210	623 210	744 000
Modernisation of operating equipment: Screening check points	1 048 310	1 048 310	1 264 000 133 000
TOTAL	6 865 000	6 865 000	7 650 000

- (38) Despite higher than expected final costs, the local authorities referred to in recital 37 paid their contributions totalling EUR 4,311 million to Oise CCI as laid down in the funding agreements, the excess costs being borne by Oise CCI.

3.1.2.2. The 2006-2007 investment programme ('programme 2')

- (39) Oise CCI carried out a second investment programme of EUR 9,5 million over a period of 2 years from 1 January 2006 to 31 December 2007. The Department of Oise, the Region of Picardie and the Beauvaisis intermunicipal authority agreed to make a financial contribution to this programme (calculated in relation to the overall cost estimate for programme 2, not in relation to specific costs), by agreements signed with Oise CCI on 11 December 2006, 11 July 2007 and 12 July 2007 respectively. The investment programme was as follows:

Table 5

Investments planned and implemented under programme 2 (EUR)

Type of investment	Estimated amounts of investment	Final amounts of investment
Terminal extension	1 202 039	1 327 749
Security fencing	151 653	165 805
Upgrading of aircraft stands and taxiway	1 410 000	1 408 739
Renovation of hangars and runways	300 000	231 542
Passenger flow separation corridor	237 451	176 590
Staff car park complying with the Water Act	215 079	227 611
Car rental base	110 000	1 735
Land acquisitions ILS	150 000	61 540
Indoor and outdoor signage	50 000	10 510
Porte Maillot passenger reception area	189 873	213 548
Compliance with the Water Act	870 000	46 141
Upgrading ground marking	75 000	0
ILS studies	150 000	139 803
Modernisation of public access roads	1 350 000	1 053 861
Administrative offices	890 000	944 557
Heating upgrade	80 000	0
Terminal 2 studies	0	188 188
Fees and contingencies	500 000	745 123
Modernisation of operating equipment:	1 568 905	2 178 477
<i>Installation of border police booths</i>		52 670
<i>Installation of a laser bird repellent</i>		86 085
TOTAL	9 500 000	9 121 527

- (40) The local authorities referred to in recital 37 undertook to contribute 74 % of the total investment amount, the rest being borne by Oise CCI, with the Region of Picardie and the Department of Oise contributing 25 % of the investment costs each (EUR 4,6 million in total) and the Beauvaisis intermunicipal authority 24 %, with a final grant of EUR 2,2 million to Oise CCI. Oise CCI thus received for this investment programme an investment grant of around EUR 6,8 million, corresponding to 74 % of the value of the investments carried out.

3.1.2.3. The 2008-2023 investment programme ('programme 3')

- (41) As stated in recital 34, the PSD agreement requires SAGEB to carry out a programme of investments of EUR 68,2 million over the period 2008-2023, with funding from SMABT capped at EUR 14,5 million. Annex 6 to the PSD agreement set out the type and amount of these investments and the timetable for implementing them ⁽⁴⁰⁾. The investments planned and implemented to date can be summarised as follows:

Table 6

Investments planned and implemented under programme 3 (EUR million)

Type of investment	Initial estimated amounts	Amounts executed at 31 December 2018	Revised estimates to be executed
Construction Terminal T2	11,9	9,7	0,01
Upgrade Terminal T1	1,6	5	0,07
Establishment of ILS category III programme	13,6	14,4	0
Additional aeronautical infrastructure	3,3	4,2	0,2
Parking and commercial facilities	5,4	9,1	0,03
Environmental investment	2,9	1,6	0
Installation maintenance	8,5	3,3	0,12
Transfer of general aviation installations	0,7	1,5	0,04
Acquisition of safety and security equipment	10,2	8,7	2,1
Ground handling equipment and furniture	7,1	1,8	0,9
IT equipment	3	2,6	1,8
TOTAL	68,2	61,9	67,2

- (42) As at 31 December 2018, investments worth close on EUR 62 million had been made by SAGEB. The investment forecasts from now until the expiry of the PSD agreement include a total estimated amount slightly below that originally included in the PSD agreement.

3.1.3. Operating subsidies

3.1.3.1. Direct payments

- (43) The Commission made the preliminary observation that none of the concession agreements for the management and operation of Beauvais airport provided for the payment of operating subsidies to the successive airport managers (see section 3.1.1).
- (44) None the less, the Commission pointed out in the opening decision that the successive managers had received various types of operating subsidy.

⁽⁴⁰⁾ The investment timetable contains three financing periods: a period running from 1 June 2008 to 31 December 2012 with a commitment of EUR 49,9 million; a second period running from 1 January 2013 to 31 December 2017 with a planned investment of EUR 7,8 million; and a final period between 2018 and 2023 involving EUR 10,5 million in investments.

- (45) First, the Commission found that between 2002 and 2008, the accounts of Oise CCI (airport arm) showed various operating subsidies paid by a number of bodies to Oise CCI's airport arm totalling EUR 107 924,59.

Table 7

Amount received in operating subsidies by Oise CCI's airport arm (EUR)

2002	2003	2004	2005	2006	2007	2008	TOTAL
84 845,10	15 245	0	7 834,49	0	0	0	107 924,59

3.1.3.2. Cash advances

- (46) Second, the French authorities had informed the Commission that Oise CCI's general arm had paid zero-rate cash advances to the airport arm between 1995 and 2004 to deal with a risk of default linked to the numerous and urgent costs faced by the airport arm on account of the outdated infrastructure and considerable annual rise in traffic recorded in this period. Table 8 shows the amount of aid:

Table 8

Cash advances made by Oise CCI's general arm to the airport arm (EUR)

Year	Cash advance made for the year concerned	Cumulative amount
1995	n/a	2 412 922,70
1996	888 508,49	3 301 431,19
1997	- 394 036,04	2 907 395,15
1998	323 559,53	3 230 954,68
1999	- 838 477,75	2 392 476,93
2000	- 176 603,94	2 215 872,99
2001	73 514,73	2 289 387,72
2002	142 970,85	2 432 358,57
2003	- 2 198 307,33	234 051,24
2004	327 698,17	561 749,41
2005	- 561 749,41	0

3.1.3.3. Partial exemption from funding the tourism development plan

- (47) Lastly, the Commission found that the PSD agreement included in Annex 19 a tourism development plan for Beauvais airport ⁽⁴¹⁾. According to this Annex, the plan set a target of turning 8 % of passengers into consumers/visitors for Beauvais, Oise and Picardie within 3 years of the entry into force of the PSD agreement. To achieve this target, the plan set out a number of actions to encourage Beauvais airport passengers to stay in the Beauvaisis area, the Oise department or the Picardie region (passenger surveys, image marketing, etc.) The plan was to be carried out by the Picardie regional tourism committee, the Oise department tourism committee and the Beauvaisis tourist office ('the institutional tourism agencies'). The plan was to be funded by SMABT and the selected tenderer, namely SAGEB (50 % each).

⁽⁴¹⁾ The tourism development plan had been adopted previously by SMABT on 24 January 2008. It was attached to the PSD agreement.

- (48) An agreement on objectives and means (*convention d'objectifs et de moyens*) was concluded on 15 October 2008 between SMABT, SAGEB and the institutional tourism agencies. It set out in detail the implementation of the tourism development plan contained in Annex 19 to the PSD agreement by the institutional tourism agencies. The agreement provided that the latter had to report on their activity directly to SMABT every year (as well as to the steering committee made up of all the signatories) ⁽⁴²⁾. The agreement was concluded for a duration of 3 years with an annual budget of EUR 462 000 split 50-50 between SAGEB and SMABT and granted to allow them to implement the tourism actions agreed on.

3.2. Measures in favour of the airlines

- (49) Between 1 May 1997 and 30 May 2012, various airport services contracts were concluded between the successive operators of Beauvais airport (first Oise CCI, then SAGEB) and a number of airlines.
- (50) The contractual relationship between the airport operator and Ryanair took the form of an exchange of letters, while with the other airlines a formal contract was drawn up, either on the IATA (International Air Transport Association) model or as a one-off. All the contracts covered by this Decision are listed in Table 9.
- (51) At the time the contracts RYAN4, RYAN5 and WIZZ3 were signed, SAGEB was operating Beauvais airport. When the other contracts were signed, Oise CCI was the airport operator.

Table 9

List of airport services contracts concluded between the operators of Beauvais airport and the airlines

Contract code	Airline	Airport operator	Contract type	Date signed	Date in force	Duration
Ryanair						
RYAN1	Ryanair	Oise CCI	Letters	8.9.1998	1.1.1999	5 years
RYAN2	Ryanair	Oise CCI	Letters	16.3.2001	Not specified	Not specified
RYAN3	Ryanair	Oise CCI	Letters	12.2.2002	Not specified	10 years
RYAN4	Ryanair	SAGEB	Letters	4.2.2010 and 5.2.2010	1.5.2010	7 months
RYAN5	Ryanair	SAGEB	Letters	27.7.2010	1.1.2011	1 year
Wizz Air						
WIZZ1	Wizz Air	Oise CCI	Contract (IATA ground handling agreement)	11.6.2004	11.6.2004	5 years
WIZZ2	Wizz Air	Oise CCI	Contract (IATA ground handling agreement)	1.7.2005	1.7.2005	3 years and 8 months

⁽⁴²⁾ See Article 8 of the Agreement on objectives and means of 24 October 2008.

Contract code	Airline	Airport operator	Contract type	Date signed	Date in force	Duration
WIZZ3	Wizz Air	SAGEB	Contract ('Investment' agreement and IATA ground handling agreement)	1.6.2009	1.6.2009	5 years
<i>Other airlines</i>						
GOOD1	Goodjet	Oise CCI	Contract (one-off)	14.12.2001	14.12.2001	7 years
CIAO1	Ciaofly	Oise CCI	Contract (one-off)	24.4.2002	24.4.2002	7 years
BERL1	Berlin Jet	Oise CCI	Contract (one-off)	30.1.2003	30.1.2003	5 years
VOLA1	Volare	Oise CCI	Contract (one-off)	13.2.2003	13.2.2003	5 years
STER1	Sterling	Oise CCI	Contract (IATA ground handling agreement)	15.7.2004	31.3.2004	5 years
NORW1	Norwegian Air Shuttle	Oise CCI	Contract (IATA ground handling agreement)	7.4.2005	31.3.2004	5 years
AIRH1	Air Horizons	Oise CCI	Contract (one-off)	12.7.2004	18.7.2004	1 year
AIRP1	Air Polonia	Oise CCI	Contract (one-off)	20.10.2004	20.10.2004	5 years
BLUE1	Blue Air	Oise CCI	Contract (IATA ground handling agreement)	11.10.2005	11.10.2005	1 year
BLUE2	Blue Air	Oise CCI	Contract (one-off)	28.8.2007	26.3.2007	8 months
FLYM1	Flyme	Oise CCI	Contract (IATA ground handling agreement)	30.3.2006	31.3.2006	5 years
CENT1	Centralwings	Oise CCI	Contract (IATA ground handling agreement)	18.2.2007	19.2.2007	1 year

- (52) The various contracts were all different; their key features are summarised in Table 10. Several included the possibility of the Beauvais airport operator's paying a financial contribution to the airline in exchange for the traffic it brought. However, none of the contracts mention marketing payments by the Beauvais airport operator in exchange for advertising by an airline.

Table 10

Features of airport services contracts concluded between the operators of Beauvais airport and the airlines

Contract code	Key features of the contracts
<i>Ryanair</i>	
RYAN1	This contract provided for the operation of two routes from Beauvais on the following terms: — Dublin: the contract included three weekly turnarounds (two on Saturday and one on Sunday) for a landing fee of FRF 750 (EUR 114,37). For any new additional daily turnaround, the airline was exempted from the landing fee. The contract also included a fee of FRF 10 (EUR 1,52) per departing passenger. — Prestwick: the contract included a daily turnaround in exchange for a fee set at FRF 750. For any additional daily turnaround, the landing fee was set at FRF 500 (EUR 77,22). The contract also included a fee of FRF 10 (EUR 1,52) per departing passenger.
RYAN2	The terms of the RYAN1 contract were amended as follows: — For the Dublin route, the landing fee was set at FRF 750 for up to 19 weekly turnarounds. Above that number, Ryanair was exempt from the landing fee. — For the Prestwick route, the landing fee was set at FRF 750 for up to 7 weekly turnarounds, and FRF 500 for between 8 and 14 weekly departures. Above 14 weekly departures, Ryanair was exempt from the landing fee. — For any new route launched by Ryanair, the landing fee was set at FRF 500 for one daily turnaround. For any additional turnarounds, Ryanair was exempt from the fee. — The fee per departing passenger was set at FRF 10 for the existing routes, FRF 6 (EUR 1,22) for new routes for up to 6 daily turnarounds, and FRF 4 (EUR 0,61) above that.
RYAN3	This contract replaced the RYAN1 and RYAN2 contracts. It set the terms under which Ryanair operated its air services as follows: — For 2002, a target of 210 000 passengers departing from Beauvais was assigned to Ryanair. The landing fee was set at FRF 750 for all routes operated by the airline. — For 2003, a target of 310 000 passengers departing from Beauvais was assigned to Ryanair. The landing fee was set at FRF 750 for up to 7 daily turnarounds and FRF 650 (EUR 99,09) above that. — For 2004, the passenger target was 410 000 passengers. The landing fee was set at FRF 750 for up to 7 daily turnarounds, FRF 600 (EUR 91,47) for between 8 and 10 daily turnarounds and FRF 400 (EUR 60,98) above that. — The departing passenger fee was set at FRF 8/passenger for up to 135 passengers per aircraft (FRF 0 above that) for each year over the duration of the contract. This contract remained valid until 4 February 2010 on the terms established for 2004.
RYAN4	This contract amended contract RYAN3 by adding the following elements: Ryanair undertook to operate 10 additional weekly turnarounds on new routes. In exchange the airport manager paid a financial contribution to Ryanair of EUR 1,5 per departing passenger on the new routes.
RYAN5	This contract amended contract RYAN4. Under this contract, SAGEB undertook to pay Ryanair a financial contribution of EUR 2 per departing passenger for each additional passenger carried in 2011 compared with the number of passengers carried by Ryanair in 2010. In exchange, Ryanair undertook to operate 26 additional turnarounds per week.

Contract code	Key features of the contracts
<i>Wizz Air</i>	
WIZZ1	In this contract, the landing fees were set for Wizz Air as follows: — EUR 500 for the first daily turnaround; — EUR 450 for the second and third daily turnarounds; — EUR 400 for subsequent daily turnarounds. The airport manager undertook to pay the airline, for the first 4 years of the contract, a financial contribution in accordance with the number of departing passengers in an amount of one euro per departing passenger, capped at EUR 40 000, 30 000, 20 000 and 10 000 respectively in the first, second, third and fourth years. The contract included other optional services such as cleaning the aircraft. The airline was exempt from departing passenger fees.
WIZZ2	This contract amended WIZZ1. The landing fee was now set at EUR 425 for all turnarounds. The financial contribution paid by the airport manager was set at EUR 0,75 per departing passenger.
WIZZ3	The landing fees were set as follows: — EUR 425 for up to 20 weekly turnarounds; — EUR 42,5 for between 21 and 32 weekly turnarounds; — EUR 21,25 for more than 33 weekly turnarounds. The airline was exempt from departing passenger fees. The airport operator undertook to pay the airline a financial contribution per departing passenger of EUR 0,375 for between 0 and 20 weekly turnarounds, EUR 1,375 for between 21 and 26 weekly turnarounds, EUR 1,725 for between 27 and 32 weekly turnarounds and EUR 1,925 above that. The contract included other optional services such as cleaning the aircraft.
<i>Other airlines</i>	
GOOD1	This contract established a schedule of 24 weekly turnarounds. The landing fee was set at FRF 4 000 (EUR 609,8) and the airline was exempt from the departing passenger fee.
CIAO1	This contract set a landing fee of EUR 305 and exempted the airline from the departing passenger fee.
BERL1	This contract provided for one weekly turnaround. The landing fee was set at EUR 500 and the airline was exempt from the departing passenger fee.
VOLA1	This contract provided for five daily turnarounds. The landing fee was set at EUR 450 and the departing passenger fee at EUR 2,13. The airport manager undertook to provide financial support for launching routes of up to EUR 100 000 per route.
STER1	This contract set the landing fee at EUR 576 for up to 3 weekly turnarounds, EUR 540 for between 4 and 6 weekly turnarounds and EUR 500 for more than 7 weekly turnarounds. The airline was exempt from departing passenger fees. The contract included other optional services such as cleaning the aircraft.
NORW1	This contract set the landing fee at EUR 500 for up to 6 weekly turnarounds and EUR 400 for more than 7 weekly turnarounds. The airline was exempt from departing passenger fees. The contract included other optional services such as cleaning the aircraft.

Contract code	Key features of the contracts
AIRH1	This contract established a schedule of 5 weekly turnarounds. The landing fee was set at EUR 147,38 and the departing passenger fee at EUR 2,89. The airport manager undertook to pay the airline a financial contribution of EUR 0,5 per departing passenger. The contract also included optional services such as cleaning the aircraft and other services.
AIRP1	This contract provided for one turnaround a day. The landing fee was set at EUR 192,88 and the departing passenger fee at EUR 2,89. The contract also included optional services such as cleaning the aircraft.
BLUE1	This contract set the landing fee at EUR 600 and waived the departing passenger fee for the airline.
BLUE2	This contract amended BLUE1 in respect of the amount of the landing fees, now set at EUR 450.
FLYM1	This contract provided for a minimum of 4 weekly turnarounds. The landing fees were set at EUR 600 for type B737-300 aircraft (136 seats) and EUR 550 for type B737-500 aircraft (125 seats). The airline was exempt from the departing passenger fee.
CENT1	This contract set the landing fee at EUR 500 for up to 3 weekly turnarounds, EUR 450 for between 4 and 7 weekly turnarounds and EUR 400 for more than 7 weekly turnarounds. The airline was exempt from departing passenger fees. The airport manager undertook to pay the airline a financial contribution of EUR 0,75 per departing passenger for the first 6 months, and EUR 0,50 for the last 6 months.

4. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

4.1. Financial support to the successive operators of Beauvais airport

- (53) First, the Commission expressed doubts that the financial support granted to Oise CCI and SAGEB did not involve State aid.
- (54) The Commission had doubts as to whether certain activities of Beauvais airport funded by the public authorities fell under the public authority remit. The Commission also had doubts about whether the conditions established by the *Altmark* ⁽⁴³⁾ ruling were met by the measures for Beauvais airport included in programme 3. The Commission commented that the grounds cited by the public authorities for the investment grants did not refer to their direct financial return. The Commission therefore questioned whether those investments were in line with the market economy investor principle ('MEO principle'). Lastly, the Commission came to the preliminary finding that the measures were imputable to the State, were selective, and were likely to distort competition and affect trade within the EU.
- (55) Second, the Commission expressed doubts about the compatibility of the investment aid and the operating aid with the internal market pursuant to Article 107(3)(c) TFEU.
- (56) An assessment of the compatibility with the internal market of the measures in favour of the operators showed that, while all the measures met an objective of general interest, their necessity and proportionality in the light of that objective had not been demonstrated. The Commission also had doubts about the medium-term prospects for use of the infrastructure.

⁽⁴³⁾ Judgment of the Court of 24 July 2003, *Altmark Trans GmbH and Regierungspräsidium Magdeburg*, C-280/00, ECLI:EU:C:2003:415.

4.2. Measures in favour of the airlines

- (57) In its opening decision, the Commission came to the preliminary view that the signature of the contracts by the airport operator (Oise CCI, then SAGEB) with the airlines involved the use of State resources and that the decisions to conclude the contracts were imputable to the State.
- (58) The Commission was not in a position to give a view on whether the airlines enjoyed a selective advantage. The information at its disposal was insufficient to determine whether the airport manager had behaved like a prudent market economy investor. The Commission invited France and interested parties to provide it with further information.
- (59) The Commission came to the preliminary conclusion that the measures were likely to distort competition and affect trade within the EU.
- (60) Lastly, the Commission expressed doubts as to the compatibility with the internal market of the aid measures in favour of the airlines. In particular, the Commission took the preliminary view that the measures involving aid for new routes did not meet the criteria for compatibility with the internal market.

5. COMMENTS BY FRANCE

5.1. Financial support to Beauvais airport

5.1.1. *Investment aid*

- (61) France informed the Commission that it 'did not intend in respect of Beauvais airport to rely on the notion of service of general economic interest for any of the investment grants received by the local authorities and paid over to the successive holders of the concession for Beauvais airport (Oise CCI, then SAGEB)' ⁽⁴⁴⁾.
- (62) France also indicated that it did not intend to rely on the application of the MEO principle to the investment grants paid to the successive holders of the concession for Beauvais airport (Oise CCI, then SAGEB) ⁽⁴⁵⁾.
- (63) However, France took the view that the grants could not be classed as State aid or incompatible State aid on the grounds that they were linked to funding activities under the remit of the public authorities or that their compatibility with the internal market could be demonstrated.

5.1.1.1. The funding of activities under the remit of the public authorities

- (64) France clarified that the grants disbursed under programme 1 for activities falling under the public authority remit, worth EUR 1 110 669 in total, were as follows ⁽⁴⁶⁾:
- grants for safety and security equipment (EUR 922 000);
 - grants for modernising the screening check points (EUR 133 000);
 - grants totalling EUR 55 669 for fees and depreciation costs linked to and declared under the public-remit tasks.
- (65) France clarified that the grants disbursed under programme 2 for activities falling under the public authority remit, worth EUR 567 782 in total, were as follows:
- grants of EUR 52 670,98 for installing border police booths and EUR 86 085,57 for a laser bird repellent;

⁽⁴⁴⁾ Comments by France of 14 August 2012.

⁽⁴⁵⁾ Comments by France of 14 August 2012.

⁽⁴⁶⁾ See Table 4. More specifically, France indicated in its comments that these amounts came to EUR 920 425. In reality, after close examination by the Commission of the invoices supplied by France, the expenditure on the items concerned was higher than indicated by France.

- grants of EUR 165 805 for installing security fencing and EUR 617 for modernising screening check points;
 - a grant of EUR 176 590 for a flow separation corridor;
 - grants totalling EUR 86 632 for fees and depreciation costs linked to and declared under the public-remit tasks common to the investment programmes.
- (66) The grants linked to the public-authority remit over the period 2001-2008 therefore came, according to France, to EUR 1 678 451.
- (67) France also identified three investments scheduled in the PSD agreement for the 2008-2023 period that were linked, in its view, to activities falling under the public-authority remit:
- installation of an all-weather instrument landing system (category III ILS) for EUR 14 381 000;
 - investments to locate flying clubs and private owners together in the 'leisure' zone to the north of the airport for a grant of EUR 1 442 000;
 - supply and fitting out of a 50 m² space in Terminal T2 for the institutional tourism agencies (under 'construction of Terminal T2') for an amount of EUR 54 000.
- (68) According to France, the total amount of the investments referred to in recital 67 and implemented under the PSD agreement (2008-2023) came to EUR 15 877 million. Thus, the maximum grant of EUR 14,5 million paid to SAGEB under the PSD agreement constituted consideration for the investments linked to activities falling under the public-authority remit and therefore could not be classed as State aid.
- (69) France outlined the following arguments to demonstrate that the investments referred to above fell under the remit of the public authorities:
- the tasks connected with these investments were performed either directly by the State, or on its instructions;
 - the tasks connected with these investments were required under European and national rules;
 - the tasks connected with these investments were performed in the general interest or public interest (e.g. protection of human life, aviation security, border police, animal hazard prevention, air traffic services, tourism development);
 - the performance of the tasks connected with these investments by the successive airport concession holders was entirely non-commercial;
 - it had been recognised by EU and French case-law that the tasks connected with these investments fell under the remit of the public authorities.
- (70) Specifically with reference to the all-weather instrument landing system, France argued that this fell under the provision of air navigation services, which was a public-authority task. The system was designed to prevent aircraft collisions on landing and in the manoeuvring area, expedite and maintain an orderly flow of air traffic, and provide advice and information useful for the safe and efficient conduct of flights. However, France pointed out that such systems were not installed by right at airport hubs and were not covered by the airport tax.
- (71) As for the investments in locating flying clubs and private owners together to the north of Beauvais airport, France considered that this measure put a stop to the movement of the aircraft, passengers and staff of flying clubs and private owners across the restricted access zones, thus ensuring better control of access to these zones and better guaranteeing flight safety, which was a task under the responsibility of the public authorities.
- (72) France also took the view that fitting out a space of 50 m² in Terminal T2 for the institutional tourism agencies allowed them to carry out their task of promoting local tourism at Beauvais airport. In France's view, developing tourism was a public-authority task, to which the fitting out of the dedicated space was connected.

5.1.1.2. Compatibility of the investment aid with the internal market

- (73) The French authorities informed the Commission that they endorsed the application to the case in hand of the criteria from the Guidelines in force at the time of the investment aid measures, in accordance with point 173 of the 2014 Guidelines.
- (74) France argued that all the investment grants were compatible with the internal market in the light of the compatibility criteria laid down in the 2005 Community guidelines on financing of airports and start-up aid to airlines departing from regional airports ⁽⁴⁷⁾ (the 2005 Guidelines').

Clearly defined objective of general interest

- (75) According to France, all the measures at issue were such as to meet a clearly defined objective of general interest, namely local economic development. Moreover, the Commission had in the past found that airport safety and security constituted an objective of general interest and, in the case at hand, most of the investment over the relevant period also met this objective.

The infrastructure is necessary and proportionate to the objective

- (76) France stated that the infrastructure put in place was indispensable to the smooth functioning of Beauvais airport in view of the increase in passengers that could reasonably be expected. Most of the investment corresponded to urgent work on security and upgrading at Beauvais airport in a situation of rapid growth in air traffic at the airport.
- (77) Moreover, these investments were proportional to the objective in so far as, according to France, the investment amount was always extremely conservative, in particular as it was based on very low traffic forecasts compared with the traffic volumes actually achieved. The investments could have been much more far-reaching and far more costly in view of the traffic volumes actually achieved.

The infrastructure has satisfactory medium-term prospects for use

- (78) France stressed that the investments made at Beauvais airport during the period 2001-2006 were based on traffic assumptions of 600 000 passengers for 2006. The investments under programme 2 were also based on a traffic assumption of 18 000 movements in the medium term, and programme 3 had been drawn up by SAGEB to take account of a reference scenario involving a maximum of 21 000 movements per year.
- (79) The growth in flights operated by Ryanair observed at the time of the decisions on the investment programmes and the geographical proximity of Paris tended to confirm the positive prospects for use in the medium term.

All potential users of the infrastructure have access to it in an equal and non-discriminatory manner

- (80) France stated that no airline operating at Beauvais airport nor any of their passengers had been given an advantage in terms of access to the different equipment and infrastructure provided by the airport.

Trade is not affected contrary to the common interest

- (81) In France's view, the existence of Beauvais airport relieved the air traffic congestion at the Paris airports, particularly Roissy-Charles de Gaulle.
- (82) Moreover, without denying that Beauvais airport might attract some of the customers from Roissy-Charles de Gaulle airport, France explained that this should be viewed in proportion to the greater accessibility and number of destinations offered by the latter, and to the curfew imposed at Orly airport. As for Amiens and Rouen airports, they had not developed any commercial traffic.

⁽⁴⁷⁾ Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).

Necessity and proportionality of the aid

- (83) The aid intensity for programme 1 was around two thirds of the total amount to be financed. For programme 2 the aid intensity was as high as 74 %, but this could be explained by the short depreciation period of the works (just over one year) because of the short period during which the concession agreement between the State and Oise CCI was extended. For programme 3, France estimated the aid intensity at around 21,26 %, pointing out that this was a ceiling and that the final aid amount might be lower depending on the investments actually carried out.
- (84) France explained that the high intensity of the aid granted to Oise CCI for the investment programmes 2001-2006 and 2006-2008 was necessary in so far as without this aid, Oise CCI would not have been able to implement all the investments decided upon and could therefore not have met the need to upgrade and increase the security of the infrastructure. France stressed in this connection that Oise CCI had taken out a loan to cover its share of the funding under the two investment programmes, so it could not have made a bigger contribution.

5.1.2. Operating aid

- (85) First, as regards the operating aid, France argued that Oise CCI had received very low amounts in subsidies over the period 1996-2008. These subsidies could not therefore have distorted competition or affected trade between Member States.
- (86) Of the EUR 107 924,59 received, France estimated that:
- a grant of EUR 68 000 disbursed in 2002 was to finance the exceptional measure of increasing the rate of passenger hand baggage checks from 25 % to 50 % after the attacks of 11 September 2001;
 - a sum of EUR 1 600,10 paid in 2002 corresponded to a transfer from the Association for managing funds for the integration of people with a disability (*Association de gestion du fonds pour l'insertion des personnes handicapées*), in reimbursement of a surplus contribution by Oise CCI;
 - an amount of EUR 2 005 paid in 2005 corresponded to a transfer from the national centre for the development of farm structures (*centre national pour l'aménagement des structures des exploitations agricoles*);
 - a sum of EUR 5 829,49 paid out in 2005 corresponded to a grant from the town of Tillé for sanitation work linked to the connection of pavilions belonging to the airport concession to the public waste water system, which Oise CCI did on behalf of the town;
 - two grants of EUR 15 245 each corresponded to the reimbursement by the department of Oise for tourism promotion services performed by the staff of Oise CCI's airport arm.
- (87) France explained that the grant of EUR 68 000 was linked to a security task and therefore did not constitute State aid. As regards the other payments, they were no more than a fair consideration for services carried out by Oise CCI or reimbursement of excessive contributions to associations of which Oise CCI was a member.
- (88) Second, as regards the advances from Oise CCI's general arm to its airport arm, France took the view that the advances granted before the *Aéroports de Paris* judgment of 12 December 2000 did not constitute aid in accordance with point 29 of the 2014 Guidelines. Therefore, only the advances granted in 2001, 2002 and 2004 could constitute State aid.
- (89) Furthermore, the advances made in 2001 and 2002 (which had been repaid in full) were granted at a time when Beauvais airport had recorded, in the two financial years preceding the one in which the aid was granted, traffic of less than 700 000 passengers per year. In accordance with point 118 of the 2014 Guidelines, the airport was unlikely to be able to cover its operating costs to a substantial extent, which justified the zero rate. Regarding the advance made in 2004, France took the view that Beauvais airport had, in the two financial years preceding the one in which the aid was granted, recorded traffic of between 700 000 and 1 million passengers per year. On top of the interest waived on this advance of 2004, France emphasised that Beauvais airport was not covering all its operating costs and therefore certainly met the requirements of point 118 of the 2014 Guidelines.

- (90) Lastly, regarding the advantage granted to SAGEB in the form of the exemption from tourism expenditure that it should have borne as the airport manager, France argued that SAGEB had neither the authority nor the remit for local and regional tourism development and that it had not received any subsidy in this connection.
- (91) France asserted that tourism development was a State task pursuant to national legislation. The tourism development plan could be implemented only by the local authorities (SMABT in this instance) and was not designed to boost business at the airport but rather to encourage regional tourism. France added that the objectives of the tourism development plan had been set by SMABT alone and implemented by the tourism agencies, with no input or influence from SAGEB. On the contrary, SAGEB had to contribute financially to the initiatives and supply if needed the means for these agencies to carry out their tasks (premises, advertising within the airport, etc.).
- (92) France further stated that none of the initiatives under the tourism development plan had the objective of promoting Beauvais airport or the flight destinations it offered. Media used by SAGEB to that end were outside the scope of the tourism promotion remit and were financed by SAGEB from its own funds.
- (93) Since none of the grants covered in these comments (with the exception of the cash advances in 2001, 2002 and 2004) constituted State aid, France found that there was no need to demonstrate their compatibility with the internal market. In any event, the French authorities stated that they endorsed the application to the case in hand of the criteria set out in point 137 of the 2014 Guidelines in respect of the operating aid.

5.2. Measures in favour of the airlines

- (94) France argued that the airport operator (Oise CCI, then SAGEB) behaved like a prudent market economy investor. All the contracts generated incremental profitability and did not confer an advantage on the airlines within the meaning of Article 107(1) TFEU.
- (95) France also stressed that the Beauvais airport operators never signed a marketing contract for the supply of marketing services (publicity on a website or equivalent) by an airline. The marketing contributions that the operators paid under certain contracts were incentives for the airlines to develop their traffic, that generated additional revenue for the operators (bus, non-aeronautical revenues).
- (96) France stated that Oise CCI was not able to provide economic analyses conducted prior to the signature of the individual contracts with the airlines when it was the airport operator. However, Oise CCI acted like a market economy investor despite the absence of *ex ante* economic analyses and systematically took decisions on accepting a new airline or opening new routes with a view to developing a profitable airport business. In this connection, France supplied a general budget simulation (for the entire airport business) carried out *ex ante* by Oise CCI for the period 2001-2006. According to this simulation, the airport could generate a positive overall cash-flow from developing the business of Ryanair and other airlines (75 % and 25 % respectively of projected revenue in 2006).
- (97) Following the opening decision, France reconstructed incremental business plans for the contracts concluded by Oise CCI and the airlines referred to in Table 9 (with the exception of the RYAN1 and RYAN2 contracts for which no reconstructed business plan was provided). France indicated that these business plans had been reconstructed on the basis of information known to Oise CCI before the conclusion of the contracts and on the basis of traffic, revenue and cost assumptions that would have been deemed reasonable prior to the signature of the contracts. These reconstructed business plans show that, on the basis of the assumptions adopted by France, Oise CCI could legitimately expect to generate a profit when signing each of the contracts with the airlines.
- (98) France supplied the economic analyses (project summaries, business plans) carried out by SAGEB, Beauvais airport operator at the time, ahead of all the contracts signed by it and listed in Table 9, namely RYAN4, RYAN5 and WIZZ3. These economic analyses showed that the contracts generated a profit for the airport operator. Following the opening decision, France indicated that these analyses were based on average costs, rather than incremental costs. France therefore submitted revised versions of these three analyses (i.e. produced after the contracts had been signed) based on an incremental rise in costs, that confirmed that the three contracts did generate incremental profits for SAGEB.

- (99) France therefore argued that SAGEB did not receive any operating subsidies (aside from those relating to the public-authority tasks), and that the risks and responsibilities borne by SAGEB were shared between Oise CCI and Véolia. In particular, by virtue of the shareholder agreement signed between Oise CCI (51 % of the votes) and the private company Véolia (49 % of the votes), SAGEB's decisions to sign the contracts with the airlines were subject to the approval of the shareholders by a qualified majority of 75 % of the votes. The contracts signed by SAGEB thus could not be signed without the approval of Véolia, and the latter's endorsement of the contracts with the airlines was evidence that they conformed to market practice.
- (100) France also submitted that no investment at the airport was made for the benefit of a specific airline. The airport operator had entered into contact with numerous airlines in order to diversify its customer base. Even though Ryanair accounted for 80 % to 90 % of airport traffic between 1999 and 2011, the infrastructure was accessible on non-discriminatory terms to all the airlines and was constructed as part of an airport development plan without being linked to a specific contract.

6. COMMENTS BY INTERESTED PARTIES

6.1. Comments by interested parties on the application of the 2014 Guidelines to the case at hand

6.1.1. Joint comments from Oise CCI, SMABT and SAGEB

- (101) As regards the investment grants covered by this Decision, Oise CCI, SMABT and SAGEB understood that their compatibility would be assessed in the light of the 2005 Guidelines. Furthermore, the grants made to Beauvais airport before 12 December 2000 would not be contested on the basis of the State aid rules, in accordance with the *Aéroports de Paris* ruling ⁽⁴⁸⁾.
- (102) As regards the financial relations between Beauvais airport and airlines operating there, Oise CCI, SMABT and SAGEB understood that they would be assessed in the light of the new 2014 Guidelines.

6.1.2. Comments by Air France

- (103) In connection with the investigation, Air France submitted comments restricted to the application of the 2014 Guidelines. Air France contested the retroactive application of the 2014 Guidelines to cases involving operating aid to airports even where such aid had been disbursed before they had been published, on a number of grounds:
- According to Air France, retroactive application of the 2014 Guidelines favoured unscrupulous operators by legitimising behaviour that did not comply with the rules applicable at the time. By contrast, operators who did comply with the previous Guidelines by refraining from claiming public funds were penalised.
 - Air France also emphasised that the retroactive application of the 2014 Guidelines to operating aid granted to airports was contrary to the general principles of law and to EU case-law.
 - Air France claimed that the 2014 Guidelines would have the effect of favouring new operators to the detriment of incumbent operators. By allowing a new airline to pay only the incremental cost associated with its activity, they would discriminate against incumbent operators at the airport, who were subject to higher fees.
 - Lastly, Air France commented that, although the condition of non-discriminatory access to the infrastructure of an airport may seem easy to meet in theory, the situation was quite different in practice, with certain operating models being consciously disadvantaged.

6.2. Joint comments from Oise CCI, SMABT and SAGEB

- (104) Oise CCI, SMABT and SAGEB submitted joint comments to the Commission.

⁽⁴⁸⁾ Judgment of the Court of First Instance of 12 December 2000, *Aéroports de Paris v Commission*, T-128/98, ECLI:EU:T:2000:290.

6.2.1. Financial support to Beauvais airport

- (105) Regarding the investment aid and the operating aid covered by the formal investigation procedure, Oise CCI, SMABT and SAGEB referred in full to the comments submitted by France.
- (106) Oise CCI, SMABT and SAGEB further supplied in support of the arguments submitted by France an analysis of the competition exerted by Beauvais airport on the passenger transport market, produced by the independent consultant Microeconomix. This study concluded that the aid to Beauvais airport had not affected trade to an extent contrary to the common interest.
- (107) First, according to the study, the aid paid to Beauvais airport had not affected competition with the two other Paris airports, Roissy and Orly. The study did not rule out demand substitutability, at least in part, between Roissy and Orly airports and Beauvais airport, as the catchment area of the three airports partly overlapped ⁽⁴⁹⁾. Beauvais airport hosted exclusively low-cost traffic between 2000 and 2011, while Orly and Roissy also had low-cost traffic, but it accounted in 2011 for only 13,6 % of total traffic for the two airports, i.e. a minority share ⁽⁵⁰⁾. None the less, the study ruled out the possibility of the investment aid's affecting trade on the following grounds:
- The study showed that Beauvais airport's market share remained low (e.g. 4 % in 2011) within the regional airport market that it formed with Roissy and Orly airports. Specifically on the low-cost market in the Paris region, Beauvais airport's market share came to 31 % in 2011, compared with the shares of Roissy and Orly.
 - The aid did not prevent the development of low-cost traffic at Orly and Roissy. The share of low-cost increased as a proportion of total traffic at the two airports by 5,7 % between 2009 and 2010, then 11,3 % between 2010 and 2011. So, even if the development of Beauvais airport might have restricted the number of new low-cost routes opened in the other two airports, it did not block its development.
 - The study stressed that none of the airlines operating at Beauvais airport were present in the two other Paris airports and that certain destinations were only offered from Beauvais (Bari, Bergen, Cagliari, Cluj-Napoca, Katowice, Lodz and Shannon).
 - Detailed analysis of a sample of destinations served by Roissy, Orly and Beauvais ⁽⁵¹⁾ in fact showed fierce competition between Orly and Roissy and relative autonomy for Beauvais airport's traffic. For example, on the Paris-Barcelona route, offered by the three Paris airports, the study showed that demand at Roissy contracted significantly between 2008 and 2010, which resulted in a strong increase in demand at Orly, while traffic at Beauvais ⁽⁵²⁾ remained stable over the same period. This was even more noticeable on the Paris-Rome or even Paris-Milan routes, where the Roissy and Orly curves broadly correlated, while the Beauvais distribution curve bore no relation to them. On the Dublin and Stockholm routes, offered only at Beauvais and Roissy airports, when the traffic fell between 2007 and 2011 at Beauvais airport, it also fell (for Dublin) or stagnated (for Stockholm) at Roissy.
 - The study showed that if there was substitutability between Beauvais airport and the other Paris airports, it was limited. It remained far easier to access Orly and Roissy from Paris by any means of transport ⁽⁵³⁾. Thus, only passengers with low sensitivity to access times (and thus high price sensitivity) were likely to consider Beauvais airport as a credible alternative to the other two Paris airports.

⁽⁴⁹⁾ Roissy airport is 80 km from Beauvais airport and Orly, 115 km.

⁽⁵⁰⁾ According to the study (based on data from the French Civil Aviation Authority), Roissy airport recorded a total of 60,7 million passengers in 2011 and Orly, 27,1 million passengers.

⁽⁵¹⁾ Dublin, Barcelona, Milan, Rome and Stockholm. These five routes represent the most frequent departure routes from Beauvais between 2002 and 2010, accounting for up to 77 % of its total passenger traffic and were therefore likely to have a significant impact on the other Paris airports.

⁽⁵²⁾ The number of passengers fell at Roissy on the Paris-Barcelona route from almost 1,2 million passengers in 2008 to less than 800 000 in 2010, compared with an increase of around 550 000 passengers at Orly in 2008 and close on 800 000 passengers in 2010. Beauvais airport's share remained stable at around 300 000 passengers between 2008 and 2010.

⁽⁵³⁾ The study showed that it took more than 1 hour to reach Beauvais airport from Paris whether by bus, car or train, while the journey to Orly or Roissy took less than 1 hour, or even half an hour.

- The study also stressed that the presence of Beauvais airport had reduced congestion at the Paris airports (Roissy and Orly). Orly in particular was subject to a cap on air traffic movements that it had almost reached in 2011, making it a saturated airport that would not have seen, or only to a limited extent, an increase in traffic in the absence of Beauvais airport. As for Roissy, the study referred to a report of March 2011 by the European Commission finding that the airport would face demand in excess of its capacity by 2025.

- (108) Second, according to the study, the development of Beauvais airport did not affect potential competition with other (rail) links from Paris to national and international destinations ⁽⁵⁴⁾.

6.2.2. *Financial support to the airlines*

- (109) Oise CCI, SMABT and SAGEB indicated that Oise CCI and SAGEB, as successive operators of Beauvais airport, acted, in their contractual relations with the airlines operating flights from and to the airport, in accordance with the MEO principle.
- (110) Oise CCI, SMABT and SAGEB referred in this connection to the analyses done by France, and also sent the Commission a detailed business plan relating to the contract of 12 February 2002 concluded with Ryanair. In their view, the business plan showed the profitability prospects of this contract for the economic activity of the airport.

6.3. **Comments by the airline Ryanair**

- (111) Ryanair submitted comments only in respect of the financial support granted to the airlines by the successive managers of Beauvais airport covered by this Decision. Its comments were as follows.
- (112) First, Ryanair disputed the assertion that the airport services contracts concluded in this case were imputable to the State and financed through State resources. Oise CCI was not just another facet of the French State and imputability could not be established solely on the basis that Oise CCI was a public undertaking and therefore under the control of the French State. Nor were the charges the only revenue for Oise CCI, which had its own revenue from its commercial activities. As for SAGEB, given its capital ownership, Ryanair doubted whether it could be considered to act under the control and instructions of the public authorities.
- (113) Second, Ryanair took the view that the airport services contracts had been concluded in accordance with the MEO principle.
- (114) The Commission should compare the agreements concluded with Beauvais airport with the contracts concluded with airports that behaved like private investors. Referring to the case-law of the Court of Justice ⁽⁵⁵⁾, it argued that only where no MEO test was possible should the Commission adopt a cost-based approach.
- (115) Moreover, even if the Commission were to take a cost-based approach, Ryanair believed that the airport services contracts had been concluded in line with the MEO principle and had been very profitable for Beauvais airport. In support of its arguments, Ryanair supplied a study by the independent consultant Oxera showing that all the airport services contracts it had signed with Beauvais airport were in line with the MEO principle ⁽⁵⁶⁾.
- (116) Since the measures did not constitute State aid within the meaning of Article 107(1) TFEU, there was no reason to examine their compatibility with the internal market.

⁽⁵⁴⁾ According to the study, the time needed to travel to Beauvais airport from the centre of Paris precluded its air services constituting a credible alternative for intermodal passengers (mainly rail) from Paris. The study concluded that while local customers, i.e. those located in the immediate vicinity of Beauvais airport, might regard it as a substitute for rail to destinations within France, customers from Paris did not regard air services from Beauvais airport as substitutable for rail.

⁽⁵⁵⁾ Ryanair relied in particular on the judgment of the Court of 3 July 2003 in Joined cases C-83/01 P, C-93/01 P and C-94/01 P, *Chronopost SA*, ECLI:EU:C:2003:388.

⁽⁵⁶⁾ Oxera study of 11 September 2014 supplied by Ryanair with its comments of 12 September 2014.

6.4. Comments by the airline Wizz Air

- (117) Wizz Air submitted comments only in respect of the financial support granted to the airlines by the successive managers of Beauvais airport covered by this Decision. Its comments were as follows.
- (118) First, Wizz Air disputed the assertion that the airport services contracts concluded in this case were imputable to the State and financed through State resources. Oise CCI was not just another facet of the French State and imputability could not be established solely on the basis that Oise CCI was a public undertaking and therefore under the control of the French State. In particular, France had no power to take part in Oise CCI's decision-making, the role of the French State being confined to the oversight of certain decisions. Nor were the charges the only revenue for Oise CCI, which had its own revenue from its commercial activities. As for SAGEB, given its capital ownership, Wizz Air doubted whether it could be considered to act under the control and instructions of the public authorities. Such an approach would be contrary to the *Stardust Marine* case-law, according to which 'the criterion of control of an undertaking by the State is not, purely on its own, sufficient to establish that the conduct of that undertaking is imputable to the State' ⁽⁵⁷⁾.
- (119) Second, Wizz Air took the view that the airport services contracts had been concluded in accordance with the MEO principle.
- (120) Like Ryanair, Wizz Air believed that the Commission should compare the agreements concluded with Beauvais airport with the contracts concluded with airports that behaved like private investors. Referring to the case-law of the Court ⁽⁵⁸⁾, Wizz Air argued that only where no MEO test was possible should the Commission adopt a cost-based approach ⁽⁵⁹⁾.
- (121) Moreover, even if the Commission were to take a cost-based approach, Wizz Air believed that the airport services contracts had been concluded in line with the MEO principle and had been very profitable for Beauvais airport. In support of its arguments, Wizz Air supplied a study by the independent consultant Oxera showing that all the airport services contracts it had signed with Beauvais airport were in line with the MEO principle ⁽⁶⁰⁾.
- (122) Wizz Air confirmed the Commission's position that the MEO principle had to be applied in the light of all the contractual and commercial agreements concluded with the successive managers of Beauvais airport. The airport services contract concluded between Wizz Air and Oise CCI in 2005 set a marketing contribution for Oise CCI at EUR 0,75 per passenger departing from Beauvais. This contribution had been reduced to EUR 0,375 per departing passenger in the airport services contract of 1 June 2009. According to Wizz Air, these payments were not intended for it, but were paid directly into a bank account and used exclusively to pay third parties with no link to Wizz Air that supplied marketing services such as advertising campaigns in print media or online.

7. COMMENTS BY FRANCE ON THE INTERESTED PARTIES' COMMENTS

- (123) France had no comments on the submissions by interested parties.

⁽⁵⁷⁾ Judgment of the Court of 16 May 2002 in C-482/99, *France v Commission*, ECLI:EU:C:2002:294, paragraph 45.

⁽⁵⁸⁾ Wizz Air relied in particular on the judgment of the Court of 3 July 2003 in Joined cases C-83/01 P, C-93/01 P and C-94/01 P, *Chronopost SA*, ECLI:EU:C:2003:388.

⁽⁵⁹⁾ In support of this argument, Wizz Air supplied a study by Oxera of 26 October 2012 showing that the airports of Doncaster, Liverpool, Memmingen, Prestwick and Stockholm-Skavsta were comparable to Beauvais.

⁽⁶⁰⁾ Oxera study of 3 November 2014 supplied by Wizz Air with its comments of 4 November 2014.

8. ASSESSMENT OF THE MEASURES

8.1. Financial support to Oise CCI and SAGEB

8.1.1. Existence of aid within the meaning of Article 107(1) TFEU

- (124) Article 107(1) TFEU states that ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.’
- (125) For a measure to be classed as State aid, therefore, all of the following criteria have to be met:
- the beneficiary must be an undertaking within the meaning of Article 107(1) TFEU, which presupposes that it carries on an economic activity,
 - the measure in question must be granted through State resources and be imputable to the State,
 - the measure in question must confer an economic advantage on its beneficiary or beneficiaries;
 - the measure in question must be selective in that it favours certain undertakings or the production of certain goods, and
 - the measure in question must distort or threaten to distort competition and be likely to affect trade between Member States.

8.1.1.1. Investment grants

Economic activity

- (126) Article 107(1) of the Treaty does not apply where the State acts ‘by exercising public power’⁽⁶¹⁾ or where public entities act ‘in their capacity as public authorities’⁽⁶²⁾. An entity may be deemed to act by exercising public power where the activity in question forms part of the essential functions of the State or is connected with those functions by its nature, its aim and the rules to which it is subject. Moreover, the 2014 Guidelines⁽⁶³⁾ specify that not all the activities of an airport are necessarily of an economic nature. The Court has held that activities that normally fall under the responsibility of the State in the exercise of its powers as a public authority are not of an economic nature and in general do not fall within the scope of the rules on State aid. At an airport, activities such as air traffic control⁽⁶⁴⁾, police⁽⁶⁵⁾, customs, firefighting⁽⁶⁶⁾, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform those activities are considered in general to be of a non-economic nature.
- (127) However, the public funding of such non-economic activities does not constitute State aid, but should be strictly limited to compensating the costs to which they give rise and may not be used for other activities. Any possible overcompensation by public authorities of costs incurred in relation to non-economic activities may constitute State aid. Moreover, if an airport is engaged in non-economic activities, alongside its economic activities, separated cost accounting is required in order to avoid any transfer of public funds between the non-economic and economic activities.

⁽⁶¹⁾ Judgment of the Court of Justice of 4 May 1988, *Bodson*, C-30/87, ECLI:EU:C:1988:225, paragraph 18.

⁽⁶²⁾ See, in particular, Judgment of the Court of Justice of 19 January 1994, *SAT v Eurocontrol*, C-364/92, ECLI:EU:C:1994:7, paragraph 30.

⁽⁶³⁾ Paragraphs 35 to 37 of the 2014 Guidelines.

⁽⁶⁴⁾ Judgment of the Court of Justice of 26 March 2009, *Selex Sistemi Integrati v Commission*, C-113/07 P, ECLI:EU:C:2009:191, paragraph 71.

⁽⁶⁵⁾ Commission Decision of 7 December 2011 on State aid SA.32820 (2011/NN) — United Kingdom – Aid to Forensic Science Services (OJ C 29, 2.2.2012, p. 4), recital 8.

⁽⁶⁶⁾ See Commission Decision (EU) 2015/1227 of 23 July 2014 on State aid SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (OJ L 201, 30.7.2015, p. 109), recitals 101 and 495, and Commission Decision (EU) 2016/633 of 23 July 2014 on State aid SA.33961 (2012/C) (ex 2012/NN) implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited (OJ L 113, 27.4.2016, p. 32), recital 567.

- (128) Moreover, public financing of non-economic activities must not lead to undue discrimination between airports. Indeed, it is established case-law that there is an advantage when public authorities relieve undertakings of the costs inherent to their economic activities ⁽⁶⁷⁾. Civil airports which, in contrast to other civil airports, do not bear certain costs associated with their operation, could benefit from an advantage, whether or not those costs are linked to an activity considered to be of a non-economic nature.
- (129) The Commission notes that the investments referred to in recitals 64 and 65 related to infrastructure or equipment necessary for firefighting, security and aviation safety. However, according to the 2014 Guidelines, those activities are intrinsically part of the essential functions of the State ⁽⁶⁸⁾, as concluded by the Commission in previous decisions ⁽⁶⁹⁾. In the absence of the introduction of market mechanisms for the activities referred to in recitals 64 and 65, they did not, therefore, constitute economic activities at the time the investments in question were granted. Consequently, given that the contributions paid by the public authorities under programmes 1, 2 and 3 were not formally allocated to specific costs, the Commission considers that part of the total amount of the subsidies paid under programmes 1 and 2 corresponding to the investment amounts referred to in recitals 64 and 65 related in principle to public-remit activities. The Commission would add that the costs related to the purchase of security equipment under programme 3 ⁽⁷⁰⁾ can also come under the public-remit activity of aviation security.
- (130) The Commission also considers that the investments referred to in the previous recital were all eligible for a national scheme to finance public-remit tasks ⁽⁷¹⁾ and could have been fully financed by that scheme if they had not been covered by the investment grants in question. The Commission has concluded in previous decisions ⁽⁷²⁾ that this national financing scheme provided for by French law was based on strict cost control mechanisms, both *ex ante* and *ex post*, ensuring that the scheme would grant airport managers only the amounts strictly necessary to cover costs. Moreover, that system applied to all French civil airports, including Beauvais airport, at the time when the measures at issue were granted, in particular as regards the scope of the tasks giving rise to compensation. Finally, that system provided for separation of accounts between the commercial and public-remit activities of the airport for the purpose of declaring costs to the French Civil Aviation Authority. The non-discrimination condition is therefore met.
- (131) Consequently, the grants of EUR 1 110 669 awarded under programme 1, EUR 567 782 under programme 2 and EUR 10,2 million ⁽⁷³⁾ under programme 3 did not constitute State aid.
- (132) On the other hand, the Commission considers that the investments referred to in recital 67 are not linked to public-remit activities.
- (133) As regards, in the first place, the all-weather instrument landing system (ILS III), the Court held that ‘that instrument, even if it were mandatory and though it is indisputable that it contributes, like other systems, to the safety of landings, plays no part either in the control and supervision of airspace, [...] or in the performance of any other public policy remit which might be exercised at an airport. It contributes to the delivery of the services offered by a civil airport in a competitive context to airlines within the framework of its general activity, which is an economic activity’ ⁽⁷⁴⁾.

⁽⁶⁷⁾ Judgment of the Court of Justice of 3 March 2005, C-172/03, *Wolfgang Heiser v Finanzamt Innsbruck*, ECLI:EU:C:2005:130, paragraph 36.

⁽⁶⁸⁾ Note: these investments related to the construction of a security and fire service room as well as the creation of hold baggage control and access control systems, a passenger flow separation corridor, security fencing, security screening check points, customs booths and a laser bird repellent, as well as the fees associated with these investments.

⁽⁶⁹⁾ See Decision (EU) 2015/1227, recitals 101 and 495; and Decision (EU) 2016/633, recital 567.

⁽⁷⁰⁾ See Table 6 (line ‘acquisition of safety and security equipment’).

⁽⁷¹⁾ This scheme was based on a tax levy (airport tax), and on an additional scheme (the Intervention Fund for Airports and Air Transport (FIATA)) until 2008, when the State replaced the additional scheme with an increase in airport tax.

⁽⁷²⁾ See, for example, the Decision (EU) 2016/633, recitals 32-42.

⁽⁷³⁾ This amount relates to the projected amount included in the investment plan under the PSD agreement.

⁽⁷⁴⁾ Judgment of the General Court of 25 January 2018, T-818/14, *BSCA v Commission*, ECLI:EU:T:2018:33, paragraph 102.

- (134) Secondly, with regard to the investments enabling flying clubs and private owners to be brought together in the 'leisure' zone to the north of the airport, the Commission considers that, although this measure helps to improve the safety of air traffic at the airport, it falls first and foremost within the commercial operation of Beauvais airport and contributes to the delivery of the services offered by a civil airport, in a competitive context, to airlines within the framework of its general activity, which is an economic activity.
- (135) Finally, as regards the development of a specific area within the airport dedicated to institutional tourism development bodies, it should be noted that, according to the settled case-law of the Court, there is no cause to dissociate the activity of building or enlarging infrastructure from the subsequent use to which it is put, and that the nature of the construction activity must be determined according to whether or not the subsequent use of the infrastructure which has been built amounts to an economic activity ⁽⁷⁵⁾. The Commission notes that in the present case, under Article 6 of the PSD agreement, while the space in question was to be made available to local public tourism bodies for the purpose of promoting local tourism, it could also be used to sell services such as 'guided tours, hotel reservations, etc.' and regional tourism products. The latter point was, moreover, confirmed by France itself in its observations of April 2014, without demonstrating that such activities involving the sale of services and products represented only a negligible part of the activity of local public tourism bodies. In these circumstances, the Commission considers that the 50 m² space within the airport was intended to be used to carry out an economic activity. Therefore, the construction of that space by SAGEB was also an economic activity and its financing falls within the scope of the State aid rules.
- (136) In any event, even if those investments were to be linked to public-remit activities, they were not eligible for the financing provided for by the national financing scheme for public-remit tasks, with the result that France has not demonstrated that other airports could benefit from subsidies to finance those same investments. As a result, Beauvais airport was relieved of costs which other airports could have or had to bear themselves, thereby discriminating against them.

Imputability to the State and transfer of State resources

- (137) It follows from settled case-law that measures adopted by intra-state entities of the Member States, whatever their legal status and description, fall, in the same way as measures taken by the central authority, within the ambit of Article 107(1) TFEU, if the conditions laid down in that provision are satisfied ⁽⁷⁶⁾.
- (138) The investment grants in question were awarded by the Region of Picardie, the Department of Oise and the Beauvais intermunicipal authority (CCB) successively to Oise CCI and SAGEB, either directly (2002-2008) or via SMABT (2008-2023), of which these three local authorities were exclusive members ⁽⁷⁷⁾. With regard to SMABT, the Commission also notes that this publicly owned establishment is no more than a group of local and regional authorities which has no employees of its own (the officials of the Oise department are made available to SMABT) and whose decisions (in particular budgetary ones) are taken by a joint committee composed of representatives of the three local and regional authorities that are members.
- (139) Consequently, the measures granted by these entities are imputable to the State. Moreover, the resources of local authorities and SMABT (whose resources are exclusively financed from the budget of the local authorities and subject to budgetary oversight by the State – see recital 18) should be regarded as State resources within the meaning of Article 107(1) TFEU ⁽⁷⁸⁾.

⁽⁷⁵⁾ Judgment of the General Court of 24 March 2011, T-455/08, *Flughafen Leipzig v Halle GmbH*, ECLI:EU:T:2011:117, paragraph 95.

⁽⁷⁶⁾ Judgment of 12 May 2011 in Joined Cases T-267/08 and T-279/08 *Région Nord-Pas-de-Calais*, ECLI:EU:T:2011:209, paragraph 108.

⁽⁷⁷⁾ SMABT is a body governed by public law consisting entirely of local authorities which contribute two thirds of its financing and whose executive members come from those same authorities and act on their behalf.

⁽⁷⁸⁾ Judgment of 12 May 2011 in Joined Cases T-267/08 and T-279/08 *Région Nord-Pas-de-Calais*, ECLI:EU:T:2011:209, paragraph 109.

Existence of an advantage

- (140) To determine whether a State measure constitutes aid to an undertaking, it must be determined whether the undertaking in question enjoys an economic advantage enabling it to avoid costs that would otherwise have been borne by its own financial resources or whether it enjoys an advantage which it would not have received under normal market conditions. That assessment is made, in principle, by the application of the market economy operator test (MEOP).
- (141) Consequently, when an airport benefits from public funding, the Commission will assess whether such funding constitutes aid by considering whether in similar circumstances a private operator, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, would have granted the same funding.
- (142) However, it follows from the case-law ⁽⁷⁹⁾ that, as a general rule, the private investor test is applicable where the Member State has acted as an economic operator, and not as a public authority, by conferring an economic advantage on an undertaking. The private investor test should thus be applied where the conduct of the Member State could have been adopted, at least in principle, by a private operator acting with a view to profit or to limit losses ⁽⁸⁰⁾.
- (143) The Commission notes first of all that the French authorities consider that the operation of Beauvais airport as a whole should not be regarded as a service of general economic interest (SGEI) ⁽⁸¹⁾. It also notes that the French authorities also did not call for the MEO principle to be applied to the investment grants awarded in this case.
- (144) Nonetheless, it should be borne in mind that the MEO principle is not an exception that applies only if a Member State requests it. Where it is applicable, this principle is among the factors which the Commission is required to take into account for the purposes of establishing the existence of aid. Where the Member State does not invoke the MEOP, in order to determine whether the test is applicable, it is necessary to use as a starting point the economic nature of the Member State's action and not how that Member State, subjectively speaking, intended to act or which alternative courses of action it considered before adopting the measure in question ⁽⁸²⁾.
- (145) As stated in recital 17, the State was the owner of Beauvais airport until 1 March 2008, while Oise CCI was responsible for managing and running it under a temporary authorisation to occupy the public domain, followed by a public equipment concession.

Programme 1

- (146) With regard to programme 1, the Commission considers that the local authorities which granted the subsidies provided for under programme 1 to Oise CCI did not act in their capacity as economic operators.

⁽⁷⁹⁾ Judgment of the Court of 5 June 2012, C-124/10 P, *EDF*, ECLI:EU:C:2012:318, paragraphs 80 and 81.

⁽⁸⁰⁾ Judgment of the Court of 7 May 2020, C-148/19 P, *BTB Holding Investments and Duferco Participations Holding v Commission*, ECLI:EU:C:2020:354, paragraph 46.

⁽⁸¹⁾ See recital 61.

⁽⁸²⁾ Judgment of the General Court of 16 January 2018, T-747/15, *EDF v Commission*, ECLI:EU:T:2018:6, paragraphs 240-242; Judgment of the Court of 19 December 2019, C-385/18 P, *Arriva Italia Srl*, ECLI:EU:C:2019:1121, paragraph 73.

- (147) Indeed, the Commission considers that the Region of Picardie, the Department of Oise and the Beauvaisis intermunicipal authority (CCB) could not expect, under programme 1 and at the time when the investment grants were awarded ⁽⁸³⁾, to obtain any financial return on their contribution to the investments made in Beauvais airport by Oise CCI.
- (148) The three local authorities referred to above were not shareholders in Oise CCI and had no title of ownership in the airport at the time the aid was granted. Moreover, the financing agreements concluded by each authority with Oise CCI ⁽⁸⁴⁾ did not contain any optional or compulsory profit-sharing schemes in return for the subsidies awarded.
- (149) In addition, these subsidies were awarded with the sole aim of supporting the development of the regional economy and enhancing environmental protection and the safety of local residents ⁽⁸⁵⁾. However, public interest considerations cannot be taken into account when applying the market economy operator test ⁽⁸⁶⁾.
- (150) It cannot therefore be concluded that the conduct of the authorities referred to above could have been adopted, at least in principle, by a private operator acting with the aim of making a profit. The MEO criterion is therefore not applicable in the present case with regard to the subsidies granted under programme 1.
- (151) Given that, at the time the subsidies were granted, Oise CCI was responsible under the 1997 AOT for developing the infrastructure and equipment of Beauvais airport ⁽⁸⁷⁾, it was therefore required to bear the cost of the investments referred to in recital 37, with the exception of investments falling within the scope of public-remit tasks ⁽⁸⁸⁾. The investment grants it received under programme 1 thus enabled it to avoid having to bear costs that would normally have had to be met out of its own financial resources. Consequently, these subsidies conferred an economic advantage on Oise CCI.

Programme 2

- (152) The considerations set out in the context of programme 1 also apply to the subsidies awarded under programme 2. Indeed, the Commission considers that the local authorities which awarded the grants to Oise CCI provided for under programme 2 did not act in their capacity as economic operators.
- (153) However, the Commission notes that, while the financing agreement between Oise CCI and the Department of Oise was concluded on 18 December 2006 (i.e. before the date on which ownership of the airport was transferred to SMABT), the financing agreements with the Region of Picardie and the CCB were concluded after 1 March 2007, i.e. after the date on which the agreement granting ownership of Beauvais airport to SMABT with effect from 1 March 2008 was signed ⁽⁸⁹⁾. Nonetheless, the Commission considers that the MEO principle should not be applied to the subsidies paid under programme 2 for the following reasons.
- (154) First of all, each of the local authorities concluded the financing agreements with Oise CCI on an individual basis and not on behalf of or in the name of SMABT. Yet only SMABT, i.e. the entity comprising those three authorities and not each authority individually, could expect a financial return on the investments financed. In this sense, SMABT's articles of association do not provide for any form of redistribution of profits made in the course of its activities to its member authorities. Moreover, none of the financing agreements contained an optional or compulsory profit-sharing scheme in return for the subsidies awarded.

⁽⁸³⁾ That award took place when each of the three financing agreements was concluded, i.e. 23 July 2002 for the grants awarded by the Department of Oise, 12 December 2002 for the grants awarded by the Region of Picardie and 8 October 2002 for the grants awarded by the CCB.

⁽⁸⁴⁾ See section 3.1.2.1.

⁽⁸⁵⁾ This is apparent from the preambles to the financing agreements concluded in 2002 between the three local authorities and Oise CCI, and those concluded in 2006 between the same parties.

⁽⁸⁶⁾ Judgment of the Court of 19 December 2019, C-385/18 P, *Arriva Italia Srl*, ECLI:EU:C:2019:1121, paragraph 73.

⁽⁸⁷⁾ See recital 27.

⁽⁸⁸⁾ See recital 131.

⁽⁸⁹⁾ See recitals 17 and 39.

- (155) In addition, these subsidies were awarded with the sole aim of supporting the development of the regional economy and enhancing environmental protection and the safety of local residents ⁽⁹⁰⁾. However, public interest considerations cannot be taken into account when applying the market economy operator test.
- (156) It cannot therefore be concluded that the conduct of the authorities referred to above could have been adopted, at least in principle, by a private operator acting with the aim of making a profit. The MEO criterion is therefore not applicable in the present case with regard to the subsidies granted under programme 2.
- (157) Given that, at the time the grants were awarded, Oise CCI was responsible under the 2002 public equipment concession for developing the infrastructure and equipment of Beauvais airport ⁽⁹¹⁾, it was therefore required to bear the cost of the investments referred to in recital 39, with the exception of investments falling within the scope of public-remit tasks ⁽⁹²⁾. The investment grants it received under programme 2 thus enabled it to avoid having to bear costs that would normally have had to be met out of its own financial resources. Consequently, these subsidies conferred an economic advantage on Oise CCI.

Programme 3

- (158) As regards the investment grants paid by SMABT to SAGEB under the PSD agreement, the Commission notes that those grants were provided for in the agreement in order to support the implementation of the investment programme imposed on SAGEB at its own expense. In the context of that agreement, SMABT, as the contracting authority, was paid a fixed land lease fee of EUR 10 795 243 for the entire duration of the PSD agreement ⁽⁹³⁾ as well as a share of the profits from its investments ⁽⁹⁴⁾. The entitlement to a share of profit was triggered under certain conditions ⁽⁹⁵⁾ and its amount was set at 50 % of excess profit ⁽⁹⁶⁾.
- (159) The Commission further notes that these conditions were established following an invitation to tender for the concession to operate Beauvais airport and the route linking the airport to Paris, under the terms of which the applicants were required to include an investment plan in their tender. The call for tenders consisted of a negotiated procedure with publication. After five applications and four tenders had been submitted, SMABT decided to select two tenders and to start negotiations with two consortia: Oise CCI-Veolia, and the consortium comprising Vinci, Airports-Vinci, SA Keolis and Group K Finance. After inviting the two consortia to submit final tenders, primarily on the basis of a benchmark scenario providing for controlled growth of air traffic limited to 21 000 movements by 2022, SMABT eventually awarded the concession contract to the Oise CCI-Veolia consortium.
- (160) In the first place, the Commission considers there to be little doubt that the MEO principle was applicable to the investment grants paid by SMABT to SAGEB under the PSD agreement.
- (161) As the owner of Beauvais airport, SMABT decided to pay these grants under the PSD agreement, providing for delegation of the management of the airport to SAGEB, with financial compensation for SMABT. In other words, the public authority, as the infrastructure owner, decided to outsource its management to a third party operator in return for a financial consideration. This approach could be adopted, at least in principle, by a private operator acting with the aim of making a profit or leveraging the value of an asset it owns by outsourcing its management to a third party.

⁽⁹⁰⁾ This is apparent from the preambles to each of the above-mentioned financing agreements.

⁽⁹¹⁾ See section 3.1.1.2.

⁽⁹²⁾ See recital 131.

⁽⁹³⁾ See Annex 14 to the PSD agreement.

⁽⁹⁴⁾ Annex 14 provides that 'in return for SMABT's contribution to the financing of the airport infrastructure, the concession holder undertakes to pay SMABT a profit share calculated on the basis of excess profit in relation to the projected internal rate of return of 10 %'.

⁽⁹⁵⁾ According to Annex 14 to the PSD agreement, the entitlement to a share of profit is triggered in year (n) if the net income is positive, where the cumulative net income for the years (1) to (n) is positive and the internal rate of return thus calculated is above 10 %. The profit share was set at 50 % of excess profit.

⁽⁹⁶⁾ Annex 14 of the PSD agreement.

- (162) In addition, the decision delegating the concession for the management of Beauvais airport was taken with a view to entrusting the concession holder with the tasks of maintaining and operating Beauvais airport, operating the bus route between Paris and Beauvais airport and conducting an investment programme aimed at developing the airport's commercial infrastructure (recital 19). The overall purpose of these tasks was therefore primarily commercial. The same is true of the objectives pursued by SMABT, one of which was to increase commercial traffic up to the maximum capacity permitted by law (see recital 167).
- (163) It follows that the existence of a potential selective advantage granted under programme 3 must be analysed in accordance with the MEO principle.
- (164) As indicated in recital 159, the grants under programme 3 were part of a contractual package for which SMABT organised a tender procedure. Therefore, in order to verify whether those grants conferred an advantage on SAGEB which it would not have obtained under normal market conditions, the Commission must analyse whether the tender procedure, which provided for the payment of grants where necessary, was conducted in accordance with the MEO principle.
- (165) It should be borne in mind that, where the acquisition of services through the exercise of public authority is concerned, this must in principle be done in compliance with the public procurement rules laid down by secondary EU law. In that case, the fact that such a tender procedure is conducted before a public authority of a Member State makes a purchase of services is normally considered sufficient to rule out the possibility that the Member State is seeking to grant an advantage to the chosen service provider that it would not have otherwise obtained under normal market conditions ⁽⁹⁷⁾. This is the case, in principle, where a concession for the commercial operation of an airport is granted following a competitive, transparent, non-discriminatory and unconditional tender procedure, in line with the principles of the TFEU on public procurement, provided that the appropriate criteria for selecting the buyer or seller ⁽⁹⁸⁾ that would have been applied by a private operator in the same circumstances as SMABT have been used.
- (166) *Above all*, a tender must be competitive to allow all interested and qualified tenderers to participate in the process. The procedure must *also* be transparent to allow all interested candidates to be equally and duly informed at each stage of the tender procedure. *Thirdly*, non-discriminatory treatment of all tenderers at all stages of the procedure and objective selection and award criteria specified in advance of the process are indispensable conditions for ensuring that the resulting transaction is in line with market conditions.
- (167) The information provided by France shows that the tender procedure was published in official publications for legal announcements, such as the *Official Journal of the European Union*, and in a specialised journal. Article 3.3 of the tendering rules ⁽⁹⁹⁾ specified that the objectives of SMABT were to:
- increase traffic up to 21 000 commercial movements per year, the maximum set by the noise exposure plan, by 2012;
 - develop the economic benefits in terms of direct and indirect employment linked to the operation of the platform, as well as in terms of tourism and business parks;
 - integrate the management of the airport into an environmental plan, which is currently being devised.

⁽⁹⁷⁾ Judgment of the General Court of 13 May 2020, *easyJet Airline Co. Ltd.*, T-8/18, ECLI:EU:T:2020:182, paragraph 201.

⁽⁹⁸⁾ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), point 89 and the case-law cited.

⁽⁹⁹⁾ See the tendering rules, Chapter 7.

(168) Article 7 of the tendering rules also specified that the tenders of candidates participating in the invitation to tender for the public service delegation for the operation of the Beauvais airport hub would be evaluated on the basis of the following criteria:

- the nature and quality of the means implemented to organise and operate the airport (management, human resources, operation of the bus service, sustainable development requirements);
- the overall organisation involved in operating the airport and the financial relations between SMABT and the successful tenderer; and
- the quality of the investment programme.

(169) The Commission notes that the candidates had equal access to various pieces of information and documents comprising, in particular, the draft contract and its detailed annexes, the financial information relating to Oise CCI's accounts under the concession agreement concluded with the State in 2002 ⁽¹⁰⁰⁾, the list of assets made available to the successful tenderer, the existing depreciation tables indicating their status, the airport services contracts in force, the consolidated version of the contract concluded between SMABT and Oise CCI relating to the operation of the bus route and the economic and financial data pertaining to it, as well as the list of staff assigned to the operation of the airport and various extracts from the regulations applicable to the airport (noise exposure plan, environmental assessment, police order, operating regulations, etc.). The company consultation file was submitted in electronic form (CD-Rom) and candidates could ask questions by e-mail before the deadline for the submission of tenders. A data room was also made available to each candidate to physically consult the files on the SMABT premises and an on-site visit to the airport facilities was organised for each candidate.

(170) The Commission notes that these elements were confirmed by national administrative courts, before which two of the unsuccessful candidates brought two pre-contractual applications for interim relief and which also found that the procedure in question had complied with the reasonable time limits for the submission of applications and tenders ⁽¹⁰¹⁾. More broadly, those courts concluded that the procedure had taken place in a way that complied with the principles of equal treatment in public procurement and transparency. Finally, the Commission notes that the procedure enabled a relatively large number of candidates (five) to submit tenders having knowledge of the selection criteria and the objectives pursued by SMABT.

(171) The procedure in question was therefore conducted on a competitive, transparent and non-discriminatory basis.

(172) However, the Commission reiterates that, as regards the criterion relating to the unconditional nature of the invitation to tender, when public bodies buy assets, goods and services, any specific conditions attached to the tender should be non-discriminatory and closely and objectively related to the subject matter and to the specific economic objective of the contract. They should allow for the most economically advantageous offer to match the value of the market. The criteria therefore should be defined in such a way as to allow for an effectively competitive tendering procedure which leaves the successful bidder with a normal return, not more. In practice, this implies the use of tenders which put significant weight on the 'price' component of the bid or which are otherwise likely to achieve a competitive outcome ⁽¹⁰²⁾.

⁽¹⁰⁰⁾ These elements included in particular the budgets implemented, the initial budget for 2007, the analysis of an independent firm of experts dated August 2007 providing updated information on the concession's economic and financial data, the asset and liability items listed on the balance sheets, tax returns, amortisation tables and balances of financial commitments.

⁽¹⁰¹⁾ See judgments of 25 February 2008 (No 0800277) and 17 March 2008 (No 0800506) of the Administrative Court of Amiens.

⁽¹⁰²⁾ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, paragraph 96.

- (173) The Commission notes that the selection criteria for the tenders were neither ranked nor given a score. SMABT did not determine the weighting of each criteria, which gave it a relatively high margin of discretion in the choice of tenders. Thus, while the overall organisation of the contract was indeed one of the criteria taken into account by SMABT, it cannot be said that the tendering rules in principle gave that criterion greater weight than the other criteria. Therefore, the Commission is required to verify whether, in fact, this procedure conferred an economic advantage on SAGEB which it would not have obtained under normal market conditions.
- (174) First of all, the Commission notes that of the five candidates permitted to submit a tender, one of them withdrew during the procedure and two others submitted tenders which did not comply with the financial conditions imposed by SMABT. For example, the public service delegation committee responsible for evaluating tenders found that the GTS consortium had not provided information on projected profit; its self-financing capacity had not been simulated (equity financing capacity had not been anticipated), the simulation of projected and profit-sharing fees had not been communicated and the consortium had not specified how it would finance the investments. Therefore, financial considerations caused SMABT to reject two tenders at the evaluation stage and to start the negotiation procedure with the two remaining tenders.
- (175) The tenders submitted to SMABT by the Vinci Airport consortium on the one hand and the Oise CCI-Veolia consortium on the other were both based on several variants according to the number of traffic movements authorised under the noise exposure plan applying to Beauvais airport. In the course of the negotiations, SMABT thus asked both tenderers to submit tenders based on a benchmark scenario limiting the number of traffic movements to 21 000 for the entire duration of the contract, in order to comply with the noise exposure plan.
- (176) On the financial side, the Vinci Airport consortium submitted a tender with operating fees estimated at EUR 40 million based entirely on operating results, with an investment programme of EUR 70 million without SMABT subsidies. The tender submitted by the Oise CCI-Veolia Transport consortium included a fixed share of operating fees of EUR 10,8 million, plus an additional EUR 5 million in profit sharing and an investment programme of EUR 68,2 million including a grant of EUR 14,5 million.
- (177) According to France, although the tender submitted by the Vinci Airport consortium appeared more attractive on the surface, it was nevertheless based on optimistic and rash assumptions in comparison with the traffic estimates envisaged by the Oise CCI-Veolia consortium, in particular with regard to the limitation of the number of movements imposed by national legislation (noise exposure plan). However, the projected charges of the Vinci Airport consortium were based exclusively on these broad estimates and, unlike the CCI-Veolia consortium's tender, did not include a fixed portion; thus, from a financial point of view, the latter's tender, although lower than that of Vinci Airport, appeared more reasonable and prudent for a cautious investor wishing to safeguard its financial profitability.
- (178) The Commission further notes that the tender submitted by the Oise CCI-Veolia consortium was still profitable for SMABT. The subsidy envisaged by SMABT, net of the portion relating to public-remit investments (see recital 131), was valued at EUR 4,3 million ⁽¹⁰³⁾, whereas the Oise CCI-Veolia consortium's tender provided for payment of a minimum fixed portion of EUR 10,8 million to SMABT, guaranteeing a profit margin for SMABT.
- (179) By a decision of 25 February 2008, SMABT awarded the concession contract to the Oise CCI-Veolia consortium, whose tender was *'the most attractive tender in so far as it was best placed to ensure the controlled, environmentally-conscious development of the airport in the light of the general structure of the contract'*. Thus, SMABT complied with the conditions laid down in the tendering rules, which were known in advance to all the candidates taking part in the procedure, as the basis for its choice.
- (180) In the light of the foregoing, the Commission concludes that the tender of the Oise CCI-Veolia consortium selected by SMABT ensured financial profitability for SMABT and therefore did not have the effect of conferring an economic advantage on the CCI-Veolia consortium (subsequently SAGEB) within the meaning of Article 107(1) TFEU.

⁽¹⁰³⁾ This amount is a forecast amount as set out in the investment plan contained in the PSD agreement.

- (181) Since the grant of EUR 4,3 million was part of the transaction concluded with the Oise CCI-Veolia consortium (later SAGEB), the Commission concludes that the grant allocated to programme 3 did not constitute State aid within the meaning of Article 107(1) TFEU.

Selectivity

- (182) Where the Commission has identified an advantage, understood in a broad sense, arising directly or indirectly from a particular measure, it is also required to establish that that advantage specifically benefits one or more undertakings. It falls to the Commission to show, in particular, that the measure at issue creates differences between undertakings which, with regard to the objective of the measure, are in a comparable situation. It is necessary therefore that the advantage be granted selectively and that it be liable to place certain undertakings in a more favourable situation than that of others ⁽¹⁰⁴⁾.
- (183) The selectivity requirement differs depending on whether the measure in question is envisaged as a general scheme of aid or as individual aid. In the latter case, the identification of the economic advantage is, in principle, sufficient to support a presumption of selectivity ⁽¹⁰⁵⁾.
- (184) In the case at hand, the investment grants were all awarded under bilateral agreements negotiated directly with each of the successive operators of the airport in the form of individual aid. These grants were therefore selective in their favour.

Risk of affecting trade between Member States and intra-Union commerce

- (185) In general, when an advantage granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in a given Union market, trade between Member States must be regarded as being affected by that advantage. The Commission notes that airports are in competition for the management of airport infrastructure, including at local and regional airports. The public funding of an airport may therefore distort competition in the markets for airport infrastructure operation.
- (186) In the present case, Beauvais airport competes with other national airports (e.g. Paris-Roissy). The investment aid in question, which had the effect of strengthening its position in relation to that of those other airports, was liable to distort competition. As the market for airport services was open to intra-Union competition, the contributions could also affect trade between Member States.

8.1.1.2. Operating subsidies

Economic activity

- (187) In the light of the considerations set out in recitals 126 to 128, the Commission concludes that the subsidy of EUR 68 000 granted by the French Civil Aviation Authority to Oise CCI in 2002 related to an activity falling under the public authority remit. As France has demonstrated, that subsidy was granted in order to cover the funding of the one-off measure imposed by the State following the attacks of 11 September 2001, which increased the rate at which passengers' hand luggage was searched from 25 % to 50 %; as this formed part of a security task falling within the State's public authority remit, it did not constitute an economic activity ⁽¹⁰⁶⁾.
- (188) In addition, that measure was part of an aid scheme intended for all Class 3 provincial airports and was therefore open to all airports in the same category as Beauvais airport at the time it was granted ⁽¹⁰⁷⁾. Therefore, this subsidy did not have the effect of giving rise to discrimination.

⁽¹⁰⁴⁾ Judgment of 13 December 2018, *Ryanair DAC*, T-53/16, ECLI:EU:T:2018:943, paragraph 162.

⁽¹⁰⁵⁾ Judgment of the Court of Justice of 4 June 2015, *MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.

⁽¹⁰⁶⁾ See recital 129.

⁽¹⁰⁷⁾ <https://www.senat.fr/rap/l02-068-318/l02-068-31827.html#toc310>

- (189) The argument put forward by France that part of the advances granted by the general arm of Oise CCI to its airport arm fell within the public authority remit should be accepted. Indeed, before 12 December 2000 — the date of the Court of Justice judgment in *Aéroports de Paris* — the operation and construction of airport infrastructure could constitute activities falling within the remit of a public authority; accordingly, the Commission cannot call into question, on the basis of Article 107 TFEU, aid granted before that date for the financing or operation of airport infrastructure ⁽¹⁰⁸⁾. Therefore, advances granted by the general arm of Oise CCI to its airport arm before 12 December 2000 should not be deemed to constitute aid within the meaning of Article 107(1) TFEU. Nonetheless, the Commission must assess whether the cash advances granted in 2001, 2002 and 2004 do constitute State aid.

Existence of an economic advantage

- (190) To determine whether a State measure constitutes aid to an undertaking, it must be determined whether the undertaking in question enjoys an economic advantage enabling it to avoid costs that would otherwise have been borne by its own financial resources or whether it enjoys an advantage which it would not have received under normal market conditions. That assessment is made, in principle, by the application of the market economy operator test.

Operating subsidies

- (191) In the first place, the Commission notes that the subsidies of EUR 2 005 and EUR 1 600,10 received by Oise CCI respectively from the national centre for the development of farm structures (in 2005) and the Association for the management of funds for integrating persons with disabilities corresponded to a reimbursement of part of the contributions from Oise CCI overpaid to those two bodies. Consequently, these reimbursements did not cover costs that Oise CCI would normally have had to bear and therefore did not give it an economic advantage.
- (192) As regards the subsidies of EUR 30 490 (2002-2003) and EUR 5 829,49 (2005) paid by the Oise Department and the town of Tillé respectively, the Commission notes, on the basis of the invoices and supporting documents provided by the French authorities, that these subsidies did indeed correspond to remuneration for services provided by the airport arm of Oise CCI on behalf of those two public bodies.
- (193) The Commission notes that, under national legislation, the Oise Department's tourism promotion remit is the responsibility of that Department ⁽¹⁰⁹⁾. The same applies to the connection of pavilions to the collective waste water network, which is the responsibility of the municipalities ⁽¹¹⁰⁾. Consequently, these charges did not constitute normal costs inherent in the management of the airport and were not meant to be borne by Oise CCI.
- (194) In the second place, the Commission notes that the reimbursements did indeed correspond to the expenditure incurred by Oise CCI in providing those services, with the result that Oise CCI was not overcompensated and therefore did not enjoy an economic advantage in receiving those subsidies.
- (195) Since the criterion of economic advantage is not fulfilled in the present case, the Commission considers that the operating subsidies referred to in this subsection and granted to the airport arm of Oise CCI do not constitute State aid within the meaning of Article 107(1) TFEU.

⁽¹⁰⁸⁾ Points 28-29 of the 2014 guidelines.

⁽¹⁰⁹⁾ See in particular Article L.1111-4 of the General Code for Local and Regional Authorities (*Code général des collectivités territoriales*)

⁽¹¹⁰⁾ Article L2224-8 of the General Code for Local and Regional Authorities (*Code général des collectivités territoriales*) stated that 'the municipalities must bear the costs associated with collective sewage systems, in particular waste water treatment plants and the disposal of the sludge they produce, and expenditure on monitoring non-collective sewage systems'. In the present case, Oise CCI carried out works relating to the collective network (connection of pavilions), which was thus the responsibility of the municipality of Tillé.

Advances granted by the general arm of Oise CCI to the airport arm

- (196) As mentioned in recital 140, the assessment of the existence of an advantage is in principle carried out by applying the MEO principle. By way of preliminary observation, the Commission notes that France has not invoked this principle. Since the measures in question concern the cash advances granted to CCI Oise's airport arm in 2001, 2002 and 2004, the Commission will determine whether those advances were granted in accordance with market conditions, in the absence of any doubt as to the intervention of Oise CCI (general arm) in its capacity as an economic operator. As the Oise CCI airport arm was an integral part of the services of Oise CCI, the cash advances could therefore amount to a transaction carried out within the same economic entity and thus constitute, in principle, a transaction which an economic operator in the same situation as the general arm of Oise CCI could adopt in order to assist another subsidiary or branch of the same economic entity. In addition, these cash advances were motivated by economic considerations, since the general arm of Oise CCI intervened to help its airport arm deal with its financial difficulties (see recital 46).
- (197) In the present case, the Commission notes, firstly, that the cash advances were made at zero rate, with no expiry date, even though the airport arm was experiencing a difficult economic period at the time the advances were granted ⁽¹¹¹⁾. Therefore, the general arm did not have sufficient guarantees for it to expect the airport's operation to become profitable and allow the airport arm to repay the advances granted while leaving a profit margin big enough to remunerate the capital committed by Oise CCI's general arm. Moreover, it is not apparent from the information sent to the Commission that a business plan or budgetary simulation was prepared or reconstructed by the airport arm for the general arm with a view to analysing the risk involved in granting those cash advances.
- (198) The Commission therefore concludes in the present case that the MEO principle was not respected and that the advances in question conferred an advantage on the airport arm which it would not have obtained under normal market conditions.

Aid for the tourism development plan

- (199) In the present case, the tourism development plan put in place by SMABT was intended to foster local and regional tourism by encouraging some of the passengers of Beauvais airport to stay in Picardie or the Beauvaisis region instead of travelling to Paris. The plan therefore provided for measures (advertising material at the airport, passenger surveys, websites, SMABT information points, etc.) geared towards the development of tourism in the Picardie, Oise and Beauvaisis regions. Consequently, even if the tourism development plan was based on passengers transiting through Beauvais airport, SAGEB was not the recipient of those actions, since they were aimed primarily at passengers already present at Beauvais airport, i.e. those who had already travelled to Beauvais regardless of the measures of the tourism development plan.
- (200) The Commission notes in the present case that, since the aim was to promote local and regional tourism — a task which in the present case falls to the public authorities by law — the costs associated with that task were not, in principle, to be borne by SAGEB, whose sole task was to operate and manage Beauvais airport. The Commission notes in this regard that the PSD agreement does not impose any obligation on SAGEB to promote local or regional tourism, other than to make a financial contribution to the expenditure associated with these tourism activities and to provide institutional tourism bodies with the necessary resources to enable them to implement these measures (access to the airport, display material, etc.).
- (201) Therefore, the Commission considers that the tourism development plan created by SMABT did not have the effect of alleviating the costs that SAGEB would normally have had to bear.
- (202) Since the criterion of economic advantage is not fulfilled in the present case, the Commission considers that the partial payment by SMABT of expenditure related to the promotion of local tourism development does not constitute State aid within the meaning of Article 107(1) TFEU.

⁽¹¹¹⁾ See Table 8.

Imputability to the State and transfer of public resources

- (203) According to settled case-law, Article 107(1) TFEU covers all aid granted through State resources without it being necessary to make a distinction whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid. A measure financed by such a body is therefore imputable to the State where, essentially, the State decides to establish the measure and defines the conditions of use, management or distribution of those resources.
- (204) The cash advances in question were granted in this case by the general arm of Oise CCI. However, the Commission would point out that, in previous decisions, the measures adopted by the chambers of commerce and industry were found to be imputable to the State and to involve State resources ⁽¹¹²⁾. In the present case, on the date on which the advances in question were granted, Oise CCI was in a similar situation to that of the other CCIs examined by the Commission. Particularly in view of the applicable law, the decision-making within those entities, the supervision exercised by the state over those entities and the origin of their resources ⁽¹¹³⁾, the Commission concludes that the cash advances were imputable to the state and involved the use of State resources.

Selectivity

- (205) The cash advances in this case constituted individual aid ⁽¹¹⁴⁾, which had the effect of favouring the airport arm of Oise CCI to the detriment of other airports. Since the aid was granted directly by the general arm, in a bilateral manner, it is therefore selective in nature ⁽¹¹⁵⁾.

Risk of affecting trade between Member States and intra-EU commerce

- (206) For the reasons set out in recitals 185 and 186, the Commission considers that the cash advances had the effect of affecting intra-EU commerce and trade between Member States.

8.1.1.3. Conclusion on the existence of aid

- (207) The Commission concludes that all investment grants, with the exception of those referred to in recital 131 and those awarded to SAGEB as described in recitals 131 and 181, constitute State aid within the meaning of Article 107(1) TFEU.
- (208) The Commission also concludes that the cash advances granted by the general arm of Oise CCI to its airport arm in 2001, 2002 and 2004 constitute State aid within the meaning of Article 107(1) TFEU.
- (209) In contrast, the operating subsidies totalling EUR 107 924, the cash advances granted before 12 December 2000 and the partial coverage of the cost of promoting tourism by SMABT do not constitute State aid within the meaning of Article 107(1) TFEU.

⁽¹¹²⁾ See the Decision (EU) 2016/633, recitals 255 to 274, confirmed for example by the Court in the judgment of 13 December 2018, *Ryanair v Commission*, ECLI:EU:T:2018:943.

⁽¹¹³⁾ At the time when Oise CCI granted those advances, the chambers of commerce and industry were public bodies set up by law, administered by elected managers and supervised by the State. Moreover, as intermediate State authorities, and thus as public authorities of the State, they were entrusted by law with general interest tasks. In addition, Article L710-1 of the Commercial Code in force at the time when the aid was granted provided for specific financing arrangements for chambers of commerce and industry, the resources of which consisted, in particular, of tax revenues (the tax to cover the costs of chambers of commerce and industry, established by Article 1600 of the General Tax Code then in force), subsidies or even resources arising out of training and transport infrastructure operation activities.

⁽¹¹⁴⁾ See recital 183.

⁽¹¹⁵⁾ Judgment of the Court of Justice of 4 June 2015, *MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.

8.1.2. Lawfulness of the aid

- (210) Article 108(3) TFEU states that ‘the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. The Member State concerned may not put its proposed measures into effect until the procedure has resulted in a final decision’.
- (211) In the present case, the Commission was not informed of any of the measures in question. Therefore, they constitute unlawful aid.

8.1.3. Compatibility of the aid with the internal market

- (212) The investment and operating aid identified in recitals 207 and 209 and paid to the successive operators of Beauvais airport constitutes State aid within the meaning of Article 107(1) TFEU. Its compatibility with the internal market must be assessed in the light of the exceptions referred to in Article 107(3) TFEU.
- (213) Article 107(3) TFEU provides for certain exemptions from the general rule that State aid is deemed incompatible with the internal market. In particular, the investment and operating aid in question may be assessed on the basis of Article 107(3)(c) TFEU, under which ‘aid intended to facilitate the development of certain activities or of certain economic regions, when it does not affect trading conditions to an extent contrary to the common interest’, can be considered to be compatible with the internal market. The 2014 Aviation Guidelines provide in principle a framework for assessing whether investment and operating aid can be declared compatible with the internal market under Article 107(3)(c) TFEU.
- (214) As regards investment aid, point 173 of the 2014 Guidelines provides that ‘in accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, the Commission will apply to unlawful investment aid to airports the rules in force at the time when the aid was granted. Accordingly, it will not apply the principles set out in these guidelines in the case of unlawful investment aid to airlines granted before 4 April 2014’. For investment aid granted before 4 April 2014, the Commission will therefore apply the 2005 Guidelines, which were in force as from 9 December 2005 in accordance with the first paragraph of point 85 thereof. As regards investment aid granted before 9 December 2005, for which there were no specific compatibility criteria, the Commission will assess their compatibility directly on the basis of Article 107(3)(c) TFEU, while also taking into account its decision-making practice. Since this was consolidated by the 2005 Guidelines, investment aid granted before 9 December 2005 should also be assessed in the light of the criteria laid down in the 2005 Guidelines.
- (215) As regards the investment aid granted in 2007, its compatibility will therefore be assessed in accordance with the 2005 Guidelines.
- (216) Where the operating aid is concerned, point 172 of the 2014 Guidelines provides that the principles set out therein apply in all cases involving unlawful operating aid to airports, even if the aid was granted before 4 April 2014 and the beginning of the transitional period. Since the measures in question were not notified before they were granted, they constitute unlawful aid. The Commission will apply the 2014 Guidelines to assess the compatibility of the cash advances.

8.1.3.1. Investment aid

Applicability of the 2005 guidelines

- (217) Paragraph 53 of the 2005 Guidelines indicates that not all aid granted to finance airports falls within Section 4 of those Guidelines. In particular, aid granted for the pursuit of commercial activities not directly linked to the airport’s core activities must be assessed on the basis of the relevant sectoral and general rules. Moreover, according to paragraph 54, the 2005 Guidelines apply to all airport activities, with the exception of safety, air traffic control and any other activities for which a Member State is responsible as part of its public authority remit.

(218) The compatibility criteria for investment aid for the financing of airport infrastructure are described in Section 4.1 of the 2005 Guidelines. The only investments eligible for aid under this section are those undertaken for the construction of airport infrastructure and equipment (runways, terminals, aprons, control tower) or facilities that directly support them (fire-fighting facilities, security or safety equipment) ⁽¹¹⁶⁾. Aid related to the provision of airport services ancillary to air transport falls under Section 4.3 of the 2005 Guidelines (subsidies for airport services).

(219) Under programme 1, the Commission classified all investments made as follows:

Table 11

Type of investment under programme 1 in relation to 2005 Guidelines (in EUR)

	State-remit investments	Investments falling under Section 4.1	Other investments
West concourse (departures)		2 608 000	
East concourse (arrivals)		164 000	
Terminal modernisation		649 000	
Safety and security equipment	922 000		
Access roads and utility services <i>Including car park</i>		774 533	463 467
Environmental studies and works		62 000	
Fees ⁽¹¹⁷⁾	55 669	688 223	
Modernisation of operating equipment: <i>Including screening check points</i>	133 000	1 131 000	
Total	1 110 669	6 076 756	463 467

(220) The Commission thus notes in the context of programme 1 that the amount of public-remit investment comes to EUR 1 110 669; that the investments referred to in Section 4.1 of the 2005 Guidelines are EUR 6 076 756 and other investments (i.e. those related to commercial activities not directly linked to the airport's core activities and not covered by the 2005 Guidelines) amount to EUR 463 467. As noted in recital 37, the public authorities' contributions (EUR 4,311 million) did not formally cover specific investments under programme 1 but were based on the projected total amount of investments to be made. Therefore, in order to analyse the compatibility of the programme 1 investment aid under the 2005 Guidelines, the costs relating to other investments (EUR 463 000) should be excluded from the eligible costs. However, the Commission notes that after deducting the costs of public-remit investments (EUR 1 110 669) and other investments (EUR 463 467) from the total amount of investments under programme 1, the total amount of subsidies from the public authorities (EUR 4,311 million), net of the subsidy of EUR 1 110 669 awarded to Oise CCI to cover the cost of public-remit tasks (EUR 3,20 million) ⁽¹¹⁸⁾, does not exceed the total amount of investments referred to in Section 4.1 of the 2005 Guidelines (i.e. EUR 6,076 million). Accordingly, it is not necessary to examine the compatibility of the investment aid under programme 1 under legal bases other than those of Section 4.1 of the 2005 Guidelines.

⁽¹¹⁶⁾ See paragraph 55 of the 2005 guidelines.

⁽¹¹⁷⁾ The fees in question concerned both public-remit investments (amounting to EUR 55 669) and investments related to the construction of infrastructure.

⁽¹¹⁸⁾ The subsidy of EUR 1 110 669 granted to cover the cost of public-remit tasks under programme 1 does not constitute State aid within the meaning of Article 107(1) TFEU, as indicated in recital 131.

(221) Under programme 2, the Commission classified the investments made as follows:

Table 12

Type of investment under programme 2 in relation to 2005 Guidelines (in EUR)

	State	Investments falling under Section 4.1	Other investments
Terminal extension		1 327 749	
Security fencing	165 805		
Upgrading of aircraft stands and taxiway		1 408 739	
Renovation of hangars and runways		231 542	
Passenger flow separation corridor	176 590		
Staff car park complying with the Water Act		227 611	
Car rental base			1 735
Land acquisitions ILS		61 540	
Indoor and outdoor signage		10 510	
Porte Maillot passenger reception area			213 548
Compliance with the Water Act		46 141	
ILS studies		139 803	
Modernisation of public access roads		1 053 861	
Administrative offices		944 557	
Terminal 2 studies		188 188	
Fees and contingencies ⁽¹¹⁹⁾	86 085	659 038	
Modernisation of operating equipment, of which: — installation of booths for border police — installation of a laser bird repellent	52 670 86 085	2 039 000	
Total	567 782	8 338 279	215 283

⁽¹¹⁹⁾ The fees in question related to both public-remit investments (amounting to EUR 86 085) and investments related to the construction of infrastructure.

- (222) The Commission thus notes in the context of programme 2 that the amount of public-remit investment comes to EUR 567 782; that the investments referred to in Section 4.1 of the 2005 Guidelines are EUR 8 338 279 and other investments (i.e. those related to commercial activities not directly linked to the airport's core activities and not covered by the 2005 Guidelines) amount to EUR 215 283. As noted in recital 40, the public authorities' contributions (EUR 6,8 million) did not formally cover specific investments under programme 2 but were based on the projected total amount of investments to be made. Therefore, in order to analyse the compatibility of the programme 2 investment aid under the 2005 Guidelines, the costs relating to other investments (EUR 215 283) should be excluded from the eligible costs. However, the Commission notes that after deducting the costs of public-remit investments (EUR 567 782) and other investments (EUR 215 283) from the total amount of investments under programme 1, the total amount of subsidies from the public authorities (EUR 6,8 million), net of the subsidy of EUR 567 782 awarded to the Oise CCI to cover the costs of public-remit tasks (EUR 6,23 million) ⁽¹²⁰⁾, does not exceed the total amount of investments referred to in Section 4.1 of the 2005 Guidelines (i.e. EUR 8,3 million). Accordingly, it is not necessary to examine the compatibility of the investment aid under programme 2 under legal bases other than those of Section 4.1 of the 2005 Guidelines.

Compatibility criteria for investment aid

- (223) The compatibility of the investment aid in question must be analysed in the light of the criteria set out in paragraph 61 of the 2005 Guidelines and in the light of the case-law ⁽¹²¹⁾. State aid to airports, like any other State aid, must be necessary to facilitate the development of an economic activity and proportionate to that objective in order to be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU. The Commission will therefore assess compliance with these criteria of necessity and proportionality in addition to the aforementioned criteria from the 2005 Guidelines.

— The aid facilitates the development of an economic activity

- (224) It is clear from the various documents submitted by France that the infrastructure provided for in programme 1 and programme 2 was built with the aim of enabling successive managers to operate Beauvais airport under satisfactory safety conditions for airport users and staff and local residents, and adapted to the significant increase in air traffic recorded by the airport between 2000 and 2010, as indicated in recital 37. This objective was explicitly stated in the financing agreements for these two investment programmes.
- (225) In addition, local and regional authorities have provided financial support to make the Beauvais airport hub a tool for regional economic development. This is clear from the very terms of the financing agreements and the PSD agreement. Local authorities and successive airport managers have stated the objective of making Beauvais airport no longer a transit airport for Paris but an airport contributing to the regional development of the Picardie region.
- (226) Finally, the airport met the objectives of sustainable development and environmental protection. All the investment programmes included studies and work to reduce the environmental stresses caused by air traffic around Beauvais airport. The infrastructure was thus planned and adapted to the need imposed by local authorities to monitor the development of air traffic at Beauvais airport.
- (227) The Commission therefore considers that the aid granted to the successive managers of Beauvais airport was intended to facilitate the development of the Beauvais airport hub by providing it with secure infrastructure capable of accommodating a larger volume of traffic.

⁽¹²⁰⁾ The subsidy of EUR 1 110 669 granted to cover the costs of public-remit tasks under programme 2 does not constitute State aid within the meaning of Article 107(1) TFEU, as indicated in recital 131.

⁽¹²¹⁾ Judgment of the Court (Grand Chamber) of 22 September 2020, C-594/18 P, *Republic of Austria v Commission*, ECLI:EU:C:2020:742, paragraph 20.

— *The infrastructure is necessary and proportionate to the objective pursued*

Programme 1

- (228) The Commission takes the view the documents and information provided by France show that, at the time the investment aid was granted, the infrastructure in question appeared to be necessary and proportionate to the objective pursued.
- (229) On the one hand, in the early 2000s Beauvais airport was in a dilapidated state because of the lack of investment undertaken by the State and its manager since it was built. Thus, when the State took the decision to commercially operate Beauvais airport, the airport suffered from a significant lack of infrastructure, in particular as regards safety equipment, the condition of the roads and the airport infrastructure itself. The infrastructure existing at that time was not capable of accommodating national and international passengers under satisfactory safety conditions. All the investments covered by investment programme 1 were therefore necessary in order to ensure the safe operation of Beauvais airport.
- (230) Secondly, the infrastructure built under programme 1 appears to be proportionate in the light of the objective pursued, in so far as it did not go beyond what was necessary to enable Beauvais airport to provide a service complying with the minimum safety requirements. As explained in recital 236, the infrastructure provided for in this investment programme was planned on the basis of conservative forecasts of increased air traffic at Beauvais airport.

Programme 2

- (231) The Commission notes that the same considerations as those set out in recitals 229 and (230) in relation to programme 1 justified the necessity and proportionality of programme 2, which was planned with a view to continuing and completing the safety and modernisation work necessary to accommodate constantly increasing air traffic.
- (232) This is particularly the case for the extension of the terminal: a 2002 report compiled by a firm of architects, a control office and a firm specialising in construction economics noted a significant shortage of surface area at Beauvais airport in view of the traffic forecast for 2010 of 800 000 passengers, but which could remain sustainable if that number was not exceeded and subject to efficient passenger management by the airport. However, as Table 1 shows, in 2006 the airport already had almost two million passengers, justifying the compelling need to expand ⁽¹²²⁾.
- (233) This is also the case for the work on the aircraft parking area, which was intended to increase the depth of the apron, to add taxiway fillets and to apply floor markings in order to better regulate and secure air traffic at Beauvais airport, without this work having led to an increase in the number of aircraft stands available at the airport.
- (234) More generally, all the other infrastructure proved to be necessary to enable the airport to overcome its infrastructure shortage, with the aim of accommodating growing volumes of air traffic and contributing to the economic development of the region.

— *The infrastructure has satisfactory medium-term prospects for use*

- (235) The infrastructure was built in order to address reasonable and satisfactory medium-term air traffic growth forecasts.

⁽¹²²⁾ Moreover, this extension was not sufficient in practice since Beauvais airport had temporary structures (marquees, modules, etc.) installed to cope with the influx of passengers.

(236) Thus, in 2001, Oise CCI proposed programme 1 with a target of 660 000 passengers by 2006, while the airport's traffic growth index (+18 % per year in 2000) pointed to a higher volume by that date ⁽¹²³⁾. This increase has been placed in the context of the substantial growth in European air traffic, in particular that of low-cost airlines, which at that time had risen dramatically since 1996 ⁽¹²⁴⁾.

(237) In addition, programme 2 was based on projected traffic of 18 000 movements over the medium term, according to a report by the French Civil Aviation Authority approved on 29 June 2006.

(238) The study in Table 1 shows that the traffic projections underpinning these investment decisions were all largely achieved and exceeded ahead of time.

— *All potential users of the infrastructure have access to it in an equal and non-discriminatory manner*

(239) The formal investigation procedure confirmed the observations made in the opening decision that all potential users of the infrastructure had access to it in an equal and non-discriminatory manner.

— *The development of trade is not affected to an extent contrary to the common interest*

(240) France clarified in its comments that the airports of Amiens-Glisly and Rouen are business and leisure airports with no commercial traffic. The development of Beauvais airport therefore had no impact on these two airports, which were not likely to be considered valid alternatives to Beauvais airport. Competition between these airports and Beauvais was therefore very limited and trade was unlikely to be affected to an extent contrary to the common interest.

(241) Despite the fact that Beauvais airport experienced substantial growth in passenger traffic between 2000 and 2013, from 380 000 to almost 4 million departing passengers, its market share remained very limited in the Paris area (4 % in 2011) compared to Roissy and Orly airports. As regards low-cost traffic, in 2011 Beauvais airport accounted for 31 % of flights from/to Paris, compared to 69 % at Roissy and Orly airports. However, at the same time, according to a Microeconomix study provided by Oise CCI, SMABT and SAGEB (see recitals 106 et seq.), the proportion of low-cost traffic among total traffic at Roissy and Orly airports increased by 5,7 % between 2009 and 2010 and by 11,3 % between 2010 and 2011. Detailed analysis of this study indicates that the development of Beauvais airport, which mainly focuses on low-cost traffic, has not affected the development of the low-cost activity of the two Paris airports because of its characteristics, its market (since unlike the Paris airports it is exclusively geared to the low-cost market) and the absence of large-scale diversion of traffic from Beauvais airport to one of the other two Paris airports.

(242) Moreover, passenger traffic at Roissy airport amounted to 62 052 917, while Orly airport recorded 28 274 154 passengers in the same year. The Commission has noted that Roissy airport will have to cope with demand exceeding its capacity from 2025. Moreover, as the traffic at Orly airport is capped by an administrative decision ⁽¹²⁵⁾, it can currently be considered congested. Beauvais airport, by virtue of its proximity to Paris, therefore appears to be an effective means of combating congestion at the two Paris airports.

(243) Furthermore, the Commission notes that the investment aid received by Beauvais airport was primarily aimed at ensuring the safety of the infrastructure, which had been overloaded by the massive increase in traffic between 2000 and 2010, rather than encouraging the growth of that traffic. In other words, Beauvais airport already enjoyed some success without this investment aid (see recital 224), after a number of low-cost airlines chose to open air routes and potentially establish long-term bases there.

⁽¹²³⁾ Between 800 000 and 1 000 000 passengers.

⁽¹²⁴⁾ In its investment application file, Oise CCI states that the European market for low-cost flights was booming, with the market expanding from USD 400 million in 1996 to USD 1,5 billion in 2000.

⁽¹²⁵⁾ The number of airport slots attributable each year is 250 000, while in 2013 there were 229 654 movements.

- (244) As regards alternative modes of transport, the formal investigation procedure also failed to establish that their development was affected to an extent contrary to the common interest, as demonstrated by SMABT, Oise CCI and SAGEB in their joint observations (see recital 108).

— *Necessity and proportionality of the aid*

- (245) As regards programme 1 in the first instance, the Commission observes that it is clear from the information submitted that Oise CCI would not have been able to finance the planned investments alone. Indeed, the airport arm of Oise CCI made a loss in financial years 2000 and 2001 (see Table 2). Moreover, Oise CCI used borrowing to fund its participation in the financing of the investment programme ⁽¹²⁶⁾. The aid granted to this investment programme was therefore necessary.
- (246) The Commission also notes that the intensity of the aid from local authorities amounted to 53 % of total eligible costs, which is not disproportionate in view of the immediate investment needs at the time the aid was granted. Moreover, the financing agreements concluded in 2002 each included a mechanism for the recovery of aid in the event that expenditure was not incurred or was lower than the total estimated amount of investment. Similarly, the aid was limited even if the total projected amount was exceeded. The financing agreements also put in place checks on the expenditure incurred by the local authorities, the subsidies being allocated in instalments on the basis of the supporting documents produced by Oise CCI. The aid granted to this investment programme was therefore necessary and proportionate.
- (247) Secondly, as regards the investment aid granted to Oise CCI under programme 2, the Commission took note of the compelling need to undertake the investments concerned and of the very limited amortisation period of these investments for Oise CCI ⁽¹²⁷⁾. It therefore considers that the aid was necessary and proportionate in view of the specific circumstances existing at the time the aid was granted.
- (248) The Commission therefore concludes that all the investment aid granted in this case was necessary and proportionate.

Conclusion on compatibility of investment aid

- (249) The Commission concludes that the investment aid referred to in this section complies with Article 107(3)(c) TFEU as interpreted by the 2005 Guidelines.

8.1.3.2. Operating aid

- (250) Point 137 of the 2014 Guidelines provides that operating aid granted before the beginning of the transition period (including that paid before 4 April 2014) may be declared compatible with the internal market for all operating costs which are not covered, provided that the conditions set out in Section 5.1.2 are satisfied, with the exception of points 115, 119, 121, 122, 123, 126 to 130, 132, 133 and 134 of the 2014 Guidelines.

⁽¹²⁶⁾ See the resolution of the Oise CCI General Meeting of 25 June 2001 on the Beauvais airport modernisation plan and the financing of that plan.

⁽¹²⁷⁾ The concession concluded with Oise CCI was due to end in 2007. The State and the local authorities financing the investment programme then considered organising a tendering procedure for the renewal of the concession.

(251) The conditions set out in Section 5.1.2 of the 2014 guidelines are analysed below.

— *The aid facilitates the development of an economic activity*

(252) The purpose of the zero-rate cash advances granted in 2001, 2002 and 2004 was to enable Oise CCI's airport arm to maintain its Beauvais airport management activity with a view to making it a tool to foster the economic growth of the Picardie region. Consequently, the aid was intended to facilitate the regional development of Beauvais' airport activity. Moreover, the Commission notes that Beauvais airport serves a useful purpose for the Paris region in contributing to the decongestion of air traffic around the French capital.

— *Need for State intervention*

(253) Pursuant to point 118 of the 2014 Guidelines, the Commission observes that, on the basis of the actual annual passenger traffic recorded in the two financial years preceding each of those in which the cash advances were granted (i.e. in 2001, 2002 and 2004), Beauvais airport could be considered at the time each portion of the operating aid was granted as an airport not being able to cover those costs to a fairly substantial extent ⁽¹²⁸⁾.

(254) The 2014 Guidelines also require the aid to bring about a significant improvement that the market itself cannot deliver. The Commission considers this to be the case here. The critical economic situation in which Beauvais airport found itself at the time each of the cash advances was granted (marked by persistently low traffic, a compelling need for secure infrastructure and a financial balance showing a loss) ⁽¹²⁹⁾ could make it difficult for the airport arm to access the market at reasonable borrowing rates ⁽¹³⁰⁾. Since these difficulties were such as to deprive the Picardie region of a secure airport infrastructure favourable to its economic development, the cash advances were therefore necessary to prevent Beauvais airport from facing default.

— *Appropriateness of State aid as a policy instrument*

(255) Since the financial results of Oise CCI's airport arm showed a loss at the time the aid was granted ⁽¹³¹⁾ and it faced a cash flow shortfall, the cash advances enabled it to continue its Beauvais airport management activity with a view to making it a tool to foster regional economic growth and securing the infrastructure. The Commission notes that these advances were also time-limited and are the least distortive instrument for the market as they were intended to address a temporary need for liquidity. Therefore, the aid was an appropriate instrument to achieve the objectives of common interest.

— *Existence of incentive effect*

(256) The Commission notes that in the absence of these cash advances, the activities of Oise CCI as airport manager would have been considerably reduced (if not stopped due to a risk of default) even though Beauvais' airport infrastructure experienced strong growth in the early 2000s. Such a situation would have significantly undermined the pursuit of the objective of general interest described in recital 252. The aid therefore undoubtedly had an incentive effect.

⁽¹²⁸⁾ See Table 1. The actual annual traffic at Beauvais airport between 1999 and 2002 was between 200 000 and 700 000 annual passengers. The figure of 700 000 passengers was exceeded in 2003.

⁽¹²⁹⁾ See Table 2 and recitals 217 and 220.

⁽¹³⁰⁾ It should be noted that Beauvais airport also sought the assistance of local authorities to meet the urgent need to secure infrastructure (recitals 37 and 40).

⁽¹³¹⁾ See Table 2.

— *Proportionality of the aid amount (limiting aid to the minimum needed)*

- (257) According to point 125 of the 2014 Guidelines, in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place. In the present case, the Commission considers that the cash advances were proportionate in that they enabled Beauvais airport to meet its immediate payment deadlines. The Commission further notes that these advances were of small amounts, which meant that the aid was limited to what was necessary to meet the one-off liquidity needs. The Commission also notes that they were quickly reimbursed by Oise CCI's airport arm from 2005. Therefore, the cash advances were limited to the strict minimum necessary.

— *Avoidance of undue negative effects on competition and trade*

- (258) Finally, and as indicated in recitals 240 et seq., although other airports were present in the catchment area of Beauvais airport, some of them did not operate commercial traffic. Moreover, the small amount of operating aid granted in this case could not have had any negative effects on the development of the other two Paris airports (Roissy and Orly) whose size and volume of traffic were not comparable to those of Beauvais airport. In addition, the airport infrastructure was made available to all airlines on non-discriminatory terms.

— *Conclusion*

- (259) On this basis, the Commission concludes that the compatibility conditions laid down in the 2014 Guidelines have been met and, consequently, that the cash advances granted at a zero rate by the general arm of Oise CCI to its airport arm constituted State aid compatible with the internal market pursuant to Article 107(3)(c), as interpreted by the 2014 Guidelines.

8.2. Measures in favour of airlines

- (260) As indicated in recital 125, in order to qualify as State aid, a measure in favour of an airline must fulfil several cumulative conditions. In particular, it must confer an economic advantage on the airline. The Commission concluded that the measures at issue in favour of the airlines did not confer an economic advantage on them for the reasons set out in Section 8.2.1. Therefore, this section merely demonstrates the absence of an economic advantage, there being no need to examine the other criteria for the existence of State aid.

8.2.1. No economic advantage

- (261) In order to determine whether the agreements concluded with the airlines by Oise CCI and SAGEB confer an advantage on those airlines, the Commission must examine whether in similar circumstances a private operator, having regard to the foreseeability of obtaining a return and leaving aside all social, regional-policy and sectoral considerations, and operating under normal market economy conditions, would have entered into commercial agreements similar or identical to those concluded by the operator of Beauvais airport (Oise CCI, followed by SAGEB). Public funding granted in circumstances which correspond to normal market conditions is not regarded as State aid.
- (262) Consequently, with regard to the public financing of airports, the MEOP compliance analysis — about the applicability of which there is little doubt in the present case since these are agreements of a commercial nature which an airport is often called upon to conclude in the course of its commercial activity — must be based on satisfactory *ex ante* profitability prospects for the body granting the financing. Any traffic forecasts used for that purpose should be realistic and subject to a reasonable sensitivity analysis. The absence of a business plan is an indication that the MEO principle may not have been respected⁽¹³²⁾. In the absence of a business plan, Member States can provide analysis or internal documents from the public authorities or from the airport concerned showing clearly that an analysis conducted before the granting

⁽¹³²⁾ Judgment of the Court (Grand Chamber) of 5 June 2012, C-124/10 P, *Commission v EDF*, ECLI:EU:C:2012:318, paragraphs 84, 85 and 105.

8.2.1.1. Reconstruction of business plans – Oise CCI & SAGEB

- (263) The Commission considers that the transactions referred to in the previous recital are in line with market conditions on the basis of a reconstruction of the business plans that a market economy operator would have drawn up to decide whether or not to sign the contracts with the airlines ⁽¹³³⁾.
- (264) As indicated in Section 5.2, for the contracts signed by Oise CCI referred to in Table 9 (with the exception of the RYAN1 and RYAN2 contracts), France submitted analyses carried out a posteriori, but simulating the knowledge and reasonable assumptions that the airport manager would have had and made before signing the contracts. For the contracts signed by SAGEB, France provided the business plans drawn up prior to the signing of the contracts, and reconstructed those plans to calculate their incremental contribution to the airport operator's profits.
- (265) The Commission notes that several assumptions made in both the *ex ante* and *ex post* analyses are insufficiently substantiated by France. In particular, the assumptions concerning the incremental costs of the airport operator are not supported by a detailed analysis. Other assumptions, such as the aircraft load factor and aeronautical/non-aeronautical revenues, are not firmly substantiated in some analyses.
- (266) In so far as those assumptions constitute basic parameters of the financial projections, the Commission chose to determine the assumptions that would have been used by an airport operator operating under normal market economy conditions. The Commission also chose to reconstruct the business plans as they would have been drawn up, on the basis of these assumptions, by an airport operator operating under normal market economy conditions before choosing whether or not to sign the contracts with the airlines. If the reconstruction of a business plan shows that the signing of a contract makes it possible to generate an incremental profit for the airport operator, the latter acts as a MEO by signing the contract.

8.2.1.2. Reconstruction of business plans by the Commission – assumptions used

- (267) The contracts referred to in Table 9 each have very specific characteristics (see Table 10). For each of the contracts, the Commission reconstructed a business plan taking into account assumptions for passenger numbers, aircraft load factors, revenues and costs. These reconstructions make it possible to determine the incremental profit (or incremental loss) that the airport manager could expect by signing the contract. The following assumptions were applied:

Number of passengers (traffic)

- (268) Some contracts are based on passenger traffic commitments (e.g. the RYAN4 contract is based on the commitment to make at least 10 weekly turnarounds in addition to those already operated). Other contracts refer to the traffic projected by the airline, without this constituting a firm commitment. Finally, some contracts do not refer to any traffic targets.
- (269) Where the contracts contain a traffic commitment, the Commission applied that volume of traffic. Where reference is made to a particular volume of traffic, without implying any commitment on the part of the airline, the Commission applied that volume and carried out sensitivity analyses to check if a higher or lower volume would lead to the same conclusion, i.e. whether the contract in question generates a profit or a loss for the airport operator. Where no volume is referred to, the Commission carried out several traffic analyses to ensure that there is no change in the conclusions on the profitability of the contract depending on the number of flights applied. This analysis is particularly important where the airport operator's revenues vary according to the number of flights. For example, for the WIZZ1 contract, landing fee revenues decrease by 20 % per turnaround where there are more than four turnarounds per day. It is therefore necessary to ensure that if the number of daily turnarounds exceeds four, the contract remains profitable.

⁽¹³³⁾ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), points 101 to 105 and the case-law cited.

Aircraft capacity and load factor

- (270) The type of aircraft used by an airline (and thus its capacity) is sometimes mentioned in the contract. In this case, the capacity of this type of aircraft is used. Where the type of aircraft used is not mentioned in the contract, the Commission relied on the information provided by France. Aircraft capacity varies between 132 and 198 seats.
- (271) The load factor used by the Commission is that observed in the years preceding the signature of the contract. For Ryanair and Wizz Air, the specific load factors of the flights operated by those airlines in the years preceding the signature of the contract were used. For the other airlines, for which the airport manager does not have historical data, the average historical data of the airport (all airlines) were used. Load factors vary between 70 % and 80 %.

Aeronautical revenues

- (272) Aeronautical revenues are based on the terms of the contracts. They include the revenue from landing fees and fees due for each departing passenger. In many contracts, landing fees are degressive (their rate decreases according to the number of weekly or daily turnarounds) and many contracts do not include passenger fees. The Commission assumed that, for the multi-year contracts, the landing and passenger fees remained fixed for the duration of the contract, since the contracts did not include any rate increase clause.

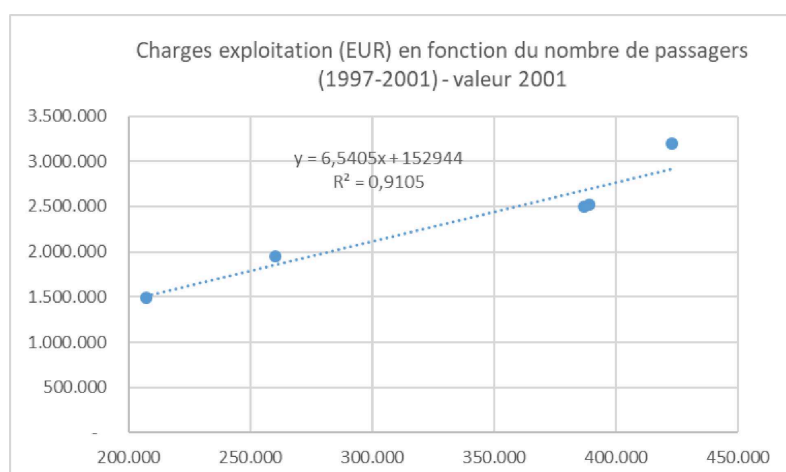
Non-aeronautical revenues

- (273) Non-aeronautical revenues constitute the majority of Beauvais airport's revenues and those from the bus connection between Paris and the airport represent the main revenue item within that category. In 2009, revenues from the operation of the bus route constituted 49 % of the airport's revenues and other non-aeronautical revenues accounted for 16 % (aeronautical revenues accounted for 12 % and the security charge 23 %).
- (274) The Commission based the estimate of the revenues from the operation of the bus route on (i) the rates in force at the time the contracts were signed ⁽¹³⁴⁾ and (ii) the proportion of passengers using the bus in the year preceding the signing of the contract (this proportion stood at [55-60] % between 1997 and 2005 and stabilised at around 50 % between 2006 and 2011). The Commission assumed that, for the multi-year contracts, bus fares increased by 2 % per year due to inflation. For the reconstruction of the RYAN3 business plan, over a period of 10 years, the Commission also applied an annual decrease of one percentage point in the proportion of passengers using the bus (from 57 % to 48 % in 10 years) to take into account the growth in airport parking activities and the expected growth in the number of local passengers and those coming from the north of the region.
- (275) The estimate of other non-aeronautical revenues (parking, shops, etc.) is based on an analysis of the airport operator's profit and loss accounts. They amount to approximately EUR 1,50 per passenger in 2000-2001 and EUR 2,20 per passenger in 2008-2009. The Commission assumed that, for the multi-year contracts, other non-aeronautical revenues increased by 2 % per year due to inflation.
- (276) The non-aeronautical revenues referred to in recitals 274 and 275 are taken into account in all of the business plan reconstructions. Other types of non-aeronautical revenues were also taken into account on an ad hoc basis in order to reflect certain specific agreements. However, their impact remains negligible:
- (a) for the RYAN1, RYAN2 and RYAN3 contracts, the Commission took into account the agreement with Ryanair under which the airport operator receives a commission of 5 % of the value of the Ryanair air tickets it sells directly. France estimated this revenue at EUR 0,15 per passenger on the basis of revenues of EUR 100 000 in 2002;
 - (b) for contracts which include optional provisions relating to aircraft cleaning and other services, the Commission assumed that airlines would use these services in 5 % of cases.

⁽¹³⁴⁾ Fares increased from EUR 5,78 per journey in 1997 to EUR 14,22 in 2011.

Incremental airport operating costs

- (277) The incremental operating costs of the airport are the main cost item of the business plans. They include all of the airport's operating costs (staff, equipment, etc.), but do not include investments made in the airport, or costs related to the State's exercise of its powers as a public authority.
- (278) With regard to incremental investment costs, it should be noted that, according to France, no investment needed to be made at Beauvais airport due to a specific contract covered by this investigation. As a result, and given that there is nothing to indicate that a market economy operator would have expected to have to make certain investments due to one or more of the contracts covered by the formal investigation procedure, no incremental investment cost has been taken into account in this analysis.
- (279) Incremental operating costs cover operating costs relating to both aeronautical and non-aeronautical operations (buses and other non-aeronautical operations).
- (280) Incremental operating costs do not include costs related to public authority obligations (safety and security), which are covered by the State (and do not constitute State aid within the meaning of Article 107(1) TFEU).
- (281) In order to reconstruct the operating costs, the Commission used the information contained in the profit and loss accounts of Oise CCI and SAGEB. Annual operating costs consist of total operating charges less (i) operating costs linked to the exercise of public-authority powers (safety and security – these costs are financed by the security charge) and (ii) amortisation of investments (consisting of depreciation and amortisation expenses and provisions for renewal and major repairs).
- (282) By analysing the change in operating costs according to the number of passengers, it is possible to calculate the incremental operating cost per passenger, i.e. the additional operating cost generated by the arrival of an additional passenger. Graph 1 and Graph 2 show that the change in the number of passengers and operating costs are closely correlated.
- (283) The Commission identified two periods for which the growth in operating costs shows different characteristics. On the one hand, between 1997 and 2001, the incremental operating cost amounted to EUR 6,54 per passenger at 2001 values. For contracts signed before 31 December 2001, the Commission based incremental operating costs on this figure. The value used to reconstruct a business plan is adjusted for inflation. Thus, for the RYAN1 business plan signed in 1999, the Commission used an incremental operating cost of EUR 6,35, corresponding to the value of EUR 6,54 adjusted for inflation between 1999 and 2001. The result of the Commission's analysis is shown in Graph 1.

*Graph 1***Operating costs according to number of passengers (1997-2001)**

Source: Beauvais airport data. Commission analysis

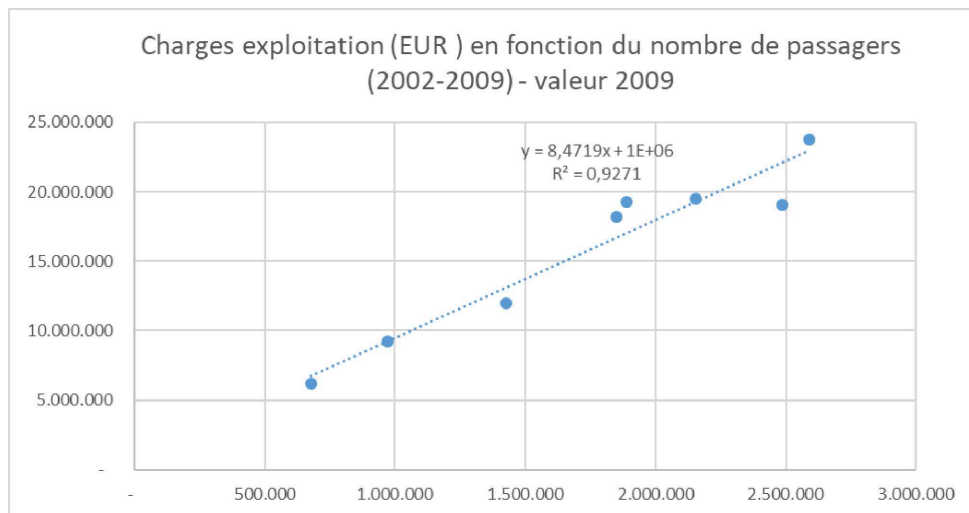
(284) Graph 1 was established using the following method:

- (1) Each dot on the graph corresponds to a year between 1997 and 2001;
- (2) For each dot, the x-axis is the number of passengers carried in the year, and the y-axis represents the total operating costs of the airport in the year;
- (3) The equation line $y = 6,5405x + 152944$ is extrapolated from all dots. The correlation between the extrapolated straight line and the dots is very high, with an R^2 of 0,9105, which means that the extrapolated straight line is an excellent approximation to model the alignment of the dots and makes it possible to determine a linear relationship between the airport's operating costs and the number of passengers carried. The extrapolated straight line equation can thus be used to define the amount of operating costs (y) according to the number of passengers carried (x);
- (4) For every additional passenger carried, the additional operating costs are thus EUR 6,5405.

(285) On the other hand, between 2002 and 2009, the incremental operating cost amounted to EUR 8,47 per passenger at 2009 values. For the contracts signed between 2002 and 2010, the Commission based the incremental operating costs on this figure, assuming that in 2010, a reasonable operator would rely on known operating costs up to 2009. The value used to reconstruct a business plan is adjusted for inflation. Thus, for the FLYM1 business plan signed in 2006, the Commission applied an incremental operating cost of EUR 8,05, corresponding to the value of EUR 8,47 adjusted for inflation between 2006 and 2009. The result of the Commission's analysis is shown in Graph 2.

Graph 2

Operating costs according to number of passengers (2002-2009)



Source: Beauvais airport data. Commission analysis

(286) Graph 2 was established using the following method:

- (1) Each dot on the graph corresponds to a year between 2002 and 2009;
- (2) For each dot, the x-axis is the number of passengers carried in the year, and the y-axis represents the total operating costs of the airport in the year;

(3) The equation line $y=8,4719x + 1^{E+06}$ is extrapolated from all the dots. The correlation between the extrapolated straight line and the dots is very high, with an R^2 of 0,9271, which means that the extrapolated straight line is an excellent approximation to model the alignment of the dots and makes it possible to determine a linear relationship between the airport's operating costs and the number of passengers carried. The extrapolated straight line equation can thus be used to define the amount of operating costs (y) according to the number of passengers carried (x);

(4) For every additional passenger carried, the additional operating costs are thus EUR 8,4719.

(287) The Commission assumed that, for the multi-year contracts, incremental operating costs are determined for the first year of the contract according to the methodology described in recitals 285 and 286, and that the costs then increase by 2 % per year due to inflation.

Marketing costs – incentive schemes

(288) The RYAN4, RYAN5, WIZZ1, WIZZ2, WIZZ3, VOLA1, AIRH1 and CENT1 contracts contain clauses according to which the airport operator undertakes to pay the airline financial contributions based on the traffic it generates. This financing constitutes costs for the airport manager and is taken into account in the business plans reconstructed by the Commission. The other contracts do not include such clauses.

8.2.1.3. Reconstruction of business plans by the Commission – results

(289) For all the contracts signed by Oise CCI and SAGEB which are the subject of this decision, the business plans reconstructed by the Commission generate incremental profits for the airport manager, confirming France's conclusions that the contracts signed by Oise CCI and SAGEB would have been signed by an airport operator operating under normal market economy conditions.

(290) Therefore, the contracts signed by Oise CCI and SAGEB with the airlines did not confer any advantages on the airlines within the meaning of Article 107(1) TFEU and thus do not constitute State aid.

8.2.1.4. SAGEB shareholders' agreement – influence of the private shareholder

(291) In addition to the analysis set out in Section 8.2.1.3, the Commission considers in the alternative that the decisions to sign airport services contracts between SAGEB and the airlines are in line with market conditions in that they have been validated jointly by the two shareholders of SAGEB (Oise CCI as a public entity and Véolia Transport as a private operator), which are equally exposed to the profits and risks resulting from those transactions. SAGEB signed the RYAN4, RYAN5 and WIZZ3 contracts (see recital 51).

(292) The Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU states that the compliance of a transaction with market conditions can be directly established where the transaction is carried out *pari passu* by public entities and private operators ⁽¹³⁵⁾.

(293) In the present case, the Commission must analyse the conduct of SAGEB (the airport operator) and not the joint conduct of SAGEB and other public or private operators. The Commission thus analysed the decision-making process within SAGEB concerning the signing of contracts with airlines and the respective roles of SAGEB's shareholders (Oise CCI with 51 % and Véolia Transport with 49 %).

⁽¹³⁵⁾ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1), point 84.

- (294) The role and powers of Oise CCI and Véolia Transport within SAGEB are governed by SAGEB's articles of association and by the shareholders' agreement signed by Oise CCI and Véolia Transport.
- (295) Within SAGEB, a Partners' Committee is made up of ten shareholders' representatives. Each shareholder appoints a number of representatives in proportion to its shareholding (rounded to the nearest whole number) ⁽¹³⁶⁾. Therefore, five representatives are appointed by Oise CCI and five by Véolia Transport.
- (296) The chair of SAGEB (who serves as the director of the airport) and the vice-chair (who replaces the chair if the latter is unable to perform his/her duties) are appointed by a qualified majority of the Partners' Committee (75 % of shareholders' votes), on a proposal from the majority shareholder for the chair and on a proposal from Véolia Transport for the vice-chair ⁽¹³⁷⁾. Both Oise CCI and Véolia Transport have a blocking minority for these two appointments, which must therefore be agreed by consensus between the two shareholders. The chair and vice-chair are both members of the Partners' Committee. The appointments of the operations director (proposed by Véolia Transport), the director of technical services and the accounting and finance director are all approved by the Partners' Committee by qualified majority ⁽¹³⁸⁾. For all key functions involved in the operation of the airport, Oise CCI and Véolia Transport thus have a blocking minority, and decisions must be taken by consensus between the two shareholders.
- (297) Decisions on the signing of contracts with airlines are subject to approval by the Partners' Committee, by qualified majority ⁽¹³⁹⁾. In particular, this concerns the following decisions:
- (a) adoption and approval of the annual budget;
 - (b) approval of updates to the business plan;
 - (c) any act, contract or agreement of more than one year or requiring SAGEB to incur a sum of more than EUR 100 000 and which is not provided for in the annual budget;
 - (d) any decision that may affect SAGEB's turnover in an amount exceeding EUR 100 000 (as is the case for the RYAN4, RYAN5 and WIZZ3 contracts);
 - (e) any act, commitment or decision which may affect more than 4 % of the total number of air movements within the airport (this is the case for the RYAN5 and WIZZ3 contracts, which affect 5,3 % and 113 % of traffic respectively).
- (298) Decisions on the signing of contracts with airlines are taken under the same conditions by the two shareholders, who are in a comparable situation. In coming to this conclusion, the Commission notes in particular that:
- (a) decisions on the signing of contracts with airlines, and in particular with regard to the RYAN4, RYAN5 and WIZZ3 contracts, are taken jointly by both shareholders and require the approval of each;
 - (b) both shareholders are exposed to the risks and profits of operating the airport according to the same terms and in proportion to their shareholding in SAGEB, i.e. 51 % for Oise CCI and 49 % for Véolia Transport;
 - (c) the participation of Véolia Transport is therefore of real economic importance ⁽¹⁴⁰⁾ and, given the shareholders' agreement, its decisions carry as much weight as those of Oise CCI;

⁽¹³⁶⁾ Article 3.3 (a) of the SAGEB shareholders' agreement.

⁽¹³⁷⁾ Article 3.1 of the SAGEB shareholders' agreement.

⁽¹³⁸⁾ Article 3.2 of the SAGEB shareholders' agreement.

⁽¹³⁹⁾ Article 3.3(f) of the SAGEB shareholders' agreement.

⁽¹⁴⁰⁾ The WIZZ3 contract affects all Wizzair traffic while the RYAN5 contract concerns the development of additional routes. The RYAN4 contract concerns the development of additional routes and affects 2,5 % of the airport's traffic.

- (d) the positions of Oise CCI and Véolia Transport are comparable with regard to operation of the airport. Although Oise CCI was the operator of Beauvais airport before SAGEB, its exposure to the results of the airport is limited to its role in SAGEB, and is in no way related to its role as the operator preceding SAGEB. The delegation contract between SMABT and SAGEB thus makes no mention of any obligations on the part of Oise CCI linked to its management of the airport before 1 June 2008 (the date on which SAGEB began operating the airport).
- (299) The Commission concludes that (i) the contracts with the airlines were signed *pari passu* by Oise CCI and Véolia Transport; (ii) because of the existence of a shareholders' agreement with Oise CCI, Véolia Transport is in a position to ensure that contracts signed by SAGEB with airlines are in line with its interests; and (iii) these transactions were carried out by a private operator in a market economy and are thus in line with market conditions.
- (300) In support of this conclusion, the Commission also notes that SAGEB carried out economic analyses prior to the signing of the RYAN4, RYAN5 and WIZZ3 contracts to ensure the profitability of these contracts, and that these analyses were approved by the Partners' Committee. The Commission also notes in further support of its conclusion that SAGEB made a profit from the operation of the airport from 2008 to 2011, illustrating the sound management of SAGEB.
- (301) In conclusion, the analysis of SAGEB's articles of association and its shareholders' agreement serve to confirm the conclusion set out in recital 290, namely that the contracts signed by SAGEB with the airlines do not confer advantages on those airlines within the meaning of Article 107(1) TFEU and therefore do not constitute State aid.

8.2.2. Conclusion on the existence of State aid

- (302) The Commission concludes that the airport services contracts concluded by Oise CCI and SAGEB listed in Table 9 did not confer an economic advantage on the airlines as they were concluded in accordance with the MEO principle.
- (303) Therefore, the airport services contracts do not constitute State aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

1. The investment grants awarded by the Oise department, the Beauvaisis intermunicipal authority and the Region of Picardie to the Oise Chamber of Commerce and Industry in 2001 in the amount of EUR 1 110 669 and in 2006 in the amount of EUR 567 782, to cover the costs associated with the public-remit tasks of Beauvais airport, as well as the investment grants awarded to the Société Aéroportuaire de Gestion et d'Exploitation de Beauvais (Beauvais airport managing and operating company, SAGEB) by the Syndicat mixte de l'aéroport de Beauvais-Tillé in 2008, amounting to EUR 14,5 million, do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
2. The investment grants awarded by the Oise department, the Beauvaisis intermunicipal authority and the Region of Picardie to the Oise Chamber of Commerce and Industry in 2001 in the amount of EUR 3,20 million and in 2006 in the amount of EUR 6,23 million constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was unlawfully granted by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.
3. The operating subsidies granted to the Oise Chamber of Commerce and Industry, as well as the cash advances granted by the general arm of the Oise Chamber of Commerce and Industry to its airport arm before 12 December 2000, do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

4. The cash advances granted by the general arm of the Oise Chamber of Commerce and Industry to its airport arm from 2001 to 2004 constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. This State aid was unlawfully granted by France in breach of Article 108(3) of the Treaty on the Functioning of the European Union.
5. The partial coverage by the Syndicat mixte de l'aéroport de Beauvais-Tillé of the expenditure relating to the implementation of a tourism development plan does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
6. The State aid referred to in paragraphs 2 and 4 is compatible with the internal market on the basis of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

1. The airport services contracts concluded between the Oise Chamber of Commerce and Industry and Ryanair on 8 September 1998, 16 March 2001 and 12 February 2002 respectively, as well as the airport services contracts concluded by the Société Aéroportuaire de Gestion et d'Exploitation de Beauvais (Beauvais airport managing and operating company, SAGEB) with Ryanair on 4 February 2010 and 27 July 2010, do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
2. The airport services contracts concluded between the Oise Chamber of Commerce and Industry and Wizz Air on 11 June 2004 and 1 July 2005 respectively, as well as the airport services contracts concluded between the Société Aéroportuaire de Gestion et d'Exploitation de Beauvais (Beauvais airport managing and operating company, SAGEB) and Wizz Air on 1 June 2009, do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.
3. The airport services contracts concluded by the Oise Chamber of Commerce and Industry with Goodjet on 14 December 2001, Ciaofly on 24 April 2002, Berlin Jet on 30 January 2003, Volare on 13 February 2003, Sterling on 15 July 2004, Norwegian Air Shuttle on 7 April 2005, Air Horizon on 12 July 2004, Air Polonia on 20 October 2004, Blue Air on 11 October 2005, FlyMe on 30 March 2006 and Centralwings on 18 February 2007 do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 26 July 2022.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2023/106**of 11 January 2023****fixing the indicative allocations of Union aid to Member States for school fruit and vegetables and for school milk for the period from 1 August 2023 to 31 July 2029**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisations of the markets in agricultural products ⁽¹⁾, and in particular Article 5(4), third subparagraph, thereof,

Whereas:

- (1) Article 23a of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽²⁾ lays down the overall amount of Union aid per school year under the school scheme for the Union as a whole and objective criteria for the allocation of that overall amount among the Member States.
- (2) Annex I to Regulation (EU) No 1370/2013 sets out the annual indicative allocations of Union aid, per Member State, for school fruit and vegetables and for school milk for the period from 1 August 2017 to 31 July 2023. After that 6-year transitional period, from 1 August 2023, the Commission is to fix the indicative allocations of Union aid to each Member State on the basis of the criteria referred to in Article 23a(2), first subparagraph, of Regulation (EU) No 1308/2013. When fixing the indicative allocations, account is to be taken of the minimum amount of Union aid to which Member States are entitled, so that the Member States with a limited demographic size can implement a cost-effective scheme.
- (3) In accordance with Article 23(8) of Regulation (EU) No 1308/2013 and Article 2(3) of Commission Delegated Regulation (EU) 2017/40 ⁽³⁾, Member States are to draw up their strategies covering the 6-year period from 1 August 2023 to 31 July 2029 and notify them to the Commission by 30 April 2023. In order to allow Member States to efficiently plan the implementation of the scheme during the period covered by their strategies, the indicative allocations of Union aid should cover the same period of time. These indications allocations are without prejudice to the future decisions related to the Union's Multiannual Financial Framework for the period beyond 2027.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS DECISION:

Article 1

The indicative allocations of Union aid for school fruit and vegetables and for school milk for each Member State per school year during the period from 1 August 2023 to 31 July 2029 are set out in the Annex.

⁽¹⁾ OJ L 346, 20.12.2013, p. 12.

⁽²⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁽³⁾ Commission Delegated Regulation (EU) 2017/40 of 3 November 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014 (OJ L 5, 10.1.2017, p. 11).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 11 January 2023.

For the Commission

Janusz WOJCIECHOWSKI

Member of the Commission

ANNEX

**INDICATIVE ALLOCATIONS OF UNION AID PER SCHOOL YEAR DURING THE PERIOD FROM
1 AUGUST 2023 TO 31 JULY 2029 REFERRED TO IN ARTICLE 1**

Member State	Indicative allocation for school fruit and vegetables in EUR	Indicative allocation for school milk in EUR
Belgium	3 648 727	1 600 475
Bulgaria	2 110 411	1 800 090
Czechia	3 349 886	3 048 057
Denmark	1 671 583	1 632 431
Germany	20 373 277	8 910 720
Estonia	396 340	754 955
Ireland	1 889 775	826 537
Greece	3 149 503	1 464 086
Spain	13 407 407	6 023 462
France	22 720 501	9 979 209
Croatia	1 278 964	610 533
Italy	15 293 816	6 910 347
Cyprus	290 000	252 652
Latvia	649 309	868 581
Lithuania	891 870	1 236 781
Luxembourg	290 000	193 000
Hungary	2 894 429	2 970 122
Malta	290 000	193 000
Netherlands	4 977 290	2 176 932
Austria	2 320 736	1 015 027
Poland	12 138 186	12 791 591
Portugal	2 804 412	1 301 261
Romania	6 178 236	11 303 390
Slovenia	665 306	305 638
Slovakia	1 851 325	1 659 402
Finland	1 672 943	2 731 455
Sweden	3 404 234	7 635 935
Total	130 608 466	90 195 669

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