II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2016/788

of 1 October 2014

on the State aid SA.32833 (11/C) (ex 11/NN) implemented by Germany concerning the financing arrangements for Frankfurt Hahn airport put into place in 2009 to 2011

(notified under document C(2014) 6850)

(Only the English 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) [1] 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 the provisions cited above [2] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 17 June 2008, the Commission informed Germany of its decision to initiate the procedure provided for in Article 108(2) of the Treaty with regard to the financing of Flughafen Frankfurt Hahn GmbH ('FFHG'), the operator of Frankfurt Hahn airport, and its financial relations with Ryanair. The formal investigation procedure was registered under the case number SA.21121 (C 29/08).

(2) By letter of 4 March 2011, Deutsche Lufthansa AG ('Lufthansa') provided further information with regard to the ongoing formal investigation procedure in case SA.21121 (C 29/08), alleging new State aid measures in favour of FFHG.

(3) By letter dated 18 March 2011 the Commission forwarded this submission of Lufthansa to Germany and requested further information on the alleged new State aid measures. By letter dated 5 April 2011, Germany

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('Treaty'). The two sets of Articles are in substance identical. For the purposes of this Decision references to Articles 107 and 108 of the Treaty should be understood as references to Articles 87 and 88 of the EC Treaty when appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the Treaty will be used throughout this Decision.

[2] OJ C 216, 21.7.2012, p. 1.

requested an extension of the deadline for providing that information until 15 July 2011. By letter dated 11 April 2011 the Commission granted an extension of the deadline until 18 May 2011 for some of the questions and until 31 May 2011 for the remaining questions. Germany replied by letters dated 19 May 2011 and 23 May 2011.

(4) However, those replies were incomplete. Therefore, by letter dated 6 June 2011 the Commission sent a reminder pursuant to Article 5(2) of the Council Regulation (EC) No 659/1999 ([3]). Germany responded by letters dated 14 June 2011 and 16 June 2011.

(5) By letter dated 13 July 2011 the Commission informed Germany of its decision to initiate the procedure provided for in Article 108(2) of the Treaty with respect to the credit line provided to FFHG by the cash-pool of *Land* Rhineland-Palatinate, the loan provided by Investitions- und Strukturbank of *Land* Rhineland-Palatinate ('ISB') to FFHG and the guarantee provided by *Land* Rhineland-Palatinate to FFHG for the ISB loan ('opening decision'). The formal investigation procedure concerning these aspects was registered under the case number SA.32833 (11/C).

(6) By letter of 22 July 2011, Germany requested an extension of the deadline for its reply to the opening decision, which was accepted by the Commission on 26 July 2011. The Commission received comments on the opening decision from Germany on 31 August 2011.

(7) By letter dated 22 December 2011 the Commission requested further information from Germany. By letter of 18 January 2012, Germany requested an extension of the deadline for replying, which was granted by the Commission on the same day. Germany responded to the request for further information dated 22 December 2011 by letter dated 22 February 2012.

(8) The opening decision was published in the *Official Journal of the European Union* ([4]) on 21 July 2012. The Commission invited interested parties to submit their comments on the measures in question within one month of the publication date.

(9) By letter dated 4 September 2012, the Commission received one submission from a third party, *Land* Rhineland-Palatinate. The Commission transmitted that submission to Germany by letter dated 7 September 2012. Germany was given the opportunity to provide comments on the submission of the third party within one month. Germany did not provide any comments.

(10) By letter dated 10 April 2013 the Commission requested further information from Germany. Germany responded by letter dated 17 June 2013.

(11) By a letter dated 25 February 2014, the Commission informed Germany of the adoption of the 2014 Aviation Guidelines ([5]) on 20 February 2014, of the fact that those guidelines would become applicable to the case at hand from the moment of their publication in the *Official Journal of the European Union*, and gave Germany the opportunity to comment on the guidelines and their application within 20 working days of their publication in the Official Journal.

(12) The 2014 Aviation Guidelines were published in the *Official Journal of the European Union* on 4 April 2014. They replaced the 1994 Aviation Guidelines ([6]) as well as the 2005 Aviation Guidelines ([7]).

(13) On 15 April 2014 a notice was published in the *Official Journal of the European Union* inviting Member States and interested parties to submit comments on the application of the 2014 Aviation Guidelines in this case within one month of their publication date ([8]). Lufthansa and Transport & Environment submitted observations. By letter dated 21 August 2014 the Commission forwarded those observations to Germany. By letter dated 29 August 2014 Germany informed the Commission that it did not have any observations.

([3]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1).
([4]) See footnote 2.
([5]) Communication from the Commission — Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).
([6]) Application of Article 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State Aids in the Aviation Sector (OJ C 350, 10.12.1994, p. 5).
([7]) Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).
([8]) OJ C 113, 15.4.2014, p. 30.

(14) By letters dated 23 March 2014 and 4 April 2014 the Commission requested further information from Germany. Germany replied by letters dated 17 April 2014, 24 April 2014 and 9 May 2014.

(15) On 17 June 2014, Germany informed the Commission that it exceptionally accepts that this Decision is adopted in English only.

2. CONTEXT OF THE INVESTIGATION

2.1. Conversion of the airport and its ownership structure

(16) Frankfurt Hahn airport is located in *Land* Rhineland-Palatinate, approximately 120 km west of the city of Frankfurt/Main. Frankfurt Hahn airport was a US military airbase until 1992. Subsequently, it was converted into a civil airport. It holds a 24-hour operating licence.

(17) Holding Unternehmen Hahn GmbH & Co. KG (Holding Hahn), a public-private partnership between Wayss & Freytag and *Land* Rhineland-Palatinate, acquired ownership of the infrastructure of Frankfurt Hahn airport from Germany on 1 April 1995. Between 1995 and 1998, this public-private partnership developed the airport with the goal of making it an industrial and commercial area. According to Germany, when the partnership between Wayss & Freytag and *Land* Rhineland-Palatinate did not turn out to be successful, on 1 January 1998, Flughafen Frankfurt/Main GmbH (Fraport) (*) started getting involved in the project and eventually took over the operation of the airport.

(18) Fraport purchased 64,90 % of the shares in the operator Flughafen Hahn GmbH & Co. KG Lautzenhausen (FFHG) for the price of […] ([9]). Payment of part of the purchase price (EUR […]) was due on 31 December 2007, and was subject to certain conditions ([10]). In August 1999, Fraport acquired 73,37 % of the shares of Holding Hahn and 74,90 % of the shares of its general partner Holding Unternehmen Hahn Verwaltungs GmbH for the price of EUR […]. Thereby Fraport effectively became the new partner of *Land* Rhineland-Palatine.

(19) Fraport's focus at Frankfurt Hahn airport was to systematically develop the passenger and cargo business of the airport. In this respect, Fraport was one of the first undertakings to apply a business model which aimed especially at attracting low-cost airlines. On this basis, Fraport undertook to conclude a new profit and loss transfer agreement with Holding Hahn upon conversion of the latter into a German limited liability company (*Gesellschaft mit beschränkter Haftung, GmbH*). The conversion and the conclusion of that agreement took place on 24 November 2000.

(20) Subsequently, Holding Hahn and FFHG merged to form Flughafen Hahn GmbH. *Land* Rhineland-Palatinate held 26,93 % and Fraport 73,07 % of the shares in the new company. In 2001, the two shareholders, Fraport and *Land* Rhineland-Palatinate, injected fresh capital into FFHG.

(21) Until 11 June 2001, 100 % of the shares in Fraport were held by public shareholders ([11]). On 11 June, Fraport was floated on the stock market exchange and 29,71 % of its shares were sold to private shareholders, the remaining 70,29 % of shares remaining with the public shareholders.

(22) In November 2002, *Land* Rhineland-Palatinate, *Land* Hesse, Fraport and FFHG concluded an agreement on the further development of Frankfurt Hahn airport. That agreement provided for a second increase of the registered capital. On that occasion, *Land* Hesse acceded to FFHG as a third shareholder. Fraport then owned 65 % of the shares and *Land* Hesse and *Land* Rhineland-Palatinate held 17,5 % each. This ownership structure remained unchanged until 2009, when Fraport sold all of its shares to *Land* Rhineland-Palatinate, which has, since then, held a 82,5 % majority share. The remaining 17,5 % are still held by *Land* Hesse.

(*) *Confidential information*
([9]) Hereafter in this Decision the term 'Fraport' is used to mean both 'FAG' prior to the change of the business name and 'Fraport AG' thereafter.
([10]) Pursuant to Section 7(3) of the purchase agreement this figure could be reduced, such as in case the costs of FFHG for noise protection would exceed a certain ceiling.
([11]) *Land* Hesse held 45,24 % of Fraport's shares, Stadtwerke Frankfurt am Main Holding GmbH (owned for 100 % by the municipality Frankfurt am Main) held 28,89 % and the Federal Republic of Germany held 25,87 %.

2.2. **Passenger and freight traffic development and airports in the vicinity**

(23) The passenger traffic at Frankfurt-Hahn airport increased from 29 289 in 1998 to 4 million in 2007 and then decreased to 2,7 million in 2013 (see Table 1). The airport is currently served by Ryanair ([12]), Wizz Air ([13]) and other airlines. Ryanair's passenger share amounts to approximately [80-100 %].

Table 1

Passenger development at Frankfurt Hahn airport from 1998 to 2013

Year	Number of passengers	Number of Ryanair passengers
1998	29 289	0
1999	140 706	89 129
2000	380 284	318 664
2001	447 142	397 593
2002	1 457 527	1 231 790
2003	2 431 783	2 341 784
2004	2 760 379	2 668 713
2005	3 079 528	2 856 109
2006	3 705 088	3 319 772
2007	4 015 155	3 808 062
2008	3 940 585	3 821 850
2009	3 793 958	3 682 050
2010	3 493 629	[2 794 903-3 493 629]
2011	2 894 363	[2 315 490-2 894 363]
2012	2 791 185	[2 232 948-2 791 185]
2013	2 667 529	[2 134 023-2 667 529]

([12]) *Ryanair* is an Irish airline and Member of the European Low Fares Airlines Association. The business of the airline is linked with secondary, regional airports. The airline operates currently approximately 160 European destinations. Ryanair has a homogenous fleet consisting of Boeing 737-800 aircraft with 189 seats.

([13]) *Wizz Air* is a Hungarian airline and Member of the European Low Fares Airlines Association. Wizz Air group consists of three operating companies, namely Wizz Air Hungary, Wizz Air Bulgaria and Wizz Air Ukraine. The business model of the airline is linked with secondary, regional airports. The airline operates currently approximately 150 European destinations. Wizz Air has a homogenous fleet, which consists of Airbus A 320 aircraft with 180 seats.

(24) Frankfurt-Hahn airport has also experienced a significant growth in air cargo traffic. The air freight at the airport increased from 16 020 tonnes in 1998 to 286 416 tonnes in 2011 and decreased again to 152 503 tonnes in 2013 (see Table 2). The total freight, including freight forwarders, handled at the airport amounted to 446 608 tonnes in 2013.

Table 2

Cargo development at Frankfurt Hahn airport from 1998 to 2010

Year	Total air freight in tonnes	Total freight including freight forwarders in tonnes
1998	16 020	134 920
1999	43 676	168 437
2000	75 547	191 001
2001	25 053	133 743
2002	23 736	138 131
2003	37 065	158 873
2004	66 097	191 117
2005	107 305	228 921
2006	123 165	266 174
2007	125 049	289 404
2008	179 375	338 490
2009	174 664	322 170
2010	228 547	466 429
2011	286 416	565 344
2012	207 520	503 995
2013	152 503	446 608

(25) The following airports are located in the proximity of Frankfurt Hahn airport:

(i) Frankfurt Main airport (~ 115 kilometres from Frankfurt Hahn airport, ~ 1 hour 15 minutes travelling time by car) is an international hub airport with a wide variety of destinations, ranging from short- to long-haul. It is predominantly served by network carriers offering connecting traffic, although it also provides point-to-point connections and charter flights. Besides passenger traffic (approximately 58 million in 2013), Frankfurt Main airport also handles air freight (approximately 2 million tonnes in 2013). Figure 1 shows the development of traffic at Frankfurt Main and Frankfurt Hahn airports in 2000-2012.

(ii) Luxembourg airport (~ 111 kilometres from Frankfurt Hahn airport, ~ 1 hour 30 minutes travelling time by car) is an international airport, providing a wide variety of destinations. In addition to passenger traffic (approximately 2,2 million), it also served 673 500 tonnes of air freight in 2013.

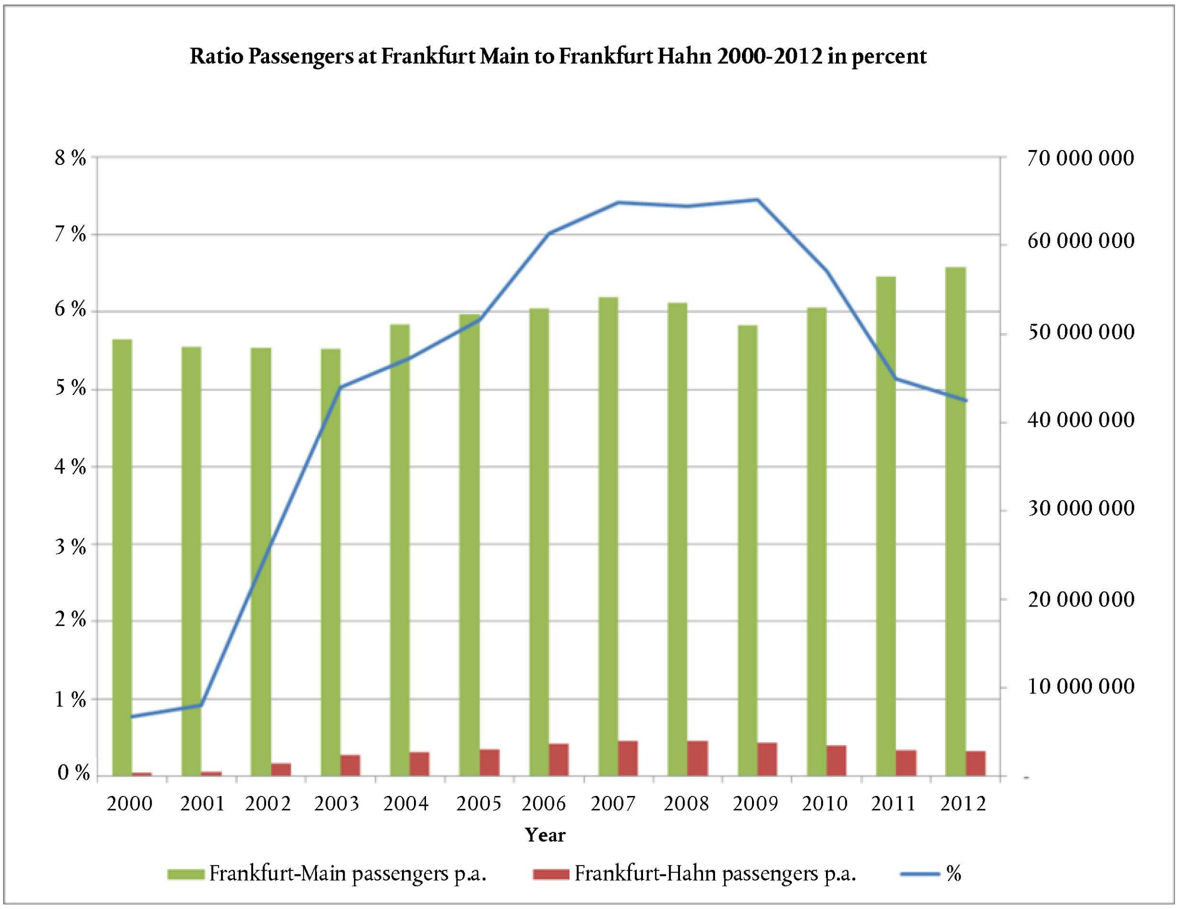
(iii) Zweibrücken airport (~ 128 kilometres from Frankfurt Hahn airport, ~ 1 hour 35 minutes travelling time by car).

(iv) Saarbrücken airport (~ 128 kilometres from Frankfurt Hahn airport, ~ 1 hour 35 minutes travelling time by car).

(v) Köln-Bonn airport (~ 175 kilometres from Frankfurt Hahn airport, ~ 1 hour 44 minutes travelling time by car).

Figure 1

Passenger traffic development at Frankfurt Main and Frankfurt Hahn airports in 2000-2012



2.3. **Airport's financial results and an overview of investments undertaken**

(26) Table 3 provides an overview of investments undertaken by FFHG from 2001 to 2012, amounting in total to approximately EUR 216 million.

Table 3

Overview of investments undertaken from 2001 to 2012

In 1 000 EUR	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total 2001-2012
Investments into infrastructure and equipment													
Anlagenzugänge inkl. Umbuchungen													
Land	3 174,00	6 488		2 994	4 284	3 086	8 613	593		[…]			
Terminal		2 519	3 310					251					
Cargo Hangar			3 850		3 222								
Office building								2 428		[…]			
Other infrastructure investments			10 194	1 152			13 275			[…]	[…]	[…]	
Apron	1 008,30	5 684			3 394		10 224	2 848		[…]	[…]		
Other infrastructure	1 502,20	3 848	2 071	2 692	3 911	1 761	1 558	2 608	384	[…]	[…]	[…]	
Immaterial assets (e.g. IT)	6,1	14,50	28	219	487	45	170	121	20	[…]	[…]	[…]	**7 108**
Equipment	8 208,89	1 097,09	12 308,42	1 814,00	2 294,54	20 232	7 550	3 823	359	[…]	[…]	[…]	**75 550**
Total	**13 899**	**19 650**	**31 761**	**8 871**	**17 592**	**25 123**	**41 390**	**12 673**	**763**	**17 289**	**19 346**	**7 930**	**216 287**

(27) Table 4 provides an overview of the annual financial results of FFHG from 2001 to 2012.

Table 4

Annual financial results of FFHG in 2001 to 2012

In 1 000 EUR	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Profit and loss statement												
Revenues	10 077,61	14 908,11	22 574,22	29 564,18	36 859,08	43 479,85	41 296,34	45 383,60	42 036,70	43 281,58	43 658,38	40 983,45
Other revenues (including compensation for public policy remit)	7 771,31	5 514,63	3 686,87	3 039,35	3 618,93	6 097,29	5 436,58	4 858,16	11 540,36	14 554,55	9 313,99	21 390,92
Total Revenue	**17 848,92**	**20 422,75**	**26 261,09**	**32 603,53**	**40 478,01**	**49 577,14**	**46 732,92**	**50 241,76**	**53 577,06**	**57 836,14**	**52 972,37**	**62 374,37**
Costs of material	– 7 092,39	– 10 211,13	– 12 560,46	– 14 601,17	– 17 895,97	– 24 062,81	– 22 491,85	– 25 133,61	– 24 979,59	– 27 650,17	– 20 017,99	– 21 871,65
Costs of personnel	– 9 185,12	– 9 672,37	– 10 734,62	– 11 217,21	– 12 101,84	– 13 337,28	– 14 433,17	– 15 758,34	– 15 883,08	– 17 893,60	– 18 228,23	– 18 349,10
Other costs (including marketing)	– 5 692,81	– 11 434,31	– 10 521,27	– 11 454,36	– 14 058,15	– 12 885,28	– 9 897,46	– 9 630,21	– 7 796,81	– 8 029,40	– 6 760,92	– 6 643,00
EBITDA	**– 4 121,41**	**– 10 895,06**	**– 7 555,27**	**– 4 669,21**	**– 3 577,94**	**– 708,22**	**– 89,56**	**– 280,39**	**– 4 917,58**	**– 4 262,96**	**– 7 965,23**	**– 15 510,62**
EBITDA (excl other revenues)	**– 11 892,72**	**– 16 409,69**	**– 11 242,13**	**– 7 708,56**	**– 7 196,87**	**– 6 805,51**	**– 5 526,13**	**– 5 138,56**	**– 6 622,78**	**– 10 291,59**	**– 1 348,76**	**– 5 880,30**
Depreciation	– 5 325,63	– 5 674,68	– 6 045,39	– 7 699,33	– 7 973,46	– 10 527,90	– 10 191,89	– 11 855,19	– 12 482,28	– 11 827,19	– 13 297,31	– 12 733,48
Financial results (interest received — interest paid)	– 2 896,64	– 3 013,42	– 4 006,57	– 4 105,53	– 4 548,42	– 4 588,16	– 5 235,30	– 5 693,02	– 4 915,39	– 2 778,06	– 5 063,04	– 8 177,54
Extraordinary revenues and costs	– 431,54	– 206,00	– 10,46	0,00	0,00	0,00	0,00	0,00	0,00	– 272,55	0,00	0,00
Taxes	– 580,13	– 204,74	– 215,18	– 323,82	– 228,44	– 242,33	– 245,00	– 238,66	– 257,45	– 240,85	– 231,03	– 277,52
Coverage of losses by Fraport trough the profit and loss transfer	***13 355,35***	***19 993,90***	***17 832,87***	***16 797,89***	***16 328,26***	***16 066,61***	***15 761,75***	***18 067,26***	***5 621,37***	***0,00***	***0,00***	***0,00***
Annual result (profit/loss)	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**0,00**	**– 7 114,17**	**– 10 855,69**	**– 10 626,14**	**– 5 677,92**

3. DESCRIPTION OF THE FACTS AND GROUNDS FOR INITIATING THE PROCEDURE

(28) The opening decision covers financing arrangements put into place in 2009 to 2011 and raised the following questions:

(i) first, whether the credit line provided by the cash-pool of *Land* Rhineland-Palatinate was provided at market conditions and thus did not constitute State aid, or if it did constitute State aid, whether such State aid could be considered compatible with the internal market;

(ii) second, whether the loans provided by ISB to FFHG and the underlying guarantee provided by *Land* Rhineland-Palatinate to FFHG were granted at market conditions, and thus did not constitute State aid, or if they did constitute State aid, whether such State aid could be considered compatible with the internal market.

3.1. Credit line provided by the cash-pool of *Land* Rhineland-Palatinate

(29) Since 19 February 2009 FFHG has been included in the cash-pool of *Land* Rhineland-Palatinate. The aim of the cash-pool is to optimise the use of liquidity within the different holdings, foundations and public undertakings of the *Land*.

(30) The participation of the different undertakings and foundations in the cash-pool is based on a Memorandum of Understanding between the undertaking/foundation concerned and the Ministry of Finance of *Land* Rhineland-Palatinate. In the event that the liquidity demand exceeds the available funds within the cash-pool, the liquidity gap is financed on short-term basis on the capital market.

(31) The current credit line for FFHG in the cash-pool of *Land* Rhineland-Palatinate is EUR 45 million. By 25 March 2013, FFHG had used 100 % (EUR 45 million) of its credit line.

3.2. Refinancing of FFHG's loans by the Investitions- und Strukturbank of Land Rhineland-Palatinate

(32) After *Land* Rhineland-Palatinate became the majority shareholder of FFHG, its long-term loans were refinanced in 2009 by ISB. Three of the loans, namely loans numbers 1, 3 and 4 (see Table 5) were granted at a fixed interest rate for the whole duration of the respective loans, while loans numbers 2 and 5 have a variable interest rate. Table 5 summarises the conditions of the loans provided by ISB.

Table 5

FFHG's loans provided by ISB

No	Bank	Loan amount in EUR million	Duration	Interest rate	Interest Swap
1	ISB	18,4	[approx. 8 years]	[> 3 %; < 4,5 %]	
2	ISB	20,0	[approx. 5 years]	[< 12] month EURIBOR plus [< 1 %]	[…]
3	ISB	2,5	[approx. 2 years]	[> 3 %; < 4,5 %]	

No	Bank	Loan amount in EUR million	Duration	Interest rate	Interest Swap
4	ISB	25,9	[approx. 7 years]	[> 3 %; < 4,5 %]	
5	ISB	6,8	[approx. 3 years]	[< 12] month EURIBOR plus [< 1 %]	[…]

(33) FFHG has also signed two interest rate swap agreements with IKB Corporate Lab. The agreements hedge against fluctuations of the variable part of the interest rate of loans numbers 2 and 5 (see Table 5), namely the 6-month and the 3-month Euribor respectively. The swap agreements were signed in 2004 and 2005 (in relation to the loans provided at that time, which the current financing replaced).

(34) The repayment conditions of the various loans provided by ISB differ. Loans numbers 1, 3, 4 and 5 are amortising loans, while loan number 2 is a bullet loan repaid at maturity. Table 6 summarises the repayment conditions of those loans.

Table 6

Repayment conditions of the ISB loans

No	Bank	Loan amount in EUR million	Repayment conditions/due date
1	ISB	18,4	Semi-annual repayment on 30 June and 30 December of every year, last repayment rate due on […]
2	ISB	20,0	Bullet loan due on […]
3	ISB	2,5	Semi-annual repayment on 30 April an 30 October of every year, last repayment rate due on […]
4	ISB	25,9	Semi-annual repayment on 30 June and 30 December of every year, last repayment rate due on […]
5	ISB	6,8	Quarterly repayment of […], last repayment rate due […]

(35) All the loans are 100 % guaranteed by *Land* Rhineland-Palatinate. For the provision of the guarantees FFHG pays a guarantee premium of [0,5 % to 1,5 %] per annum ('p. a.') to the guarantor.

3.3. **Compatibility of possible State aid to FFHG**

(36) In the opening decision, the Commission expressed doubts as to whether the credit line provided by the cash-pool of *Land* Rhineland-Palatinate mentioned in Section 3.1 and the loans and guarantee mentioned in Section 3.2 would be compatible with the internal market in the absence of the compatibility conditions for operating aid under the 2005 Aviation Guidelines, if they constituted State aid.

4. COMMENTS FROM GERMANY

(37) Generally, Germany asserted that neither of the two measures investigated in this procedure constitutes State aid within the meaning of Article 107(1) of the Treaty as there was no economic advantage conferred on FFHG taking into account all relevant circumstances. Alternatively, Germany argued that should the Commission consider that these measures do constitute aid within the meaning of the Treaty, then the aid should be deemed compatible with the internal market.

4.1. The specific situation of Frankfurt-Hahn Airport in 2009

(38) Germany considered that the specific situation of the airport and background of the financial measures concerned must be taken into account when assessing these financial measures concerned. In this regard Germany referred to the following three circumstances:

(39) Firstly, concerning the background of the measures, Germany pointed out that FFHG had financed the majority of its investments during and after the transformation from a military airport to a commercial airport through loans. According to Germany, FFHG therefore had a large amount of long-term financial obligations, unlike other airports.

(40) Secondly, Germany argued that a refinancing of FFHG's loans was inevitable because Fraport had sold its shares to the *Land* Rhineland-Palatinate as of 1 January 2009. Before the sale, the profit-and-loss transfer agreement ('*Beherrschungs- und Gewinnabführungsvertrag*', PLTA) obliged Fraport to ensure the financing of the long-term debts of FFHG and to cover its possible losses. Germany explained further that after *Land* Rhineland-Palatinate had acquired the shares, that PLTA was ended, so a refinancing of FFHG's obligations was necessary. According to Germany, with these measures *Land* Rhineland-Palatinate only aimed at maintaining the financial situation of FFHG.

(41) Thirdly, Germany emphasised especially the fact that a private undertaking would have financed FFHG under the same conditions as the *Land* Rhineland-Palatinate did and that those conditions are in line with the market economy lender principle. Germany submitted that the Commission has to take into account the commercial transaction as a whole and all the circumstances of the particular case, especially the fact that the *Land* holds the vast majority of the shares.

4.2. Aid nature of the credit line provided by the cash-pool of *Land* Rhineland-Palatinate

4.2.1. *The funding of the cash-pool*

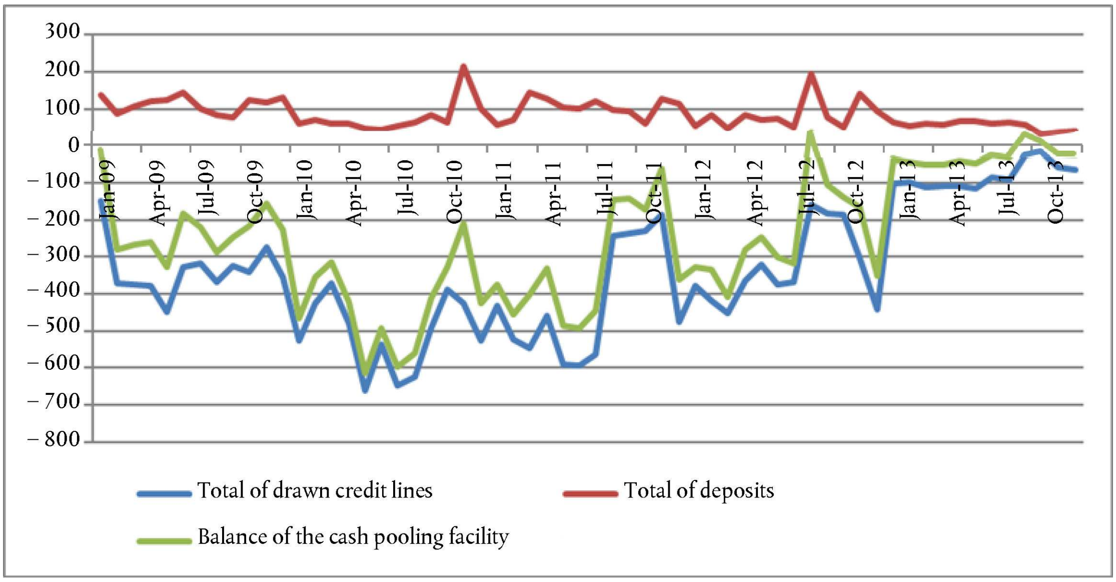
(42) Germany stated that the cash-pool is a financial instrument established in 2002 by the *Land*. The *Land*'s institutions and foundations and all undertakings governed by private law, of which the *Land* owns more than 50 %, can participate in the cash-pool. Germany explained that the daily account balance of the cash-pool is managed by the '*Landeshauptkasse*' of the *Land*.

(43) Germany considered that the cash-pool is not financed directly out of the budget of the *Land*, but from the surplus of cash of the participants. It explained further that a surplus of cash in the cash pool was invested on the capital markets; in the same way, a deficit is balanced by funds obtained on the capital market. Thus, Germany asserted that any financial support from the cash-pool would not be granted through state resources, and would also not be imputable to the state.

(44) Germany also provided data to show the overall balance (deposits of participating undertakings and drawn credit lines) of the cash-pool as summarised in Figure 2.

Figure 2

Overall development of the funding of the cash-pool of the *Land* 2009-2013 (in EUR million)



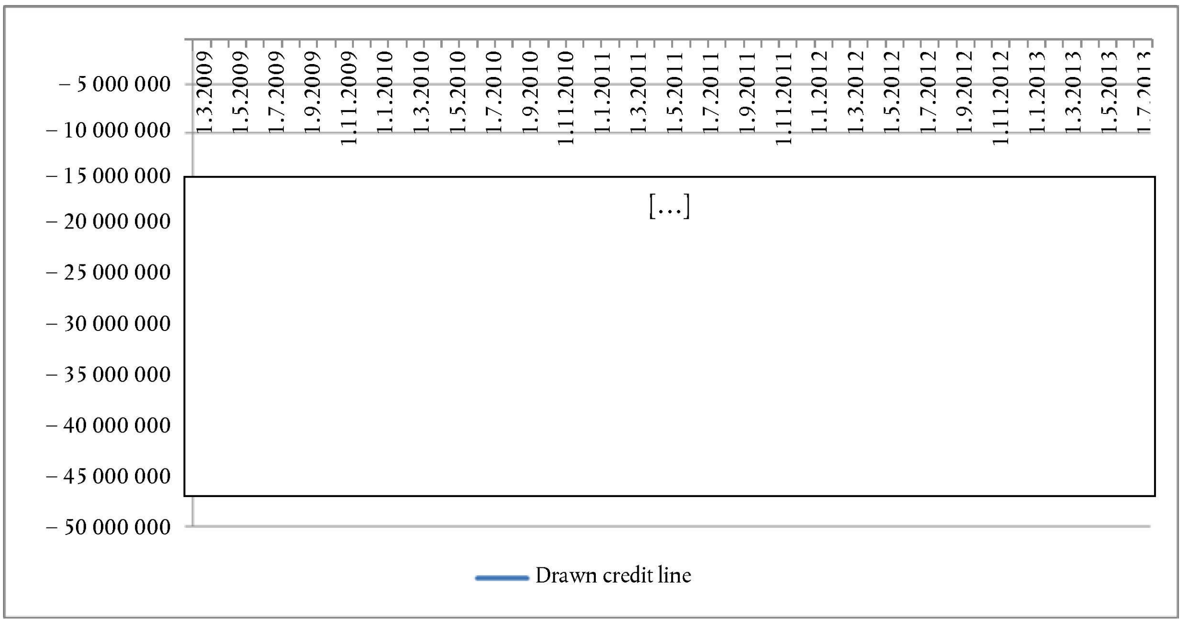
4.2.2. *Economic advantage*

(45) Germany argued that FFHG did not obtain an economic advantage within the meaning of Article 107(1) of the Treaty by being included in the cash-pool of the *Land*. According to Germany, the Reference Rate Communication ([14]) should not be applied in a strict manner as it does not take into account that *Land* Rhineland-Palatinate holds the vast majority of the shares of FFHG.

(46) Germany explained that even though the credit line was granted for a longer period, in principle the loans are due on a daily basis. Hence Germany argued that the drawn credit line corresponds to a short-term loan. Figure 3 shows the use of the credit line by FFHG.

Figure 3

Overview of the drawing on the credit line of the cash-pool by FFHG between 3/2009 and 8/2013 (in EUR)



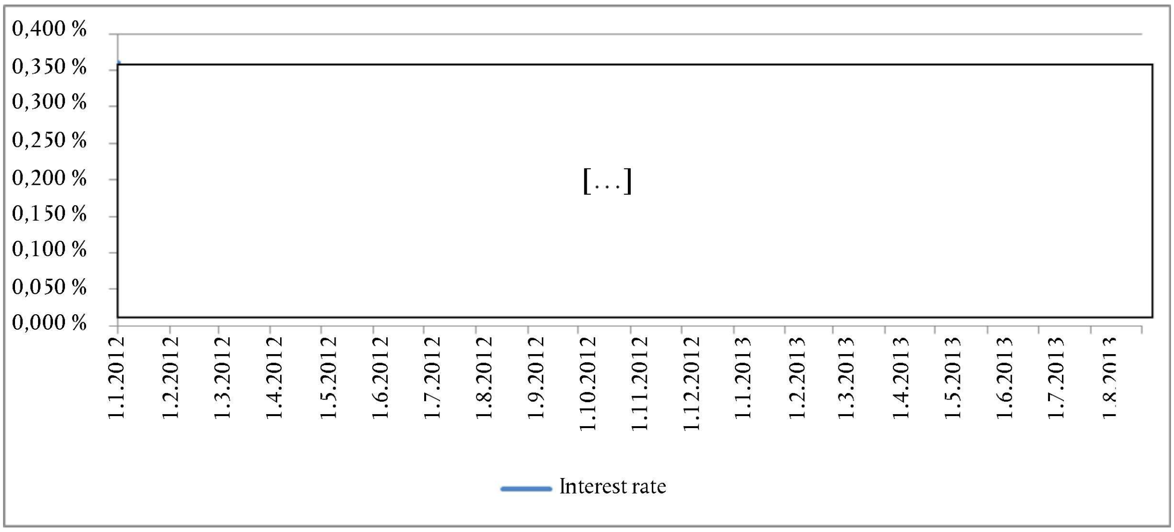
([14]) Communication from the Commission on the revision of the method for setting the reference and discount rates of 12 December 2007 (OJ C 14, 19.1.2008, p. 6).

(47) With regard to the ranking and collateralisation of the cash-pool obligations, Germany stated that the FFHG's cash-pool obligation is ranked at the same level as all its other obligations. Germany pointed out that even though no collaterals are required from the undertakings benefiting from the cash-pool, they are under the *Land's* supervision and the *Land* could always request as majority shareholder of FFHG to collateralise the drawn loans. Moreover, Germany pointed out that cash-pool facilities were a usual and a very common market practice. In Germany's view, the cash-pool pursues the goal of balancing the liquidity between the companies owned by the *Land*.

(48) Particularly with regard to the indication in the opening decision that in absence of a rating the risk margin should have been set at 1 000 basis points, Germany argued that in its opinion no private holding would add 1 000 basis points to the base lending rate for a shareholder loan granted to its subsidiary if it pursued the economic and structural interests of a holding. Germany added that the interest rate for FFHG corresponded approximately to the European overnight index average. Figure 4 shows the interest rate charged for FFHG for the use of the credit line in 2012 and 2013.

Figure 4

Development of the interest rate charged to FFHG for the drawing on the cash-pool in 1/2012-8/2013



(49) As regards the indication in the opening decision that the risk margin would normally be set on the basis of an assessment of the probability of default by FFHG, Germany pointed out that by including FFHG in the cash-pool, the *Land* Rhineland-Palatinate did not grant a loan to a third party, but offered a shareholder loan to its own subsidiary. Germany further stated that, as a shareholder, the *Land* was well aware of the probability of default by FFHG and did not require an external assessment, as it had all the necessary information.

(50) Germany also provided ratings of FFHG established on the basis of Moody's credit-scoring model ([15]) for the period 2009 to 2014, as summarised in Table 7 below. Germany stated that these ratings were established on the basis of the financial statements of FFHG per 31 December of the preceding year and the available business plans.

([15]) KMV RiskCalc Germany 3.1; this model is used for estimating the credit rating of non-traded companies based on their financial data. Moody's KMV RiskCalc Germany 3.1 calculates expected default frequency (or probability of default) of undertakings not traded on the stock exchange on the basis of financial statements data.

Table 7

Overview of the credit ratings of FFHG in 2009 to 2014

Period of time	Assumed duration ([1])	Stand-alone credit rating of the FFHG (Moody's rating scale)	Adjusted credit rating ([2]) (Moody's rating scale)
1 January 2009-31 December 2010	2 Years	[Ba1-B3] ([3])	[Baa3-B2] ([4])
1 January 2011-31 December 2011	1 Year	[Ba1-B3] ([3])	[Baa3-B2] ([4])
1 January 2012-31 December 2012	1 Year	[Ba1-B3]	[Baa3-B2]
1 January 2013-31 December 2014	2 Years	[Ba1-B3]	[Baa3-B2]

([1]) In the light of the explanations in recital 46, a short-term duration of the loans provided under the cash-pool was assumed for the credit ratings.
([2]) Taking into account the ownership structure.
([3]) This corresponds to a rating of [BB+ to B-] on the Standard & Poor's rating scale. This rating category means the borrower is […].
([4]) This corresponds to a rating of [BBB- to B] on the Standard & Poor's rating scale. This rating category means that the borrower is […].
Source: KPMG Memorandum of 7 June 2013.

(51) Consequently, Germany submitted that by being included in the cash-pool of the *Land*, FFHG did not obtain any economic advantage, and that therefore the access to the cash-pool did not constitute State aid.

4.3. **Aid nature of the loans and the guarantee granted to FFHG**

4.3.1. *Market conformity of ISB loans*

(52) Germany stated that FFHG did not obtain any advantage from the refinancing of the ISB loans. In Germany's opinion, the ISB loans were comparable to the loans granted by Nassauische Sparkasse in 2005. According to Germany, the collateralisation of the ISB loans was also comparable to the loans of Nassauische Sparkasse.

(53) Germany stated that, according to the case-law of the Court of Justice ([16]), aid is defined as interventions that mitigate the charges which are normally included in the budget of an undertaking. Germany argued that if those charges stay at the same level, there cannot be any aid. Germany highlighted that the interest paid under the loans refinanced by ISB was in total [EUR 80 000 to EUR 130 000] higher than compared to the previous financing arrangements. In addition, Germany pointed out that FFHG had to pay a premium of [300-340] and [340-410] basis points to the base lending rate. Germany stated that, according to the Reference Rate Communication, those rates correspond to an undertaking with a satisfactory rating ([BB+ to BB-] on Standard and Poor's rating scale) and a low level of collateralisation or weak rating ([B+ to B-] on Standard and Poor's rating scale) and a normal level of collateralisation.

([16]) In this respect Germany referred to case C-30/59 *De gezamenlijke Steenkolenmijnen in Limburg* v *High Authority* [1961] ECR 00003, p. 3, 43.

(54) Germany explained that in 2009, in preparation of the new financing, FFHG commissioned Deutsche Bank to provide a risk margin indication for the refinancing of its existing loans. Germany submitted the assessment of Deutsche Bank (17), which had been prepared on the basis of the three latest annual reports (2006-2008) of FFHG. Furthermore, Germany explained that that assessment did not take into account the business plan of FFHG as it was reviewed at the time. With regard to the assessment of Deutsche Bank, Germany stated that on the basis of its analysis Deutsche Bank puts FFHG in the [<BBB+] rating category (18), however it does not specify an exact rating for the company.

(55) Germany clarified that in the analysis of Deutsche Bank the specific ownership conditions of FFHG (such as that it is owned by public authorities as well as the high importance of the company for the local economy) were taken into account. Germany pointed out that according to Deutsche Bank any lender would take into account these circumstances when providing a loan to FFHG. According to Germany this means that even though the stand-alone rating of FFHG was [<BBB+], its adjusted rating (taking into account the specific ownership conditions) would be higher (19).

(56) In this regard, Germany clarified further that Deutsche Bank has provided an indication for the applicable risk margin for two alternative financing structures — one based on the adjusted rating of FFHG (without collateral, that is to say, referring to a situation without an explicit state guarantee provided by the main shareholder of FFHG — the *Land* Rhineland-Palatinate), and one with a 100 % guarantee provided by the *Land* Rhineland-Palatinate. Germany pointed out that the analysis of Deutsche Bank showed that in the first case (without collateral, based on the adjusted credit rating) the applicable risk margin for a 5-year loan would be between [1,3 % and 2,05 %] p.a. According to Germany, in the second case (with a guarantee covering 100 % of the loans) the applicable risk margin would be between [0,25 % and 0,7 %] p.a. (20).

(57) To support the analyses conducted by Deutsche Bank, Germany also provided the 2010 rating prepared by Volksbank, which assigned FFHG a rating of […] according to its internal rating scale (21). Furthermore, Germany explained that in 2011 Kreisspaarkasse Birkenfeld assigned FFHG a rating of […] according to its rating scale (22).

(58) Germany also provided ratings of FFHG established on the basis of Moody's credit-scoring model at the time the ISB loans were granted (see Table 8).

Table 8

Overview of the credit ratings of FFHG at the time the ISB loans were granted

Bank	Duration	Duration in years	Stand-alone credit rating of FFHG (Moody's rating scale)	Adjusted credit rating (1) (Moody's rating scale)
ISB	[approx. 8 years]	[approx. 8 years]	[B2-Baa3]	[B1-Baa2]
ISB	[approx. 5 years]	[approx. 5 years]	[B2-Baa3]	[B1-Baa2]
ISB	[approx. 2 years]	[approx. 2 years]	[B2-Baa3]	[B1-Baa2]

(17) Deutsche Bank, *Margen-Indikation für geplante Refinanzierung bestehender Verschuldung*, 3 September 2009.
(18) Point 3.2.1 of the *Margen-Indikation für geplante Refinanzierung bestehender Verschuldung*: '*…, gehen wir von einer Einstufung der Gesellschaft im […].*' The [<BBB+] rating category includes all ratings that are below [BBB+] of the Standard and Poor's rating scale.
(19) However, Deutsche Bank has not provided the adjusted rating for FFHG.
(20) This rate is calculated as follows: [5 to 25] bps — risk margin paid on 5-year EUR bonds of German *Länder*, [5 to 25] bps — on top of the above margin because of the indirect risk because of a state-owned company, [5 to 25] bps — for the limited tradability of the debt.
(21) *Rating Ergebnis* FFHG by Volksbank Hunsrück-Nahe eG. This rating corresponds to [B to BB] on the Standard and Poor's rating scale (see *Rating-Broschüre Finanzstandort Deutschland*, 2010, p. 18).
(22) *Ratingunterlagen* Kreissparkasse Birkenfeld. This rating corresponds to [B- to BB-] on the Standard and Poor's rating scale (see *Rating-Broschüre Finanzstandort Deutschland*, 2010, p. 18).

Bank	Duration	Duration in years	Stand-alone credit rating of FFHG (Moody's rating scale)	Adjusted credit rating [1] (Moody's rating scale)
ISB	[approx. 7 years]	[approx. 7 years]	[B2-Baa3]	[B1-Baa2]
ISB	[approx. 3 years]	[approx. 3 years]	[B2-Baa3]	[B1-Baa2]

(1) Taking into account the ownership structure.
Source: KPMG Memorandum of 7 June 2013.

(59) Germany argued that FFHG is to be considered as an undertaking with a good rating because it has a high level of collateralisation (all assets of FFHG could be used as collateral) and a good equity-ratio of around 30 % despite the fact that FFHG has been loss-making and because *Land* Rhineland-Palatinate — as shareholder of FFHG — provided a guarantee for the loan.

(60) In addition, Germany stressed that FFHG and ISB negotiated the conditions of the loans and that those negotiations were not influenced by the *Land* Rhineland-Palatinate.

(61) Consequently, Germany was of the opinion that the ISB loans granted to FFHG were on market terms, and that, therefore, those loans do not constitute State aid.

4.3.2. *Market conformity of the guarantee granted by Land Rhineland-Palatinate*

(62) Germany stated that it is very common for holding companies to guarantee financial obligations of their subsidiary. Moreover, Germany argued that the guarantee by *Land* Rhineland-Palatinate meets the requirements of the guarantee notice [23]. Admitting that the guarantee collateralised 100 % instead of 80 % of the loan amount (as the guarantee notice requires), Germany pointed out that this is due to the fact that *Land* Rhineland-Palatinate took over the guarantees of Fraport which also amounted to 100 %. In this regard, Germany stated that as a collateralisation of 100 % existed before, by taking over the collateralisation, *Land* Rhineland-Palatinate only maintained the status quo. Thus, in Germany's opinion, FFHG did not receive any economic advantage.

(63) In addition to that, Germany submitted that FFHG could have offered other collaterals (such as land property, buildings and other fixed assets), which were not necessary because the *Land* held the vast majority of the shares of FFHG. Therefore, Germany asserted that the conditions of the loan would not necessarily have altered if the *Land* had not granted a guarantee.

(64) Furthermore, Germany pointed out that FFHG pays a market fee for the guarantee. To support this, Germany referred to the Deutsche Bank study, as mentioned in recital 56. In this context, Germany clarified that Deutsche Bank determined that the guarantee fee would be between [0,5 % and 1,5 %] [24]. Germany stated that because FFHG was developing well when the guarantee was issued, the fee was set at [0,5 % to 1,5 %]. Against this background, Germany pointed out that, as this guarantee fee is within the margin determined by the Deutsche Bank expertise, it must be considered as being in line with the market.

(23) Commission Notice on the application of Article 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).
(24) Deutsche Bank assesses two alternative scenarios for the financing of FFHG — one without collateralisation and one with a 100 % state guarantee. It estimates that in the first case (without collateral) the applicable risk margin for a 5-year loan would be between [1,30 % and 2,05 %] p.a. In the second case (with a guarantee covering 100 % of the claims) the applicable risk margin would be between [0,25 % and 0,7 %] p.a. The difference in the margins between the two cases would provide an indication for the price of the guarantee. The difference estimated by Deutsche Bank is in the range of [0,6 % to 1,8 %] p.a. ([1,3 % – 0,7 % = 0,6 % and 2,05 % – 0,25 % = 1,8 %]).

(65) In conclusion, Germany emphasised that FFHG did not receive an economic advantage within the meaning of Article 107(1) of the Treaty either through the cash-pool or through the ISB loans or through the underlying guarantee.

4.4. **Compatibility of the measures with the internal market**

4.4.1. *Assessment of compatibility of the investment aid*

(66) Germany submitted that, even if the financing provided to FFHG constitutes aid, that aid would be compatible with the internal market under the Article 107(3)(c) of the Treaty.

(67) In particular with regard to the ISB loans and the underlying guarantee, Germany asserted that the ISB loans refinanced existing loan agreements which were concluded with the aim of financing infrastructure measures at Frankfurt Hahn airport. In this regard, Germany submitted that the ISB loan No 1 refinanced a loan that was intended to finance the 2007 and 2008 investments into the equipment of Frankfurt Hahn airport, whereas the ISB loan No 2 was intended to refinance a loan financing investments conducted at the airport in 2002. According to Germany, the ISB loan No 3 also refinanced investments in the transformation of a cargo hangar into a passenger terminal and other infrastructure extension measures. Germany further submitted that the ISB loans Nos 4 and 5 also refinanced loans financing investments in 2004 to 2006. Thus, Germany argued that the loans do not constitute operating aid, but investment aid that complies with the compatibility conditions set out in the 2005 Aviation Guidelines. The following recitals contain the analysis of compliance with each of those conditions.

(a) Contribution to a well-defined objective of common interest

(68) As regards the condition that the measure must contribute to a well-defined objective of common interest, Germany submitted that the objective of the financing of airport infrastructure at Frankfurt Hahn airport was always to improve the economic structure of the economically underdeveloped and scarcely populated Hunsrück region.

(69) In this regard, Germany stated that, firstly, the objective of supporting FFHG was to help overcome the weak structural economy of the Hunsrück region. Germany asserted that Frankfurt Hahn airport is surrounded by a number of areas considered as regions in need of support within the framework of *Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur'* ([25]), a task shared by the federal and local governments. In this regard, Germany submitted that the four regions around the airport, namely *Landkreis* Bernkastel-Wittlich, Birkenfeld, Cochem-Zell and Rhein-Hunsrück-Kreis, are on average only half as densely populated as the rest of *Land* Rhineland-Palatinate. Germany pointed out that for those districts whose economy is shaped by small and medium-sized enterprises, employment is the main anchor against a further decrease of the regional economy and Frankfurt Hahn airport plays an important role as an employer and client.

(70) Secondly, Germany argued that Frankfurt Hahn airport plays an important role in the strategic development of incoming (~ 33 % of passengers corresponding to approximately 1 million passengers in 2005) and outgoing tourism (~ 67 % of passengers) for the *Land* Rhineland-Palatinate. Germany stated that 88 % of the incoming passengers are staying several nights in the region. Germany submitted that the Frankfurt Hahn airport's incoming tourists generated approximately 5,7 million overnight stays in 2005 ([26]). According to Germany the

([25]) *Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur (GRW) Gesetz'* of 6 October 1969 (BGBl. I S. 1861), which was last amended by Article 8 of the Act of 7 September 2007 (BGBl. I, p. 2246).

([26]) *Flughafen Frankfurt Hahn — Regionaloekonomische Effekte, ZFL Studie*, 3/2007.

number of overnight stays further increased, *Land* Rhineland-Palatinate welcomed 8,2 million guests in 2011, which generated 21,5 million overnight stays. Germany pointed out that the number of guests from eastern and southern European countries, in particular, has increased and that a large number of flights are operated from those countries to Frankfurt Hahn. This has resulted in about 198 000 jobs being generated by tourism in Rhineland-Palatinate, according to Germany. The catalysed income and employment effects stem especially from incoming tourism, in which Frankfurt Hahn airport plays a central role as the gateway for tourists into the Hunsrück region, but also into Rhineland-Palatinate more generally, as Germany explained. Germany stated that between 1990 and 2001 the number of tourists has increased by 70 % for the Hunsrück region and by 35 % for Rhineland-Palatinate. According to Germany, during the same period, the number of tourists coming from abroad has increased by 163 % in the Hunsrück region. Since 88 % of incoming tourists from Frankfurt Hahn stay at least one night and more than 80 % of those even stay two to 10 days, they generate a total benefit of about EUR 133,7 million per year. Furthermore, Germany argued that outgoing tourism (67 %) also generates income for Frankfurt Hahn airport through non-aeronautical revenues.

(71) Thirdly, Germany stated that, taking into account all parts of the airport activities, Frankfurt Hahn airport created 3 063 jobs in the Hunsrück region in 2012 out of which 74 % were full-time positions. According to Germany, 90 % of those employees also live in the region. Germany argued that Frankfurt Hahn airport helps to prevent the movement of young, qualified employees towards other regions as well as an economic and social decline of the regional communities and their infrastructure. Furthermore, Germany pointed out that the presence of Frankfurt Hahn airport not only produces the aforementioned direct effects for the labour market, but also has enormous indirect, induced and catalysing effects through an increasing number of economic and touristic activities. In this respect, Germany referred to positive secondary effects for the region, namely less unemployment and more tax payers, thereby providing more money for the municipalities in the regions to support the local economy. In total, the airport generated around 11 000 jobs through incoming tourism for the whole Rhineland-Palatinate.

(72) Germany argued that the financing of infrastructure at Frankfurt Hahn airport has also helped to achieve the well-defined objective of common interest to combat air traffic congestion at major Union hubs. In this regard Germany pointed to the fact that the capacity limits of Frankfurt Main airport have been constantly exceeded. Germany submitted that especially in the light of its 24-hour operating licence, Frankfurt Hahn airport was therefore serving to provide additional capacity in order to relieve the congestion at Frankfurt Main airport.

(73) Furthermore, Germany submitted that supporting Frankfurt Hahn airport also serves the objective of common interest of increasing the mobility of Union citizens. In this regard, Germany pointed out that Frankfurt Hahn airport is the only German airport offering direct flights to Kaunas (Latvia), Kerry (Ireland), Kos (Greece), Montpellier (France), Nador (Morocco), Plovdiv (Bulgaria), Pula (Croatia), Rhodos (Greece), Santiago de Compostela (Spain) and Volos (Greece). Also, according to Germany, Frankfurt Hahn airport contributes to the job mobility of young people, who can reach the region Hunsrück and Rhineland-Palatinate region at low prices. Similarly, Germany pointed out that the high-quality universities and institutions of higher education in Koblenz, Mainz, Kaiserslautern, Trier, Wiesbaden, Mannheim, Bonn, etc., where for the most part no tuition fees apply, are now easily accessible to students from all over the Union.

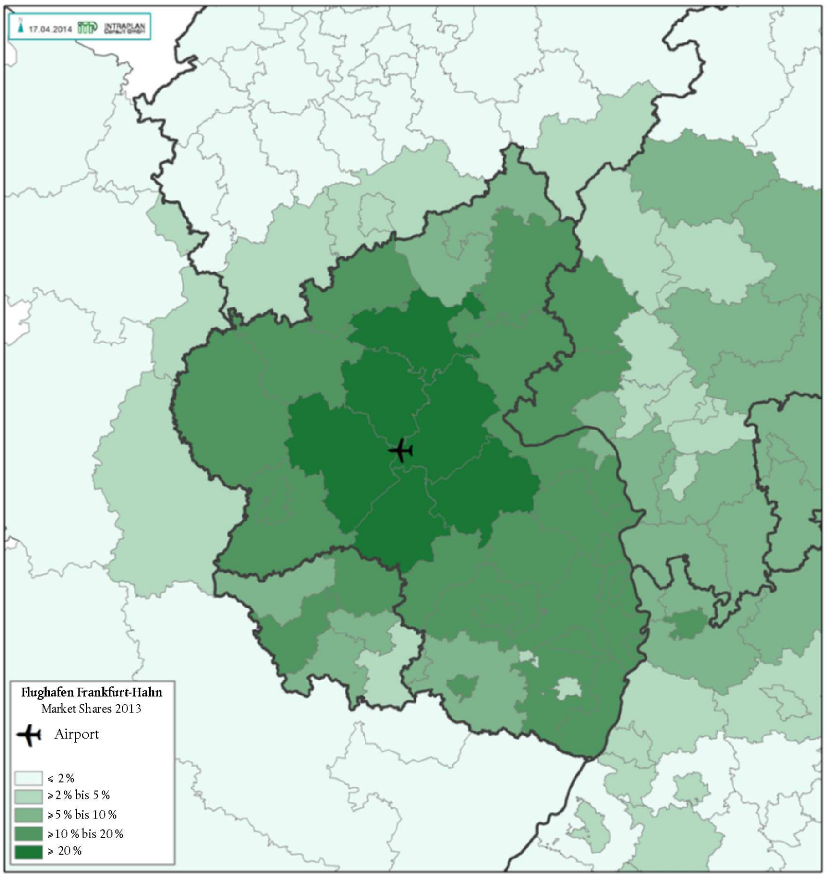
(74) Germany argued, moreover, that it is also of common interest that the Hunsrück region and the surrounding regions of Rhineland-Palatinate are connected to other peripheral regions, for example Limerick, which has already manifested itself through city partnerships. As the fourth biggest national economy in the world, Germany stated that it is focussing not only on connecting to the major European hubs, but also on connecting the regions with each other. According to Germany, becoming more independent from the major hubs such as Heathrow, Charles de Gaulle, Schiphol or Frankfurt/Main, is important for the Union since it will mean not only more direct connections, but also more reliability especially for the freight business as regional airports are less prone to cancellations due to weather, strikes, terrorism or cancellation due to cancellation risks.

(75) Lastly, Germany generally emphasised that the proximity Zweibrücken airport does not lead to a duplication of airports for the same catchment area, due to the distance of 127 km between Frankfurt Hahn airport and Zweibrücken airport. According to Germany, this distance translates into a travelling time of 1 hour and 27 minutes by car or of around 4 hours by train. Therefore, Germany argued that no reasonable worker, freight carrier or tourist whose point of departure lies in the Hunsrück region would go to Zweibrücken airport instead of Frankfurt Hahn airport in order to reach his final destination. Furthermore, Germany submitted that, looking

at passenger and air freight traffic between 2005 and 2012, no relationship of substitution between the airports can be deduced. According to Germany, the main market shares of Frankfurt Hahn airport comes from the Hunsrück-Mosel-Nahe region (see Figure 5).

Figure 5

Market shares in passenger air transport of Frankfurt Hahn airport in 2013 (*)



(b) The infrastructure is necessary and proportionate to the objective

(76) Germany considers that the financed investments are necessary and proportionate to the objective of common interest (see recital 68 and following). According to Germany, the investments were undertaken according to the needs and the constructed infrastructure was necessary for the airport in order to guarantee connectivity, to allow for the development of the region and to decongest Frankfurt Main airport. Germany pointed out that the infrastructure was not disproportionate or too opulent for the needs of users of the airport. Hence, Germany considered that this compatibility condition was met.

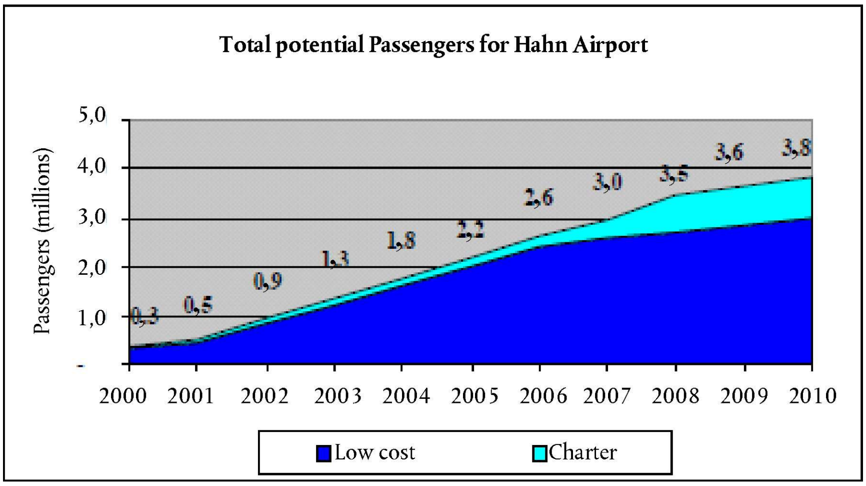
(c) The infrastructure has satisfactory medium-term prospects for use

(77) Germany submitted that before the decision to extend the airport infrastructure was taken, Fraport commissioned traffic forecast studies in order to identify the traffic potential for Frankfurt Hahn airport. Germany provided those studies which were prepared by aviation experts on behalf of Fraport. Figure 6 and Figure 8 summarise the results of one of those studies regarding the expected passenger and freight traffic development at Frankfurt Hahn airport between 2000 and 2011.

(*) Submission of Germany, September 2014.

Figure 6

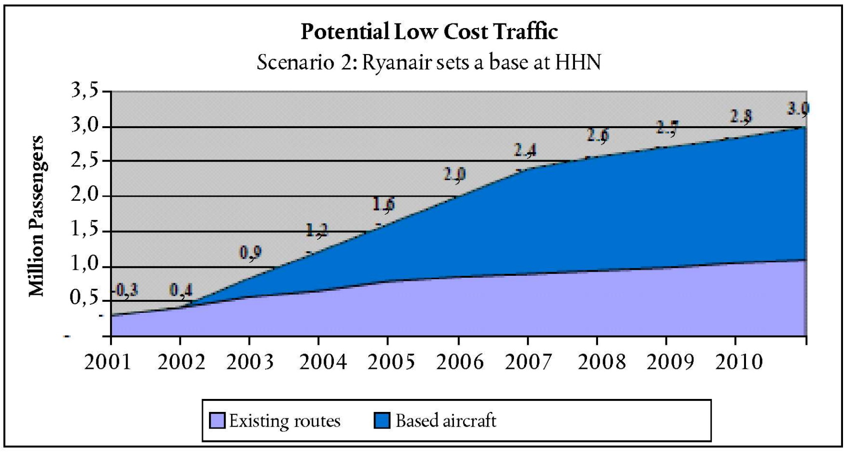
Total potential passengers at Frankfurt Hahn airport in 2000-2010



Source: SH&E

Figure 7

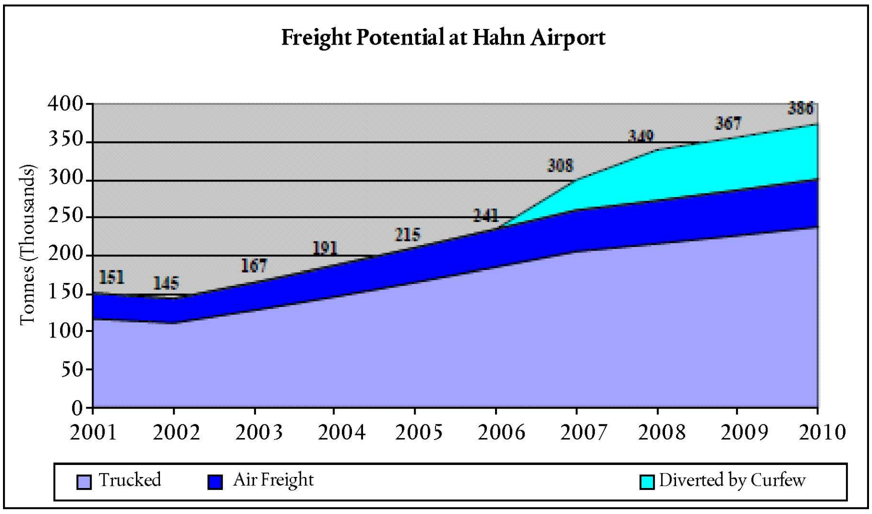
Potential low-cost passenger traffic (under the assumption that Ryanair sets a base that means that it would base/station its aircraft at the airport overnight) at Frankfurt Hahn airport in 2001-2011



Source: SH&E

Figure 8

Total potential freight traffic at Frankfurt Hahn airport in 2001-2010



Source: SH&E

(d) Access to the infrastructure in an equal and non-discriminatory manner

(78) According to the information provided by Germany, all potential users of the infrastructure have access to the airport on equal and non-discriminatory terms. Germany submitted that the airport charges paid for the use of the infrastructure were based on commercially justified differentiation and that the schedule of airport charges is available to all potential users in a transparent and non-discriminatory manner.

(e) Trade is not affected contrary to common interest

(79) Firstly, Germany stated that there are no substitution effects between Frankfurt Hahn airport and other airports in the catchment area, such as Zweibrücken airport and Frankfurt Main airport. According to Germany, there are no undue negative effects on competition with those airports as a result of the aid granted to FFHG, either in relation to passenger or to freight traffic. Germany submitted that, on the contrary, for flying with low-cost carriers the passengers would rather use hub airports (such as Köln/Bonn or Frankfurt Main) than regional airports (such as Frankfurt Hahn). Germany argued that in recent years, low-cost carriers have increasingly had to provide more flights to the major hubs since traditional airlines have lowered their prices and started to enter the market of low-cost flights. In this regard, Germany stated that regional airports, such as Frankfurt Hahn, are now under a greater pressure to compete with the hub airports for leisure passengers. Therefore, Germany concluded that the financing has not led to any undue negative effects on competition, but has on the contrary proven appropriate for the transition of the airport towards a stable business model in the future.

(80) Secondly, Germany argued that the fact that Fraport, before getting constituted in Frankfurt Hahn airport, was already the operator of Frankfurt Main airport, shows that no substitution movements from Frankfurt Main towards Frankfurt Hahn airport were to be expected. Instead, Fraport was investing in the possibility to decongest Frankfurt Main airport and use the additional, complementary function of Frankfurt Hahn airport, as a future capacity overload was foreseeable for the Frankfurt Main hub. According to Germany, the ban on night flights at Frankfurt Main airport was one of the main factors in this reasoning as Frankfurt Hahn airport had a 24-hour operating licence.

(81) In conclusion, Germany argued that the effects of the financing in favour of FFHG were limited to the positive regional effects for the Hunsrück region as a whole, whilst no undue negative effects were created in relation to other airports as Frankfurt Hahn airport is being used to decongest Frankfurt Main. Furthermore, Germany stated that apart from Luxembourg airport, which is already 1 hour and 30 minutes travelling time (111 km) from Frankfurt Hahn airport, there are no other foreign airports competing in the same catchment area. Even in relation to Luxembourg, the aid granted does not have any negative distortive effect on competition according to Germany.

(f) Incentive effect, necessity and proportionality

(82) Germany stated that in the absence of investment aid, the level of economic activity of the airport would be significantly reduced. Germany submitted that the aid was necessary as it compensated only the costs of financing and a lower amount would lead to lower levels of investment.

4.4.2. *Assessment of compatibility of the operating aid*

(83) On 17 April 2014, Germany provided its views on the compatibility of the measures under the 2014 Aviation Guidelines. Germany argued that even if the cash-pool, the loans and underlying guarantee constituted operating aid to FFHG, then that aid was compatible with the internal market pursuant to Article 107(3)(c) of the Treaty and Section 5.1.2 of the 2014 Aviation Guidelines. Germany set out its arguments in more detail with regard to the respective compatibility conditions.

(a) Contribution to a well-defined objective of common interest

(84) Concerning the requirement that the aid must contribute to the achievement of the well-defined objective of common interest, Germany submitted that the coverage of operating costs of FFHG was always aimed at the objective of improving the economic structure of the economically underdeveloped and scarcely populated Hunsrück region. In this regard the Germany used the same reasoning as for the assessment of the compatibility of the investment aid to finance the airport infrastructure (see Section 4.4.1).

(b) Need for state intervention

(85) Germany explained why Frankfurt Hahn is making operational losses which have to be covered. Germany stated that it is quite an ambitious objective for an airport such as Frankfurt Hahn airport with 1-3 million passengers to become profitable and be able to cover its operating costs. According to Germany, it was not possible to achieve this ambitious objective in the start-up years (referring to the period between the start of commercial passenger traffic at the airport until today) of Frankfurt Hahn airport since the airport was burdened by very high infrastructure investments which it financed itself on the capital market and for which it had to pay high interest. In addition, Germany stated that since the world economic and financial crisis, there has been a stagnation of passenger and especially freight traffic.

(86) Germany submitted that in the light of these circumstances, there was a need for state invention to cover the operating losses since FFHG would otherwise have become insolvent. According to Germany, this would also have resulted in the withdrawal of the 24-hour operating licence, meaning that FFHG would have had to stop operating all flights, resulting in turn in the loss of clients, such as airlines and freight carriers. Germany pointed out that it would then also have become very difficult to find a new operator for the airport.

(c) Appropriateness of the aid measures as policy instruments

(87) Germany submitted that covering the operating costs was an appropriate measure to achieve the intended objective. Germany argued in this respect that if Frankfurt Hahn airport had had to stop operating and had disappeared from the relevant markets, then the objectives of common interest pursued in developing the Hunsrück region and making conversion investments would not have been achieved. In this regard, Germany emphasised that in contrast to a private investor, a public investor has to take those objectives into account when considering the alternative of closure of the airport.

(d) Existence of an incentive effect

(88) Germany argued that in order to maintain Frankfurt Hahn airport in operation, it was a necessary to cover its operating costs as FFHG would otherwise have become insolvent. Germany stated that the coverage of operating costs was in turn the basis also for realising the objectives of common interest as stated in recital 84 and following. Furthermore, Germany argued that without this operating aid, the financial consolidation of the airport as foreseen by the operator now would have been unthinkable, since the airport would have accrued more and more debt instead of making it out of its debts. According to Germany, the incentive effect of the measures is already demonstrated by that fact that FFHG is continuously progressing towards profitability.

(e) Proportionality of the aid amount (aid limited to a minimum)

(89) Germany argued that any aid element contained in the loans was limited to the operating losses and represented the absolute minimum necessary in order to maintain Frankfurt Hahn airport in operation and keep it from becoming insolvent.

(f) Avoidance of undue negative effects on competition and trade between Member States

(90) Germany considered that there were no undue negative effects on competition and trade between Member States. In this regard Germany used the same reasoning as for the assessment of the compatibility of investment aid to finance airport infrastructure (see Section 4.4.1).

5. COMMENTS FROM THIRD PARTIES

5.1. ***Land* Rhineland-Palatinate**

(91) The Commission only received comments on the opening decision from *Land* Rhineland-Palatinate. These comments were in line with the comments from Germany.

(92) First of all, *Land* Rhineland-Palatinate stated that FFHG did not receive any State aid because it did not obtain an economic advantage. The *Land* argued that the measures taken by it would have been taken by any private investor in the same situation. It strongly emphasised that the Commission's procedure is limiting the potential development of FFHG and its business. *Land* Rhineland-Palatinate underlined the importance of Frankfurt-Hahn airport for incoming-tourism and the economy of the *Land*.

(93) According to *Land* Rhineland-Palatinate, even if State aid was granted to FFHG, it is compatible with the internal market. In the *Land*'s view, the financing was intended to develop the airport infrastructure, which is of outstanding economic interest for the *Land*.

(94) Therefore, the *Land* is of the opinion that even if the Commission takes the view that State aid was involved, it must be considered as State aid within the meaning of Article 107(3)(c) Treaty and be deemed compatible with the internal market.

5.2. Comments on the implementation of the 2014 Aviation Guidelines to the pending case

5.2.1. *Lufthansa*

(95) Lufthansa asserted that the Commission should apply the 2004 Rescue and Restructuring Guidelines ([27]) in this case. According to Lufthansa the measures involve continuous illegal and incompatible rescue aid implemented by *Land* Rhineland-Palatinate in favour of FFHG. Lufthansa stated that the airport has been ever since incurring annual losses and without the public support it would have had to exit the market.

5.2.2. *Transport & Environment*

(96) This non-governmental organisation made comments criticising the 2014 Aviation Guidelines and decisions of the Commission regarding the aviation industry so far, for their allegedly negative effects on the environment.

6. ASSESSMENT

(97) By virtue of Article 107(1) of the Treaty '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.'

([27]) Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

(98) The criteria laid down in Article 107(1) of the Treaty are cumulative. Therefore, in order to determine whether measures constitute State aid within the meaning of Article 107(1) of the Treaty, all of the following conditions need to be fulfilled. Namely, the financial support must:

(a) be granted by the state or through state resources;

(b) favour certain undertakings or the production of certain goods;

(c) distort or threaten to distort competition; and

(d) affect trade between Member States.

6.1. **Aid nature of the credit line provided by the cash-pool of Land Rhineland-Palatinate**

6.1.1. *Notion of undertaking and economic activity*

(99) According to settled case law, the Commission must first establish whether the FFHG is an undertaking within the meaning of Article 107(1) of the Treaty. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed ([28]). Any activity consisting in offering goods or services on a given market is an economic activity ([29]).

(100) In its *Leipzig/Halle Airport* judgment the General Court confirmed that the operation of an airport for commercial purpose and the construction of the airport infrastructure constitute an economic activity ([30]). Once an airport operator engages in economic activities by offering airport services against remuneration, regardless of its legal status or the way in which it is financed, it constitutes an undertaking within the meaning of Article 107(1) of the Treaty, and the Treaty rules on State aid are therefore capable of applying to advantages granted by the state or through state resources to that airport operator ([31]).

(101) Regarding the moment in time from which the construction and operation of an airport became an economic activity, the gradual development of market forces in the airport sector does not allow for a precise date to be determined. However, the General Court has recognised the evolution in the nature of airport activities and in its judgment in *Leipzig/Halle Airport*, the General Court held that from 2000 onward the application of State aid rules to the financing of airport infrastructure could no longer be excluded. Consequently, from the date of the judgment in *Aéroports de Paris* (12 December 2000) ([32]), the operation and construction of airport infrastructure must be considered as an economic activity falling within the ambit of State aid control.

(102) In this regard, the airport which is the subject of this Decision is operated by FFHG, the airport manager, on a commercial basis. The airport manager, FFHG, charges users for the use of that infrastructure. FFHG is therefore an undertaking for the purposes of Union competition law.

6.1.2. *State resources and imputability to the state*

(103) In order to constitute State aid, the measure in question has to be financed from state resources and the decision to grant the measure must be imputable to the state.

([28]) Case C-35/96 *Commission* v *Italy* [1998] ECR I-3851; Case C-41/90 *Höfner and Elser* [1991] ECR I-1979; Case C-244/94 *Fédération Française des Sociétés d'Assurances* v *Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013; Case C-55/96 Job Centre [1997] ECR I-7119.

([29]) Case 118/85 *Commission* v *Italy* [1987] ECR 2599; Case 35/96 *Commission* v *Italy* [1998] ECR I-3851.

([30]) *Leipzig/Halle judgment*, in particular paragraphs 93-94; confirmed by case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle* v *Commission* [2012] ECLI:EU:C:2012:821; see also Case T-128/89 *Aéroports de Paris* v *Commission* [2000] ECR II-3929, confirmed by case C-82/01P *Aéroports de Paris* v *Commission* [2002] ECR I-9297 and case T-196/04 *Ryanair* v *Commission* ('Charleroi judgment') [2008] ECR II-3643.

([31]) Cases C-159/91 and C-160/91 *Poucet* v *AGV and Pistre* v *Cancave* [1993] ECR I-637.

([32]) *Leipzig-Halle judgment*, paragraphs 42-43.

(104) The concept of State aid applies to any advantage granted through state resources by the state itself or by any intermediary body acting by virtue of powers conferred on it ([33]). Resources of local authorities are, for the application of Article 107 of the Treaty, state resources ([34]).

(105) Germany first submitted that the cash-pool of the *Land* Rhineland-Palatinate is not financed directly out of the public budget of the *Land*. It claimed that all funds in the cash-pool either stem from the participating undertakings or are obtained in the form of loans on the capital market. In a subsequent submission, Germany stated that the funds drawn from the cash-pool by FFHG are not covered by a guarantee of the *Land*, as the funds are directly provided from the *Land*'s resources ([35]).

(106) The Commission considers that in the case at hand, at all material times the state exercised direct or indirect control over the resources in the cash-pool, with the consequence that these constituted state resources. First, Germany itself submitted that the credit line provided by the cash-pool was financed directly from the resources of the *Land* Rhineland-Palatinate. Hence, the measure at stake was financed out of state resources.

(107) Second, only undertakings in majority ownership by *Land* Rhineland-Palatinate (at least 50 % ownership) can participate in the cash-pool. Because of the majority public ownership, the participating undertakings are clearly public undertakings within the meaning of Article 2(b) of Commission Directive 2006/111/EC ([36]). Since all the participating undertakings are thus public undertakings, their resources constitute state resources. This fact alone signifies that the funds of the cash-pool, to the extent they are made up of the deposits made by the participating undertakings, constitute state resources.

(108) Third, in the event that the participating undertakings' deposits in the cash-pool are insufficient to satisfy the liquidity needs of a participant, *Land* Rhineland-Palatinate obtains short-term financing on the financial markets in its own name and passes those funds on to the undertakings participating in the cash-pool. As the *Land* takes out the necessary loans in its own name, it must be considered that the funds thus obtained constitute state resources as well. As shown in Figure 2, between 2009 and 2013 (except August 2012 and September 2013) the deposits of the participating undertakings in the cash-pool were insufficient to satisfy the liquidity needs of all participants and the *Land* had to take out the necessary loans in its own name.

(109) Thus, the Commission considers that the funding provided by the cash-pool is financed by state resources, as both the deposits by participating undertakings and the loans taken out by the *Land* to overcome liquidity gaps in the cash-pool constitute state resources.

(110) It is furthermore clear that the *Land* had far-reaching control over the operation of the cash-pool, with the consequence that the financing provided to participating undertakings is imputable to the State. The agreement for participation in the cash-pool is concluded between the *Land* and the undertakings involved. The decision to allow an undertaking to participate in the cash-pool is thus taken directly by the *Land*. The *Land* also decides on the maximum amount that a participating undertaking may withdraw from the cash-pool in the form of a credit line. In addition, *Land* Rhineland-Palatinate directly manages the day-to-day operations of the cash-pool through the '*Landeshauptkasse*', which is an institution of the Ministry of Finance of the *Land* Rhineland-Palatinate. The '*Landeshauptkasse*' also officially represents the *Land* when obtaining funds on the market to bridge liquidity gaps in the cash-pool.

(111) Based on these elements, the Commission considers that the state is capable of directly controlling the activities of the cash-pool, most centrally the question of which undertaking may participate and the individual credit line granted to each participating undertaking. Hence, the decisions concerning the participation in the cash-pool and the extent of that participation are imputable to the state.

([33]) Case C-482/99 *France* v *Commission ('Stardust Marine')* [2002] ECR I-4397.
([34]) Joined Cases T-267/08 and T-279/08, *Nord-Pas-de-Calais* [2011] ECR II-01999, paragraph 108.
([35]) Submission of Germany dated 24 April 2014, response to question 4, p. 3.
([36]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

6.1.3. *Economic advantage*

(112) An advantage within the meaning of Article 107(1) of the Treaty is any economic benefit which an undertaking would not have obtained under normal market conditions, that is to say, in the absence of state intervention ([37]). Only the effect of the measure on the undertaking is relevant, not the cause nor the objective of the state intervention ([38]).

(113) Whenever the financial situation of the undertaking is improved as a result of State intervention, an advantage is present. Conversely, 'capital placed directly or indirectly at the disposal of an undertaking by the State in circumstances which correspond to normal market conditions cannot be regarded as State aid' ([39]).

(114) In order to verify whether an undertaking has benefited from an economic advantage induced by the granting of a loan or any other form of debt financing, the Commission applies the criterion of the market economy lender principle. Accordingly, the Commission has to assess whether the conditions of the cash-pool provided to FFHG confer an economic advantage on it which the recipient undertaking would not have obtained under normal market conditions.

(115) Germany submitted that the market economy lender principle was fully respected as the cash-pool provides financing at market conditions. With respect to the participation of FFHG in the cash-pool, Germany has explained that the cash-pool functions as follows: FFHG requests funds from the pool to ensure its liquidity, and the *Land* provides those funds from the cash-pool. The interest rates charged to FFHG are market-based call money rates ([40]), at the level available to the *Land* itself, as shown in Figure 4.

(116) Where the deposits of participating undertakings are insufficient to cover the request, the *Land* replenishes the cash-pool by taking up loans in its own name. Germany further explained that the *Land* essentially passes on the conditions it obtains on the capital market to the participants in the cash-pool, thereby allowing the participants — the *Land*'s undertakings in which the *Land* holds a majority of shares — to refinance themselves under the same conditions as the *Land* itself, without any consideration of their creditworthiness. Moreover, the financing is available to the undertakings for an unlimited period of time.

(117) In the light of this mechanism, an advantage is granted to FFHG where the conditions on which the *Land* grants loans from the cash-pool are more favourable than those otherwise available to FFHG on the market. The conditions for taking up loans from the cash-pool are the same as those available to the *Land* to refinance itself. Considering that the *Land*, as a public authority, is able to take up loans at very favourable rates (as there is virtually no risk of default and the credit rating of the *Land* corresponds to AAA ([41])), the Commission considers that the rate at which FFHG can obtain a loan from the cash-pool is more favourable than that otherwise available to it. This is further supported by the credit ratings of FFHG in 2009 to 2014 provided by Germany and summarised in Table 7, showing that the credit rating of FFHG varies between […]. Hence, the loans from the cash-pool were available at better conditions than the creditworthiness of FFHG would justify. In addition, FFHG does not have to provide collateral for those loans. Thus, by allowing FFHG to participate in the cash-pool and by handing out the loans under the credit line, the *Land* granted an economic advantage ([42]).

6.1.4. *Selectivity*

(118) Article 107(1) of the Treaty requires that, in order to be defined as State aid, a measure must favour '*certain undertakings or the production of certain goods*'.

([37]) Case C-39/94 *Syndicat français de l'Express international (SFEI) and others* v *La Poste and others* [1996] ECR I-3547, paragraph 60 and case C-342/96 *Kingdom of Spain* v *Commission of the European Communities* [1999] ECR I-2459, paragraph 41.

([38]) Case 173/73 *Italian Republic* v *Commission of the European Communities* [1974] ECR 709, paragraph 13.

([39]) Case C-482/99 *France* v *Commission* ('*Stardust Marine*') [2002] ECR I-4397, paragraph 69.

([40]) According to Germany the interest rate corresponded approximately to the European overnight index average.

([41]) Full rating report of the *Land* Rhineland-Palatinate (including *Land's* rating history since 1999) by Fitch rating agency, July 2014, available under http://www.fm.rlp.de/fileadmin/fm/downloads/finanzen/kapitalmarkt/FRR_RP_22_07_2014.pdf, shows that the *Land* was constantly rated at AAA on the rating scale.

([42]) The *Land* bears the risk of FFHG defaulting, without obtaining a compensatory payment in return.

(119) As the right to participate in the cash-pool was granted only to FFHG (and other undertakings in which the *Land* holds a majority of shares), the measure is selective within the meaning of Article 107(1) of the Treaty.

6.1.5. *Distortion of competition and effect on trade*

(120) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. In accordance with settled case-law ([43]), for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.

(121) As assessed in recital 102 and following, the operation of an airport is an economic activity. Competition takes place, on the one hand, between airports to attract airlines and the corresponding air traffic (passengers and freight), and, on the other hand, between airport managers, which may compete between themselves to be entrusted with the management of a given airport. Moreover, in particular with respect to low-cost carriers and charter operators, airports that are not located in the same catchment areas and even in different Member States can also be in competition with each other to attract those airlines.

(122) The size of Frankfurt Hahn airport (between 2,7 and 3,8 million passengers during the period under consideration, see Table 1) and its proximity to other Union airports, in particular Frankfurt Main airport, Luxembourg airport, Zweibrücken airport, Saarbrücken airport and Köln-Bonn airport ([44]), allows the conclusion that the financing is liable to distort competition and have an effect on trade between Member States. There are international flights from Frankfurt Hahn airport to a number of international destinations as set out in recital 73. The runway at Frankfurt Hahn airport is of sufficient length (3 800 m) to be used by bigger aircraft and allows airlines to serve medium- to even long-haul international destinations.

(123) In addition, Frankfurt Hahn airport serves as a freight airport, handling around 200 000 tonnes of air freight per year and 500 000 tonnes of freight, including freight trucking, in total (see Table 2). With regard to competition for air freight, the Commission notes that freight is usually more mobile than passenger transport ([45]). In general, the catchment area for freight airports is considered to have a radius of at least around 200 kilometres and 2 hours travelling time. Based on the Commission's information, industry players generally consider that the catchment area of a freight airport may be even larger as up to a half a day of trucking time (that is to say, up to 12 hours driving time by trucks) would in general be acceptable for freight forwarders to use the airport in order to transport freight ([46]). Hence, since freight airports are more fungible than passenger airports, because it is sufficient for the air freight to be delivered into a certain area and then forwarded by road and rail freight forwarders to its final destination, the Commission considers that there is a higher risk of distortion of competition and effect on trade between Member States.

(124) On the basis of the arguments presented in recitals 120 to 123, the economic advantage which FFHG receives strengthens its position vis-à-vis its competitors on the Union market for the provision of airport services. Against this background, the advantage provided to FFHG through its participation in the cash-pool of the *Land* must be considered as being liable to distort competition and have an effect on trade between Member States.

6.1.6. *Conclusion*

(125) In the light of the considerations in recitals 99 to 124, the Commission considers that the credit line provided by the cash-pool of the *Land* to FFGH constitutes State aid within the meaning of Article 107(1) of the Treaty.

([43]) Case T-214/95 *Het Vlaamse Gewest* v *Commission* [1998] ECR II-717.
([44]) See Section 2.1.
([45]) For example Leipzig/Halle airport was in competition with Vatry airport (France) for the establishment of the DHL European hub. See *Leipzig/Halle judgment*, paragraph 93.
([46]) Response of Liège airport to the public consultation on the 2014 Aviation Guidelines.

6.2. **Aid nature of the 100 % guarantee for the ISB loans provided by Land Rhineland-Palatinate to FFHG**

(126) The ISB loans assessed in Section 6.3 are guaranteed by *Land* Rhineland-Palatinate (guarantor), which is at the same time the main shareholder (82,5 %) in FFHG. Each of the five ISB loans has been collateralized with a guarantee covering 100 % of the claims of the bank. For the provision of the guarantees FFHG pays a guarantee premium of [0,5 % to 1,5 %] p. a. to the guarantor.

6.2.1. *Applicability of State aid rules to the financing of airport infrastructure*

(127) For the reasons outlined in recital 99 and following, FFHG must be considered to constitute an undertaking for the purposes of Article 107(1) of the Treaty.

6.2.2. *State resources and imputability*

(128) In order to constitute State aid, the measure in question must be financed from state resources and the decision to grant the measure must be imputable to the state.

(129) The concept of State aid applies to any advantage granted through state resources by the state itself or by any intermediary body acting by virtue of powers conferred on it ([47]). Resources of local authorities are, for the application of Article 107 of the Treaty, state resources ([48]).

(130) Any public guarantee involves a potential loss of resources by the state. As the 100 % state guarantee was issued directly by the *Land* Rhineland-Palatinate, it was granted from state resources and is also imputable to the state.

6.2.3. *Economic advantage*

(131) According to point 3.2 of the guarantee notice, an individual state guarantee is not aid when the following cumulative conditions are met: '(a) The borrower is not in financial difficulty […], (b) The extent of the guarantee can be properly measured when it is granted. […] (c) the guarantee does not cover more than 80 % of the outstanding loan or other financial obligation […], (d) A market-oriented price is paid for the guarantee […]'.

(132) In this case the *Land* Rhineland-Palatinate provided a 100 % guarantee to collateralise the loans granted by ISB in favour of FFHG. The guarantee thus exceeds the threshold of 80 % of the outstanding loan.

(133) Germany submitted that even though the loans were collateralised through a 100 % state guarantee, FFHG pays a market price for the guarantee, and hence receives no advantage. To support this, Germany provided an assessment conducted by Deutsche Bank. As stated in recital 153, Deutsche Bank assigned FFHG a [<BBB+] rating. This assessment was confirmed by two other banks and the rating assigned by the Moody's credit-scoring model (see recitals 157 and 158). However, Deutsche Bank estimated that the applicable risk margin for a 5-year loan would be between [1,30 % and 2,05 %] p. a. As explained in Section 6.3.2, the applicable risk margin for a loan collateralised by a 100 % state guarantee would be between [0,25 % and 0,7 %] p.a. According to Germany, the difference in the margins between the two situations provides an indication of the price of the 100 % state guarantee. This difference is thus estimated by Deutsche Bank as being in the range of [0,6 % to 1,8 %] p.a. ([49]).

(134) According to point 4.2, second subparagraph, of the guarantee notice, the advantage can be calculated as the difference between the specific market interest rate FFHG would have borne without the guarantee and the interest rate obtained by means of the state guarantee after any premium paid has been taken into account.

([47]) See footnote 33.
([48]) See footnote 34.
([49]) [1,3 % – 0,7 % = 0,6 % and 2,05 % – 0,25 % = 1,8 %].

(135) According to the Reference Rate Communication, for a company in the rating category of weak (B) and with normal collateralisation ([50]) a risk margin of 4 % p.a. would apply. The difference between the risk margin applicable according to the Reference Rate Communication and the risk margin charged for the ISB loans together with the guarantee rate actually charged by the *Land* gives an indication of the advantage FFHG received due to the 100 % state guarantee. This difference amounts, for loans numbers 2 and 5, to [1,5 % to 3,5 %] p.a. ([51]) and [1,5 % to 3,5 %] p.a. ([52]) respectively and for loans numbers 1, 3 and 4, to [1,5 % to 3,5 %] p.a. ([53]) Moreover, FFHG has not paid any bank fee (typically between [5 to 30] basis points ([54])). It is clear that under normal market conditions, FFHG would have had to pay such a guarantee premium (that is [0,5 % to 1,5 %] p.a.) in order to obtain a guarantee on its loans from a third party. Therefore the guarantee clearly involves an advantage.

(136) As the guarantee issued by the *Land* covers 100 % of the outstanding loan and FFHG pays a premium below the market price, it obtained an economic advantage not otherwise available on the market. The amount of this advantage is equivalent to the difference between the risk margin applicable according to the Reference Rate Communication and the risk margin charged for the ISB loans together with the guarantee rate actually charged by the *Land* and a bank fee.

6.2.4. *Selectivity*

(137) As the 100 % state guarantee was granted only to FFHG, the measure has to be qualified as being selective in nature.

6.2.5. *Distortion of competition and effect on trade*

(138) For the same reasons as outlined in recital 120 and following, the Commission considers that any selective economic advantage granted to FFHG is liable to distort competition and affect trade between Member States.

6.2.6. *Conclusion*

(139) In the light of the considerations in recitals 127 to 138, the Commission considers that the state guarantee issued by *Land* Rhineland-Palatinate securing 100 % of the outstanding ISB loans constitutes State aid within the meaning of Article 107(1) of the Treaty.

6.3. **Aid nature of the loans provided by ISB to FFHG**

6.3.1. *Applicability of State aid rules to financing of airport infrastructure*

(140) For the reasons outlined in recital 99 and following, FFHG must be considered to constitute an undertaking for the purposes of Article 107(1) of the Treaty.

6.3.2. *State resources and imputablity to the state*

(141) ISB is 100 % owned by *Land* Rhineland-Palatinate. For this reason it constitutes a public undertaking within the meaning of Article 2(b) of Directive 2006/111/EC and loans provided by it may therefore be considered as financed by state resources.

([50]) Loss given default (LGD) between 30 % and 60 %.
([51]) […]
([52]) […]
([53]) […]
([54]) See e.g. Oxera, Estimating the cost of capital for Dutch water companies, 2011 (p. 3). See also Bloomberg data on underwriting fees for bond issuance.

(142) It is clear that the *Land* had far-reaching control over the operation of ISB, with the consequence that the loans provided by it are imputable to the state. ISB is the development bank of *Land* Rhineland-Palatinate and plays a fundamental role in regional development policy. According to §3(1) of the statute of the bank, ISB's role is to support the *Land* in its financial, economic, regional, transport, environmental and employment policies. This case, the ISB loans refinanced earlier loans granted to FFHG for financing infrastructure measures at the airport.

(143) Furthermore, in addition to two representatives of the Chamber of Crafts as well as the Chamber of Industry and Commerce, ISB's supervisory board ('*Verwaltungsrat*') consists of five representatives of public authorities (including two state secretaries in the Ministry of Finance of the *Land* Rhineland-Palatinate and the Ministry of Economy, Transport, Agriculture and Viticulture of *Land* Rhineland-Palatinate, respectively) which ensures the supervision of ISB's activities by the state. Also, its advisory board ('*Beirat*') consists of representatives of public authorities.

(144) Moreover, the ISB loans were secured by a 100 % state guarantee issued by the *Land* (see Section 6.2).

(145) Based on these elements, the Commission considers that the State was able to control the activities of ISB and it cannot be assumed that it would not have been involved in an important decision concerning the financing of the airport infrastructure. Therefore, the Commission takes the view that the decision to refinance FFHG's prior loans by way of the ISB loans is imputable to the public authorities.

6.3.3. *Economic advantage*

(146) In order to verify whether an undertaking has benefited from an economic advantage induced by the granting of a loan, the Commission applies the criterion of the market economy lender principle. According to that principle, debt capital put at the disposal of a company by the state, directly or indirectly, in circumstances which correspond to the normal conditions of the market, should not be qualified as State aid ([55]).

(147) The principle of a lender in a market economy determines what a private company of a comparable size would do in a comparable situation. It aims to identify and separate those financial measures taken by the State that would not have been taken by a private investor from those which are financially reasonable, and would therefore have been taken by a private investor, in order to determine if there is an economic advantage.

(148) According to its decisional practice ([56]), in order to determine whether the financing under assessment was granted at favourable conditions, the Commission may — in the absence of other proxies — compare the interest rate on the loan in question with those set out in the Reference Rate Communication.

(149) The Reference Rate Communication establishes a method for setting reference and discount rates that are applied as a proxy for the market rate. However, because the rates in the Reference Rate Communication function as a proxy, where the Commission is in the possession of other indicators in a specific case of the interest rate that the borrower could obtain on the market, it bases its assessment on those indicators.

(150) In this case, the Commission has to assess whether the conditions of the ISB loans (as summarised in Table 5 collateralised by a 100 % state guarantee confer any additional economic advantage on FFHG, which the recipient undertaking would not have obtained under normal market conditions. The market conformity of the conditions of the 100 % state guarantee provided by the *Land* Rhineland-Palatinate has been assessed in Section 6.2.

([55]) Communication of the Commission to the Member States: application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/CEE to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3), paragraph 11. That communication deals specifically with the manufacturing sector, but is in principle also applicable to other economic sectors. See also Case T-16/96 *Cityflyer* [1998] ECR II-757, paragraph 51.

([56]) Commission Decision 2013/693/EU of 3 October 2012 on the measure SA.23600 — C 38/08 (ex NN 53/07) — Germany — Financing arrangements for Munich Airport Terminal 2 (OJ L 319, 29.11.2013, p. 8); and Commission Decision (EU) 2015/1469 of 23 July 2014 on State aid SA.30743 (2012/C) (ex N 138/10) — Germany — Financing of infrastructure projects at Leipzig/Halle airport (2) (OJ L 232, 4.9.2015, p. 1).

(151) Germany submitted that the ISB loans were concluded on market terms comparable to those of the loans which they refinanced (see recital 52 and following). In this respect, Germany stated that the conditions of the ISB loans were comparable to the loans granted by Nassauische Sparkasse in 2005, which were collateralised in a way comparable to the ISB loans. Hence, Germany asserted that, as the interest payable on the ISB loans was at the same level as the interest on the loans which the ISB loans refinanced, there cannot be any advantage in favour of FFHG.

(152) Moreover, Germany explained that in 2009, in preparation for the new financing, FFHG commissioned Deutsche Bank to provide a risk margin indication for the refinancing of its existing loans taking into account the 100 % guarantee provided by *Land* Rhineland-Palatinate.

(153) In line with the methodology underlying the Reference Rate Communication, the Commission is of the opinion that loan interest rates can be deemed in line with market conditions when the loans are priced at a rate equal to or higher than a benchmark rate defined by the following formula:

Benchmark rate = base rate + risk margin + fee

(154) The base rate represents the cost for banks of providing liquidity (funding cost). In the case of fixed-rate funding (that is to say, the interest rate is fixed for the duration of the loan), it is appropriate to determine the base rate on the basis of swap rates ([57]) with a maturity and currency corresponding to the maturity and the currency of the debt. The risk margin compensates the lender for the risks associated with the specific debt financing, in particular the credit risk. The risk margin can be derived from an appropriate sample of CDS spreads ([58]) relating to reference entities with a similar rating. Finally, it is appropriate to add 10-20 basis points as an approximation for the bank fees companies usually have to pay ([59]).

Appropriateness of the risk margins depending on the rating

(155) In order to determine whether an appropriate risk premium has been added to the base rate the rating of the undertaking needs to be determined. FFHG is not rated by a credit rating agency. Germany, however, submitted that, in the risk margin indication of Deutsche Bank, the bank also assessed the credit worthiness of FFHG. On the basis of Deutsche Bank's analysis of FFHG's financial reports of 2006 to 2008, it puts FFHG in the [<BBB+] rating category. However it does not specify an exact rating for the company.

(156) The Commission notes that the [<BBB+] rating category includes all ratings that are below [BBB+]. Hence, the [<BBB+] rating of FFHG according to Deutsche Bank could accordingly be interpreted as any rating below [BBB+] on the Standard & Poor's rating scale.

(157) Besides the analysis of Deutsche Bank, Germany submitted rating indications for FFHG conducted by two other banks. The Commission notes that these banks also assigned FFHG a [<BBB+] rating category. In 2010 Volksbank assigned FFHG a rating of […] according to its internal rating scale (that rating corresponds to [B to BB] on the Standard & Poor's rating scale). In 2011 Kreissparkasse Birkenfeld assigned FFHG a rating of […] according to its rating scale (that rating corresponds to [B- to BB-] on the Standard & Poor's rating scale).

(158) Finally, Germany provided ratings of FFHG established according to Moody's credit-scoring model based on the data available at the time the ISB loans were granted (see Table 8). These ratings confirm the [<BBB+] rating assigned by Deutsche Bank and vary between [B2] on the Moody's rating scale (this is [B] on the Standard & Poor's rating scale) and [Baa3] on the Moody's rating scale (this is [BBB-] on the Standard & Poor's rating scale).

([57]) The swap rate is the longer maturity equivalent to the inter-bank offered rate (IBOR rate). It is used in the financial markets as a benchmark rate for establishing the funding rate.

([58]) A credit default swap (CDS) is a (tradable) credit derivative contract between two counterparties, the protection buyer and the protection seller, transferring the credit risk on an underlying reference entity from the protection buyer to the protection seller. The protection buyer pays every period a premium to the protection seller until maturity of the CDS contract or until a predefined credit event occurs on the underlying reference entity (whichever occurs first). The periodic premium paid by the protection buyer (expressed as a percentage or in terms of basis points of the protected amount, the 'notional') is called the CDS spread. CDS spreads can be used as a close proxy for the price of credit risk.

([59]) See footnote 54.

(159) In the light of the considerations in recitals 153 to 158, the Commission considers that FFHG's rating corresponds to no better than [BBB-] on the Standard & Poor's rating scale.

(160) However, in order to determine whether, in addition to any possible advantage granted through the 100 % state guarantee (see Section 6.2), the ISB loans conferred any advantage on FFHG, the rating of the issuer of the 100 % state guarantee (that is the rating of the *Land* Rhineland-Palatinate) needs to be taken into account as otherwise the advantage stemming from the state guarantee would be taken into account twice. As stated in recital 117, the *Land* Rhineland-Palatinate has an AAA rating.

(161) Therefore, given that the ISB loans were granted against the background of a state guarantee, the Commission considers it appropriate to determine the risk margin on the basis of 5-year EUR bonds of the German *Länder* (amounting to [5 to 25] basis points). The Commission further observes that in its analysis Deutsche Bank added a risk premium of [5 to 25] basis points due to the fact that the loans were not granted directly to the *Land*, but were only collateralised by a 100 % state guarantee, as well as an additional premium of [5 to 25] basis points for the limited tradability of the debt. The Commission considers that these are reasonable assumptions and that the resulting risk margin between [20 basis points and 70] basis points is appropriate given the creditworthiness of the issuer of the guarantee.

Market conformity of ISB loans numbers 2 and 5

(162) With regard to ISB loans numbers 2 and 5 which have variable rates the actual interest rate is Euribor plus a risk margin of [0,35 %-0,55 %] p.a. and [0,25 %-0,45 %] p.a., respectively. The risk margin for ISB loan number 2 was within the bandwidth determined by Deutsche Bank, while the risk margin for ISB loan number 5 was 4 basis points below the risk premium determined by Deutsche Bank. No bank fee was charged on either of the two ISB loans. Hence, the Commission considers that the rate charged for the provision of the two loans provides an (albeit small) element of advantage (the interest rate paid for loan number 2 appears to be between [10-30] basis points below the benchmark rate and for loan number 5 between [5-25] basis points).

Market conformity of ISB loans numbers 1, 3 and 4

(163) The Commission notes that the interest rate of ISB loans numbers 1, 3 and 4 is fixed. As all three loans are amortising, in order to establish the relevant maturity of the loans in question, the amortisation of the loans has to be taken into account.

(164) The Commission has for that purpose calculated the weighted average life (WAL) of the loans, which indicates the average number of years that each euro remains outstanding. The WAL of loan number 1 has been calculated at 3,92 years, the WAL of loan number 3 at 1,17 years and the WAL of loan number 4 at 3,29 years.

(165) To determine the base rate of loan number 1 as its WAL amounts to 3,92 years, the Commission has used the four-year EUR swap rate ([60]) as a proxy. For loan number 3, the one-year EUR swap rate ([61]) is used as the closest approximation to its WAL of 1,17 years. For loan number 4, the three-year swap rate ([62]) is used as an approximation of its WAL of 3,29 years. The relevant swap rates have been obtained from Bloomberg, for the day when the loans were drawn ([63]). The values of the corresponding swap rates are as follows: [2 %-3 %] for loan number 1, [1 %-1,5 %] for loan number 3, and [1,5 %-2,5 %] for loan number 4 ([64]).

(166) That approach leads to a benchmark rate for loan number 1 (with a 100 % state guarantee) of [2,5 %-4,5 %] ([65]), for loan number 3 (with a 100 % state guarantee) of [1,5 %-3 %] ([66]) and for loan number 4 (with a 100 % state guarantee) of [2 %-3,5 %] ([67]).

([60]) Bloomberg code EUSA4.
([61]) Bloomberg code EUSA1.
([62]) Bloomberg code EUSA3.
([63]) Loan number 1 was drawn on 14 July 2009, loan number 3 on 28 August 2009, and loan number 4 on 8 September 2009.
([64]) Source: Bloomberg.
([65]) […]
([66]) […]
([67]) […]

(167) Loans numbers 1, 3 and 4 were granted at rates well above these calculated benchmark rates (loan number 1 at [> 3 %;< 4,5 %], loan number 3 at [> 3 %;< 4,5 %] and loan number 4 at [> 3 %;< 4,5 %]) and the Commission considers that fact to be an indication that the loans were indeed in line with market conditions, thereby excluding the existence of an advantage.

6.3.4. *Selectivity*

(168) As ISB loans numbers 2 and 5 were granted at preferential conditions only to FFHG, the measures have to be qualified as being selective in nature.

6.3.5. *Distortion of competition and effect on trade*

(169) For the same reasons as outlined in recital 120 and the following, the Commission considers that any selective economic advantage granted to FFHG is liable to distort competition and affect trade between Member States.

6.3.6. *Conclusion*

(170) In view of recitals 140 to 169 above, the Commission concludes that ISB loans numbers 1, 3 and 4 were granted at rates that can be deemed in line with market conditions, thereby excluding the existence of an advantage. Hence, given that the cumulative criteria in Article 107(1) of the Treaty are not fulfilled, the Commission considers that these ISB loans do not constitute State aid within the meaning of Article 107(1) of the Treaty.

(171) In view of recitals 140 to 169 above, the Commission concludes that ISB loans numbers 2 and 5 were granted below the benchmark rate. Hence, since the other criteria in Article 107(1) of the Treaty are fulfilled, the Commission considers that these ISB loans constitute State aid (albeit in a small amount).

6.4. **Lawfulness of the aid**

(172) Pursuant to Article 108(3) of the Treaty, Member States must notify any plans to grant or alter aid, and must not put the proposed measures into effect until the notification procedure has resulted in a final decision.

(173) As the funds provided by the cash-pool at privileged terms, the ISB loans numbers 2 and 5 and the 100 % state guarantee have already been put at the disposal of FFHG, the Commission considers that Germany has not respected the requirements of Article 108(3) of the Treaty ([68]).

6.5. **Compatibility**

6.5.1. *The applicability of the Rescue and Restructuring Guidelines*

(174) Lufthansa considers that the Commission should apply the Rescue and Restructuring Guidelines when assessing the State aid measures at stake.

(175) The Aviation Guidelines contain specific and detailed rules for the public funding of airports, including operating aid. As stated in point 117 of the 2014 Aviation Guidelines, smaller airports may have difficulties in ensuring the financing of their operation without public support, due to high fixed costs (funding gap).

([68]) Case T-109/01 *Fleuren Compost* v *Commission* [2004] ECR II-127.

(176) Even if one were nevertheless to apply the Rescue and Restructuring Guidelines in the case of aid to an airport, they are not applicable in this case because FFHG was not an undertaking in difficulty.

(177) According to the 2014 Rescue and Restructuring Guidelines ([69]), the Commission will conduct the examination of the aid measures on the basis of the guidelines applied at the time the aid was granted. As, in this case, the aid was granted between 2009 to 2011 (that is well before the publication of the 2014 Rescue and Restructuring Guidelines in the Official Journal), the Commission will examine whether FFHG could be considered as an undertaking in difficulty on the basis of the 2004 Rescue and Restructuring Guidelines (that is to say, the guidelines which were applied at the time when the aid was granted).

(178) According to point 10 of the 2004 Rescue and Restructuring Guidelines, an undertaking is considered as being in difficulty where, in the case of a limited liability company, more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months, or where the undertaking fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.

(179) In this case, neither of the two conditions had been met at the time the aid was granted. The registered capital of FFHG, which is a limited liability company, remained stable at EUR 50 million in the period 2007 to 2010, and showed a slight decrease from EUR 50 million to EUR 44 million in 2011 and EUR 38 million in 2012. Nor has FFHG fulfilled the criteria under its domestic law for being the subject of collective insolvency proceedings.

(180) The financial results summarised in Table 4 do not suggest that FFHG should be considered as an undertaking in difficulty. In this regard, according to point 11 of the 2004 Rescue and Restructuring Guidelines an undertaking may be considered to be in difficulties even where the conditions of point 10 are not fulfilled, in particular where the usual signs of an undertaking being in difficulty are present, such as increasing losses, diminishing turnover, declining cash flow, mounting debt, rising interest charges, etc. However, in this case, despite the decrease in the number of passengers due to the financial and economic crisis, the financial results of FFHG showed that it made progress towards becoming profitable.

(181) In view of the considerations in recital 175 and following, the Commission considers that FFHG cannot be considered as an undertaking in difficulty at the time the aid was granted, and the 2004 Rescue and Restructuring Guidelines are thus not applicable.

6.5.2. *The applicability of the 2014 and 2005 Aviation Guidelines*

(182) Article 107(3) of the Treaty provides for certain exemptions to the general rule set out in Article 107(1) of the Treaty that State aid is not compatible with the internal market. The aid in question can be assessed on the basis of Article 107(3)(c) of the Treaty, which stipulates that: 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest', may be considered to be compatible with the internal market.

(183) In this regard, the 2014 Aviation Guidelines provide a framework for assessing whether aid to airports may be declared compatible pursuant to Article 107(3)(c) of the Treaty.

(184) According to the 2014 Aviation Guidelines, the Commission considers that the 'Commission notice on the determination of the applicable rules for the assessment of unlawful State aid' ([70]) applies to unlawful investment aid to airports. In this respect, if the unlawful investment aid was granted before 4 April 2014, the Commission will apply the compatibility rules in force at the time when the unlawful investment aid was granted. Accordingly, the Commission will apply the principles set out in the 2005 Aviation Guidelines in the case of unlawful investment aid to airports granted before 4 April 2014 ([71]).

([69]) Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).
([70]) OJ C 119, 22.5.2002, p. 22.
([71]) Point 173 of the 2014 Aviation Guidelines.

(185) Conversely, the Commission stated in the 2014 Aviation Guidelines that the 'Commission notice on the determination of the applicable rules for the assessment of unlawful State aid' should not apply to pending cases of illegal operating aid to airports granted prior to 4 April 2014. Instead, the Commission will apply the principles set out in the 2014 Aviation Guidelines to all cases concerning operating aid (pending notifications and unlawful non-notified aid) to airports even if the aid was granted before 4 April 2014 and the beginning of the transitional period ([72]).

(186) The Commission has already concluded in recital 173 that the measures under assessment constitute unlawful State aid granted before 4 April 2014.

6.5.3. *Distinction between investment and operating aid*

(187) In view of the provisions of the 2014 Aviation Guidelines referred to in recitals 184 and 185, the Commission has to determine whether the measures in question constitute unlawful investment or operating aid.

(188) According to point 25(r) of the 2014 Aviation Guidelines, investment aid is defined as 'aid to finance fixed capital assets; specifically, to cover the "capital costs funding gap"'. Moreover, according to point 25(r) of the guidelines, investment aid can relate both to an upfront payment (that is to say cover upfront investment costs) and to aid paid out in the form of periodic instalments (to cover capital costs, in terms of annual depreciation and costs of financing).

(189) Operating aid, on the other hand, means aid covering all or part of the operating costs of an airport, defined as 'the underlying costs of the provision of airport services, including categories such as costs of personnel, contracted services, communications, waste, energy, maintenance, rent, administration, etc., but excluding the capital costs, marketing support or any other incentives granted to airlines by the airport, and costs falling within a public policy remit' ([73]).

(190) In the light of these definitions, the Commission considers that the 100 % state guarantee for the ISB loans provided at privileged terms and the ISB loans numbers 2 and 5 constitute investment aid in favour of FFHG. These funds were all linked to the refinancing of loans which in turn financed a particular infrastructure investment project (see Table 9). Moreover, the amounts of the ISB loans are equal to or lower than the respective investments carried out.

Table 9

Comparative overview of the amount of the ISB loans and their purpose ([1])

ISB loan no	Loan amount in EUR million	Purpose of the loan
1	18,4	[…] infrastructure investments amounting to […]
2	20,0	[…] infrastructure investments amounting to […]
3	2,5	[…] infrastructure investments amounting to […]

([72]) Point 172 of the 2014 Aviation Guidelines.
([73]) Point 25(v) of the 2014 Aviation Guidelines.

ISB loan no	Loan amount in EUR million	Purpose of the loan
4	25,9	[…] infrastructure investments amounting to […]
5	6,8	[…] infrastructure investments amounting to […]

(1) The overview is based on the indications in the ISB loan agreements as to the purpose of the respective loans and the investment amounts.

(191) Therefore, the Commission takes the view that the 100 % state guarantee for the ISB loans and ISB loans numbers 2 and 5 constitute unlawful investment aid granted before 4 April 2014, the compatibility of which has to be assessed under the 2005 Aviation Guidelines.

(192) With regard to the funds provided at privileged terms by the cash-pool, Germany considers that those funds were also used to finance infrastructure investments in 2009 to 2012.

(193) In 2009 to 2012 investments amounting to EUR 46 million were carried out at Frankfurt Hahn airport (see Table 3). The amount of those investments is approximately equal to the funds drawn from the cash-pool during the same period. Moreover, during the period 2009 to 2012 the operating results [74] (including extraordinary revenues, that is to say revenues other than the airport's aeronautical and non-aeronautical revenues and revenues from the sale of land or of property) were positive (see Table 4). This suggests that the airport was in a position to cover its day-to-day operating costs and the funds provided by the cash-pool were used to finance the investments into airport infrastructure. Hence, the funds provided by the cash-pool constitute unlawful investment aid granted before 4 April 2014, the compatibility of which has to be assessed under the 2005 Aviation Guidelines. In this regard, the considerations set out in Section 6.5.3 also apply. In particular, as the amount of the funds drawn is smaller than the total investments, the aid can be considered to be proportional and necessary.

(194) However, it should be noted that the funds drawn from the cash-pool were not dedicated for a specific purpose. Furthermore, the operating results (excluding extraordinary revenues, that is to say, revenues other than the airport's aeronautical and non-aeronautical revenues and revenues from the sale of land or of property) were negative in the period under consideration (see Table 4). This could indicate that the revenues from the airport's ordinary activity were not sufficient to cover its operating costs. Moreover, Germany has failed to demonstrate the mechanism by which it was ensured that the cash-pool funds would not be used for financing the airport's daily operations.

(195) Given these circumstances, it cannot be excluded that the cash-pool funds were used to prevent the FFHG from running short of liquidity, which could have caused the airport operator to cut its investments or turn it into an undertaking in difficulty. Hence, the funds provided by the cash-pool could be considered to constitute unlawful operating aid granted before 4 April 2014 the compatibility of which has to be assessed under the 2014 Aviation Guidelines. This assessment is carried out below in Section 6.5.4.

6.5.4. *Compatibility of the investment aid pursuant to the 2005 Aviation Guidelines*

(196) According to point 61 of the 2005 Aviation Guidelines, the Commission must examine whether the following cumulative conditions are met:

(a) the construction and operation of the infrastructure meets a clearly defined objective of common interest (regional development, accessibility, etc.);

(b) the infrastructure is necessary and proportional to the objective which has been set;

(74) Expressed in 'Earnings before interest, taxes, depreciation and amortisation' ('Ebitda').

(c) the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;

(d) all potential users of the infrastructure have access to it in an equal and non-discriminatory manner; and

(e) the development of trade is not affected to an extent contrary to the Union interest.

(197) In addition, State aid to airports — as any other State aid measure — must have an incentive effect and be necessary and proportional in relation to the aimed legitimate objective in order to be compatible.

(198) Germany submitted that the investment aid in favour of FFHG complies with all the compatibility criteria contained in the 2005 Aviation Guidelines.

(a) The aid contributes to a clearly defined objective of common interest

(199) The investment aid in favour of FFHG aimed at financing the further conversion of the former US military base into a civilian airport and substantially developing the infrastructure of the airport. Those measures provided a significant contribution to the regional development and connectivity of the Hunsrück region and the creation of new jobs in an area economically hit by the closure of the US military base, as well as the decongestion of Frankfurt Main airport.

(200) The Hunsrück region, as pointed out by Germany, is surrounded by a number of areas (such as *Landkreis* Birkenfeld), which were marked as regions in need of support in the framework of the '*Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur*'. Indeed, in the period under consideration, *Landkreis* Birkenfeld was at least partly considered to be a region with a gross domestic product (GDP) below the Union average ([75]).

(201) The Commission considers that the development of Frankfurt Hahn airport also contributed significantly to the creation of new jobs in the Hunsrück region. As shown by Germany, taking into account all parts of the airport activities, Frankfurt Hahn airport created 3 063 jobs in the Hunsrück region in 2012 out of which 74 % were full-time positions and 90 % of those employees also live in this region.

(202) Moreover, the development of Frankfurt Hahn airport had also positive indirect, induced and catalysing effects on the creation of jobs in the region as well as regional development in general through an increasing number of economic and touristic activities. According to the information provided by Germany, Frankfurt Hahn airport contributes significantly to the development of incoming (~ 33 % of passengers corresponding to approximately 1 million passengers in 2005) and outgoing tourism (~ 67 % of passengers) in the *Land* Rhineland-Palatinate. As pointed out by Germany, 88 % of the incoming passengers stay at least one night in the region and generated approximately 5,7 million overnight stays in 2005. Since 88 % of incoming tourists from Frankfurt Hahn stay at least one night and more than 80 % of those even stay two to 10 days, they generate a total turnover of about EUR 133,7 million per year. Moreover, incoming tourism generated around 11 000 jobs in Rhineland-Palatinate.

(203) The aided investments at issue also helped to improve the accessibility of the area. Nevertheless, the duplication of unprofitable airports (or the creation of additional unused capacity) does not contribute to an objective of common interest. In this case, the Commission takes the view that the investment aid does not lead to such a duplication which would diminish the medium-term prospects for the use of existing infrastructure at other, neighbouring airports. Indeed, there are no other airports within 100 kilometres or 60 minutes travelling time from Frankfurt Hahn airport. The closest airports to Frankfurt Hahn are Frankfurt Main airport, which is located at 115 kilometres distance or 1 hour 15 minutes travelling time by car, and Luxembourg airport, which is located 1 hour and 30 minutes travelling time (111 kilometres) away.

(204) Frankfurt Main airport is an international hub airport with a wide variety of destinations and is predominantly served by network carriers offering connecting traffic, whereas Frankfurt Hahn airport serves low-cost point-to-point flights. Traffic at Frankfurt Main airport has continuously increased since 2000, from 49,4 million

([75]) Commission decision of 8 November 2006 in State aid case N459/2006 — Germany — German regional aid map 2007-2013 (OJ C 295, 5.12.2006, p. 6).

passengers in 2000 to approximately 58 million in 2012. However, during that period growth has been affected by congestion problems and capacity constraints. As pointed out by Germany, the capacity limits of Frankfurt Main airport were constantly exceeded. Therefore, according to Germany, especially in the light of its 24-hour operating licence, Frankfurt Hahn airport played an important role in providing additional capacity in order to relieve the congestion at Frankfurt Main airport. In fact, until 2009 Fraport was the majority shareholder of FFHG, the operator of Frankfurt Hahn airport (2,7 million passengers in 2013, around 4 million passengers in 2007 at its peak) and the operator of Frankfurt-Main airport (58 million passengers and 2,1 million freight), and was as such pursuing a diversification strategy.

(205) Luxembourg airport, which is the nearest airport to Frankfurt Hahn but still around 111 kilometres or 1 hour 30 minutes travelling time by car away, had around 1,7 million passengers in 2008 and experienced a rapid growth to 2,2 million in 2013. Even though Luxembourg airport is slightly smaller than Frankfurt Hahn airport in terms of passenger traffic, its freight activity is substantially larger, with 674 000 tonnes in 2013. It offers a variety of scheduled flights to European capitals and charter flights to leisure destinations. This selection of destinations to a large extent meets the needs of the employees of the financial and international institutions located in Luxembourg.

(206) Saarbrücken airport is located around 128 kilometres away from Frankfurt Hahn airport which amounts to over 2 hours travelling time by car. In addition, Frankfurt Hahn is served mainly by low-cost carriers (Ryanair) and freight constitutes a rather important element in its business model whereas Saarbrücken airport offers mainly scheduled flights to national destinations and has only limited air freight transport.

(207) With regard to Zweibrücken airport, Germany emphasised that the distance of 127 km to Frankfurt Hahn airport translates into a travelling time of 1 hour and 27 minutes by car or around 4 hours by train. Moreover, Germany submitted that, looking at passenger and air freight traffic between 2005 and 2012, no relationship of substitution between the airports can be deduced.

(208) The Commission observes that there is a certain overlap in the activities of Frankfurt Hahn and Zweibrücken airports, as Zweibrücken airport is also engaged in handling air freight and the destinations served by Zweibrücken airport are predominantly for charter traffic. In this regard, the Commission notes that freight is usually more mobile than passenger transport ([76]). In general, a catchment area for freight airports is considered to have a radius of at least around 200 kilometres and 2 hours travelling time. Comments from the industry suggest that up to a half-day of trucking time (that is to say, up to 12 hours driving time by trucks) would in general be acceptable for freight forwarders to transport their goods ([77]). Moreover, charter traffic is also, in general, less time-sensitive and may accept travelling times of up to 2 hours by car.

(209) At the same time it should be noted that, before Zweibrücken entered the market in 2006, Frankfurt Hahn airport was already a well-established airport with more than 3 million passengers and channelling 123 000 tonnes of freight. In view of the historical development of the two airports, their geographical location and the free capacity available at Frankfurt Hahn airport at the time when Zweibrücken airport entered the commercial aviation market in 2006, the Commission concludes that it is rather the opening of Zweibrücken airport which constituted an unnecessary duplication of infrastructure.

(210) Therefore, the Commission concludes that the investments into Frankfurt Hahn airport do not constitute a duplication of existing non-profitable infrastructure. On the contrary, Frankfurt Hahn airport has played an important role in decongesting Frankfurt Main airport without limiting the latter's plans to expand. Without the investments into Frankfurt Hahn airport there was in fact a risk that the region would be underserved in terms of its transport needs.

(211) In the light of the considerations in recitals 199 to 210, the Commission therefore concludes that the investment aid directed at the construction and operation of infrastructure at Frankfurt Hahn airport meets a clearly defined objective of common interest, namely regional economic development, creation of jobs and improvement of the accessibility of the region.

([76]) See footnote 45.
([77]) See footnote 46.

(b) The infrastructure is necessary and proportionate to the objective

(212) According to Germany, the investments were undertaken according to the needs (and were thus proportionate) and the constructed infrastructure was necessary for the airport in order to serve the connectivity and the development of the region and to decongest Frankfurt Main airport.

(213) Based on the information provided by Germany, the Commission agrees that the financed investments were necessary and proportionate to the objective of common interest (see recital 68 and following). Indeed, without these investments the conversion of the former US base into a fully functioning civil aviation airport could not have been completed. The construction of passenger and freight facilities, aprons and modernisation of taxiways had to be carried out in order to further develop civil flight operations. Hence, the constructed infrastructure was necessary for the airport in order to serve the connectivity and the development of the region.

(214) Also, the infrastructure project was undertaken only to the extent it was necessary to attain the goals set: while the infrastructure was built for a maximum passenger traffic of around 4 to 5 million passengers and 500 000 tonnes of freight, the traffic statistics displayed in Table 1 and Table 2 show that the passenger traffic steadily increased until 2007 to reach a record of 4 million passengers (following by a decline to 2,7 million in 2013 for the reasons set out in recital 219) and that the freight volume increased to more than 500 000 tonnes of freight in 2011. This means that the expected traffic demand largely corresponded to the actual demand and that the investments were not disproportionately large.

(215) While it is important to avoid that investment constitutes a duplication of an existing unprofitable infrastructure, this is not the case here. As already explained in recitals 203 to 210, there are no other airports within 100 kilometres distance and 60 minutes travelling time, and even if a wider catchment area was to be considered there are no duplication effects. The closest airport is Frankfurt Main airport, which Frankfurt Hahn airport was intended to decongest.

(216) In the light of these considerations, the Commission considers that this compatibility condition is met.

(c) The infrastructure has satisfactory medium-term prospects for use

(217) Germany submitted that before the decision to further develop the airport infrastructure was taken, traffic forecast studies were conducted by external experts in order to identify the traffic potential for Frankfurt Hahn airport.

(218) The information submitted shows that at that time the external experts forecasted significant growth from 0,3 million passengers in 2000 to up to 3,8 million passengers by 2010 (see Figure 6 and Figure 7). With regard to freight development, the experts projected a development from 151 000 tonnes in 2001 to up to 386 000 tonnes in 2010 (see Figure 8), with the growth in the freight business between 2006 and 2010 coming from the freight flights diverted from Frankfurt Main airport due to curfew. However, these projections could only be fulfilled if the investments were undertaken to the planned extent.

(219) The Commission notes that these traffic forecasts (see recital 218) were confirmed by the actual traffic development at Frankfurt Hahn airport (see Table 1 and Table 2). In 2007 Frankfurt Hahn airport served around 4 million passengers. Following a period of significant growth, air traffic in Germany and the Union in recent years has been negatively affected by the economic and financial crisis in 2008/2009, which resulted in a decrease in passenger air transport in Germany in 2009. The passenger development at Frankfurt Hahn airport was further impacted by the introduction of an air passenger tax in Germany in 2011. Currently Frankfurt Hahn airport serves around 2,7 million passengers p.a. With regard to freight, Frankfurt Hahn airport handled 565 000 tonnes of freight in 2011. Due to the bankruptcy of one of its clients, the airport processed only 447 000 tonnes in 2013.

(220) In the light of these considerations, it can therefore be concluded that Frankfurt Hahn airport is already using most of its capacity and that the medium-term prospects for the use of the capacity were satisfactory.

(d) Access to the infrastructure in an equal and non-discriminatory manner

(221) All potential users of the infrastructure have access to the airport on equal and non-discriminatory terms. Indeed, the schedule of airport charges applicable at Frankfurt Hahn airport is publicly available and open to all potential and current users of the airport in a transparent and non-discriminatory manner. Any differences in airport charges actually paid for the use of the infrastructure were based on commercially justified differentiation ([78]).

(222) Hence, the Commission considers that this condition is satisfied.

(e) Trade is not affected contrary to common interest

(223) According to point 39 of the 2005 Aviation Guidelines the category of an airport can provide an indication of the extent to which airports are competing with one another and therefore also the extent to which public funding granted to an airport may distort competition.

(224) Within the standard catchment area of Frankfurt Hahn airport (1 hour travelling time by car or 100 kilometres distance) there are no other commercially exploited airports. Even if one were to extend the catchment area, the Commission considers that the aid does not create undue negative effects on competition and trade between Member States.

(225) As far as Frankfurt Main airport (the closest airport at around 115 kilometres distance and 1 hour 15 minutes travelling time) is concerned, the investments at Frankfurt Hahn airport did not result in negative substitution effects. In fact, before getting involved in Frankfurt Hahn airport, Fraport was already the operator of Frankfurt Main airport, but was nevertheless investing in Frankfurt Hahn airport with a view to decongesting Frankfurt Main airport, as a future capacity overload was foreseeable for that hub. In particular, the ban on night flights at Frankfurt Main airport was one of the main factors to be taken into consideration as Frankfurt Hahn airport had a 24-hour operating licence.

(226) Even though Frankfurt Hahn experienced significant growth in the period from 2000 until 2007, Figure 1 shows that in comparison to Frankfurt Main the traffic share remained very limited. From 2000 to 2003 Frankfurt Main airport experienced steady passenger growth from 48 million in 2000 to 54,2 million in 2007. Due to the economic crisis, Frankfurt Main experienced a slight decrease to 50,9 million in 2009, followed by a rapid increase to 58 million. With regard to the freight activities, Frankfurt Main airport experienced steady growth from 1,6 to 2,2 million tonnes in 2013.

(227) As for other airports, the Commission has already explained that the investments at Frankfurt Hahn airport had no significant impact on competition and trade between Member States ([79]). This also applies to Zweibrücken airport, given that it is rather the latter that constitutes an unnecessary duplication of infrastructure (and would thus be responsible for any distortive effect on competition).

(228) In addition, contrary to Frankfurt Main and Luxembourg airports, Frankfurt Hahn airport is not served by a train connection. Overall, no substitution effect on rail transport can be expected.

(229) In view of the considerations in recitals 223 to 228, the Commission considers that any undue negative effects on competition and trade between Member States are limited to the minimum.

([78]) Commission decision of 1 October 2014 in State aid case SA.21211 — Germany — Frankfurt Hahn airport and Ryanair, not yet published in the Official Journal.

([79]) As regards Frankfurt Main and Luxembourg airports, the Commission further notes that the business travel segment occupies a significant market share at these airports, while it only represents a comparatively limited share at Frankfurt Hahn airport.

(f) Incentive effect, necessity and proportionality

(230) The Commission must establish whether the State aid granted to Frankfurt Hahn Airport has changed the behaviour of the beneficiary in such a way that it engaged in activity contributing to the achievement of the objective of common interest that (i) it would not have carried out without the aid; or (ii) it would have carried out in a more restricted or different manner. In addition, the aid is considered to be proportionate only if the same result could not be reached with less aid and less distortion. This means that the amount and intensity of the aid must be limited to the minimum needed for the aided activity to take place.

(231) According to the information submitted by Germany, without the aid the investment could not have been realised. Germany submitted that the aid was necessary as it compensated only the costs of financing and a lower amount would have led to lower levels of investment.

(232) Indeed, according to the financial results summarised in Table 3 and Table 4 the airport is still loss-making and not able to finance its investment costs. Therefore, it can be concluded that the aid was necessary to make investments in order to decongest the airport infrastructure and to meet the current requirements for modern airport infrastructure. Without the aid, Frankfurt Hahn airport would not have been able to meet the expected demand of airlines, passengers and freight forwarders and the level of the economic activity of the airport would have been reduced.

(233) It should also be noted that the public support was granted in a period when FFHG realised very significant investments into the infrastructure (more than EUR 220 million in 2001-2012). Of this amount, EUR 46 million were invested during the period under consideration (2009 to 2012). It follows that the investment aid covered only a fraction of the overall investment costs and was limited to the difference between the interest rate paid for the funds and the market rate under which FFHG would have received those funds on the market. Also, the investment aid under consideration was granted in the form of a 100 % state guarantee and funds at preferential terms and not in the form of a direct grant.

(234) The Commission therefore considers that the aid measure at stake had an incentive effect and that the amount of aid was limited to the minimum necessary for the aided activity to take place, and was thus proportionate.

Conclusion

(235) On the basis of the above, the Commission concludes that the investment aid granted to Frankfurt Hahn airport is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty as it complies with the compatibility conditions laid down in point 61 of the 2005 Aviation Guidelines.

6.5.5. *Compatibility of operating aid pursuant to the 2014 Aviation Guidelines*

(236) Section 5.1 of the 2014 Aviation Guidelines sets out the criteria that the Commission will apply in assessing the compatibility of operating aid with the internal market pursuant to Article 107(3)(c) of the Treaty. According to point 172 of the 2014 Aviation Guidelines, the Commission will apply those criteria to all cases concerning operating aid, including pending notifications and unlawful non-notified aid cases.

(237) According to point 137 of the 2014 Aviation Guidelines, unlawful operating aid granted before the date of the publication of the 2014 Aviation Guidelines — like the funds granted from the cash-pool insofar as they may have constituted operating aid (see recitals 185 and 186) — may be declared compatible with the internal market to the full extent of uncovered operating costs provided that the following cumulative conditions are met:

(a) *contribution to a well-defined objective of common interest*: this condition is fulfilled, inter alia, if the aid increases the mobility of citizens of the Union and connectivity of the regions or facilitates regional development [80];

[80] Points 137, 113 and 114 of the 2014 Aviation Guidelines.

(b) *need for State intervention*: the aid must be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver ([81]);

(c) *existence of incentive effect*: this condition is fulfilled if it is likely that, in the absence of operating aid, and taking into account the possible presence of investment aid and the level of traffic, the level of economic activity of the airport concerned would be significantly reduced ([82]);

(d) *proportionality of the aid amount (aid limited to the minimum necessary)*: in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place ([83]);

(e) *avoidance of undue negative effects on competition and trade* ([84]).

(a) Contribution to a well-defined objective of common interest

(238) According to Section 5.1.2(a) of the 2014 Aviation Guidelines, in order to give airports time to adjust to new market realities and to avoid any disruptions in the air traffic and connectivity of the regions, operating aid to airports will be considered to contribute to the achievement of an objective of common interest, if it: (i) increases the mobility of Union citizens and connectivity of regions by establishing access points for intra-Union flights; (ii) combats air traffic congestion at major Union hub airports; or (iii) facilitates regional development.

(239) In the light of the considerations in recitals 199 to 204, the Commission considers that the continued operation of Frankfurt-Hahn airport increased the mobility of Union citizens and connectivity of regions by establishing an access point for intra-Union flights in the Hunsrück region. In addition, the continued operation of the airport facilitated the regional development of the Hunsrück region and the creation of new jobs. Moreover, the operation and development of Frankfurt Hahn airport also served to decongest Frankfurt Main airport.

(240) The Commission therefore concludes that the measure at stake meets a clearly defined objective of common interest.

(b) Need for State intervention

(241) According to Section 5.1.2(b) of the 2014 Aviation Guidelines, in order to assess whether State aid is effective in achieving an objective of common interest, it is necessary to identify the problem to be addressed. In this respect, any State aid to an airport must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself.

(242) The Commission notes that Frankfurt Hahn airport is a regional airport with approximately 2,7 million passengers p.a. It has high fixed operating costs and under present market conditions it is not able to cover its own operating costs. Therefore, there is a need for State intervention (see point 89 of the 2014 Aviation Guidelines).

(c) Appropriateness of the aid measures

(243) According to Section 5.1.2(c) of the 2014 Aviation Guidelines, any aid measure to an airport must be an appropriate policy instrument to address the objective of common interest. The Member State must, therefore, demonstrate that no other less distortive policy instruments or aid instruments could have allowed the same objective to be reached.

([81]) Points 137 and 116 of the 2014 Aviation Guidelines.
([82]) Points 137 and 124 of the 2014 Aviation Guidelines.
([83]) Points 137 and 125 of the 2014 Aviation Guidelines.
([84]) Points 137 and 131 of the 2014 Aviation Guidelines.

(244) According to Germany, the aid measures at stake are appropriate to address the intended objective of common interest that could not have been achieved by another less distortive policy instrument.

(245) In this case the aid amount (the difference between the market rate for the funds provided by the cash-pool and the actual rate) stayed below the uncovered operating losses (see Table 4, Ebitda excluding the extraordinary revenue of the airport) actually incurred and was limited to the minimum necessary as it was granted only as a repayable loan and not as a direct grant. No other policy measure would allow the airport to continue its operation. Hence, the compensation of losses is limited to the minimum and does not provide for any profits.

(246) In view of recitals 244 and 245, the Commission considers that the measures at stake were appropriate to reach the desired objective of common interest.

(d) Existence of incentive effect

(247) According to Section 5.1.2(d) of the 2014 Aviation Guidelines, operating aid has an incentive effect if it is likely that, in the absence of operating aid, the level of economic activity of the airport would be significantly reduced. This assessment needs to take into account the presence of investment aid and the level of traffic at the airport.

(248) Without the aid the scale of the operations at Frankfurt Hahn airport would be severely impacted and reduced, leading eventually to the market exit of the airport due to uncovered operating losses.

(249) In view of the above, the Commission considers that the aid measures at stake had an incentive effect.

(e) Proportionality of the aid amount (aid limited to a minimum)

(250) According to Section 5.1.2(e) of the 2014 Aviation Guidelines, in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place.

(251) In this case, the aid amount was limited to the extent of uncovered operating cost of capital, as it compensated only the costs actually incurred.

(252) Therefore, the Commission considers that the amount of the operating aid in this case was proportionate and limited to the minimum necessary for the aided activity to take place.

(f) Avoidance of undue negative effects on competition and trade between Member States

(253) According to Section 5.1.2(f) of the 2014 Aviation Guidelines, when assessing the compatibility of operating aid account will be taken of the distortions of competition and the effects on trade.

(254) Within the standard catchment area of Frankfurt Hahn airport (1 hour travelling time by car or 100 kilometres distance) there are no commercially exploited airports. Even if this standard catchment area was to be further extended to other airports in the proximity of Frankfurt Hahn airport, as demonstrated in recitals 224 and 228, there are no undue negative effects on competition between the airports located in the proximity of Frankfurt Hahn airport (that is Frankfurt Main, Luxembourg and Saarbrücken airports).

(255) In view of the above, the Commission considers that any undue negative effects on competition and trade between Member States due to the operating aid granted in favour of FFHG are limited to the minimum.

Conclusion

(256) In light of the considerations in recitals 238 to 255, the Commission concludes that the measures are compatible with the internal market on the basis of Article 107(3)(c) of the Treaty.

7. **CONCLUSION**

(257) In the light of the considerations in recitals 99 to 124, the Commission considers that the credit line provided by the cash-pool to FFGH by *Land* Rhineland-Palatinate constitutes State aid within the meaning of Article 107(1) of the Treaty.

(258) In the light of the considerations in recitals 127 to 138, the Commission considers that the state guarantee issued by *Land* Rhineland-Palatinate securing 100 % of the outstanding ISB loans constitutes State aid within the meaning of Article 107(1) of the Treaty.

(259) In the light of the considerations in recitals 140 to 169, the Commission concludes that ISB loans numbers 1, 3 and 4 were granted at rates that can be deemed in line with market conditions. Hence, given that the cumulative criteria in Article 107(1) of the Treaty are not fulfilled, the Commission considers that these loans do not constitute State aid within the meaning of Article 107(1) of the Treaty.

(260) In light of the considerations in recitals 140 to 169 above, the Commission concludes that ISB loans numbers 2 and 5 were granted below the benchmark rate. Since the other criteria pursuant in Article 107(1) of the Treaty are also fulfilled, those loans constitute State aid.

(261) As the credit line and the funds provided by the cash-pool, the 100 % state guarantee and ISB loans numbers 2 and 5 have already been put at the disposal of FFHG, the Commission considers that Germany has not respected the prohibition of Article 108(3) of the Treaty.

(262) In the light of the considerations in recitals 199 to 232, the Commission concludes that the investment aid granted to Frankfurt Hahn airport is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty as it complies with the compatibility conditions laid down in point 61 of the 2005 Aviation Guidelines.

(263) In the light of the considerations in recitals 238 to 255, the Commission concludes that the funds provided by the cash-pool at privileged terms comply with the compatibility conditions for operating aid laid down in point 137 of the 2014 Aviation Guidelines and are compatible with the internal market on the basis of Article 107(3)(c) of the Treaty.

(264) The Commission notes that Germany accepts the adoption of the decision in the English language,

HAS ADOPTED THIS DECISION:

Article 1

The State aid, unlawfully put into effect by Germany in breach of Article 108(3) of the Treaty in favour of Flughafen Frankfurt Hahn GmbH between 2009 and 2012 by means of the grant of a 100 % guarantee on loans provided by Investitions- und Strukturbank of Rhineland-Palatinate, loans provided by Investitions- und Strukturbank of Rhineland-Palatinate on 31 August 2009 amounting to EUR 20,0 million and on 30 September 2009 amounting to EUR 6,8 million as well as allowing Flughafen Frankfurt Hahn GmbH to participate in *Land* Rhineland-Pfalz's cash-pool and draw loans up to EUR 45 million at privileged terms from that cash-pool, is compatible with the internal market.

Article 2

The loans granted by Investitions- und Strukturbank of Rhineland-Palatinate to Flughafen Frankfurt Hahn GmbH between 15 July 2007 and 30 September 2009 amounting to a total of EUR 46,8 million do not constitute State aid within the meaning of Article 107(1) of the Treaty.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1 October 2014.

For the Commission

Joaquín ALMUNIA

Vice-President