



***Regulatory Body for Railway
Transport and Brussels Airport
Operations***

Decision D-2021-06-L concerning the service level agreement concluded between Brussels Airport Company and the (future) ground handlers of fuel and oil handling supplies at Brussels Airport

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1. Subject

1. As from 1 May 2023, the supply of fuel and oil to aircraft (“into plane fuelling”) at Brussels Airport will be carried out by two ground handlers to be selected through a European tendering procedure. Currently, this service is provided under a long-term concession agreement with the Regie der Luchtwezen, which will be terminated at that time.
2. The airport operator must conclude a service level agreement with these new ground handlers.¹ This agreement will be part of the specifications that will be sent to the selected candidates as part of the tendering procedure.
3. The airport operator submitted the agreement in advance to the Regulatory Body for Railway Transport and for Brussels Airport Operations² for approval. In this respect, the Regulatory Body has the competence to verify whether the agreement respects the applicable regulations, in particular:
 - The Royal Decree of 27 May 2004 on the conversion of Brussels International Airport Company (BIAC) into a public limited company governed by private law and concerning airport facilities (hereinafter the “Privatization Decree”)³;
 - The Royal Decree of 21 June 2004 on the granting of an operating licence for Brussels Airport (hereinafter the “Licence Decree”)⁴.

2. Facts and background

4. On October 7, 2021, the Regulatory Body was notified by Brussels Airport Company (BAC) by e-mail of its request to approve a service level agreement for future fuel and oil supply ground handlers. For this purpose, the airport operator submitted a written agreement called “Service Level Agreement (SLA) and Monitoring System” and four different service standards.
5. On 11 October 2021, the Regulatory Body acknowledged receipt of the request for approval of the agreement by e-mail.
6. On 12 October 2021, the Regulatory Body received the file by registered post.

¹ This will take the form of a “Service Level Agreement” or SLA.

² Hereinafter referred to as the “Regulatory Service”.

³ *Belgian Official Gazette* 24 June 2004.

⁴ *Belgian Official Gazette* 15 July 2004.

7. On 18 October 2021, BAC provided the Regulatory Body with an oral explanation of the file submitted.
8. On 2 November 2021, BAC electronically provided the Regulatory Body with an additional service standard and the revised text of the agreement.
9. On 2 November 2021, BAC provided the Regulatory Body with Section 7 of Part III of the specifications, concerning the fees that ground handlers would have to pay to the operator.
10. On 10 November 2021, the Regulatory Body asked BAC a number of questions regarding the section on fees. A response was received on 18 November 2021.

3. Legal basis

11. Article 7, 6° of the Licence Decree stipulates that the holder must, without interruption and for the first time within twelve months of granting the licence, conclude agreements with the suppliers of ground handling services concerning the level of service, to regulate the application of the quality standards of the services linked to the operation of the airport facilities and the applicable compensation in the event of shortcomings.
12. Article 33, §2 of the Privatization Decree stipulates that the agreements relating to the level of service drawn up by the licensee, and any modification thereof, are subject to the approval of the economic regulatory authority.
13. Article 33, §3 of the Privatization Decree stipulates that the economic regulatory authority may, in specific cases, demand modifications to these agreements or refuse to approve them.
14. Article 33(4) of the Privatization Decree stipulates that agreements on the level of service are deemed to have been approved if the economic regulatory authority has not communicated its decision within a period of three months from the date of notification.
15. Article 2*bis* of the Royal Decree of 25 October 2004 establishing the Regulatory Body for Railway Transport and for Brussels Airport Operations, determining its composition and the administrative and financial charter applicable to its members⁵, stipulates that the

⁵ *Belgian Official Gazette* 5 November 2004.

Regulatory Body is the economic regulatory authority referred to in Article 33 of the Transposing Decree.

4. Analysis by the Regulatory Body

16. Below is an analysis of the procedural rules that must be respected by BAC when drawing up the agreement. A content analysis of the submitted agreement itself will be made afterwards.

4.1. Compliance with the procedures relating to the service contract

17. The applicable regulations for the procedure in connection with the service agreement are the following:

- Article 19 of the Licence Decree, which states that the holder must make sufficient and reliable information available to the suppliers of ground handling services with whom the holder must conclude agreements regarding the level of service;
- Article 33, §2 of the Privatization Decree, which states that the agreements relating to the level of service, and any modification thereof, are subject to the approval of the economic regulatory authority.

18. The Regulatory Body notes that the umbrella agreement establishing the general principles of the service provides for various forms of consultation with the selected ground handlers in order to provide them with information on its application.

19. The holder thus undertakes to organise the annual consultation referred to in Article 12 of the Royal Decree of 6 November 2010 on access to the ground handling market at Brussels Airport⁶ (hereinafter the “GHRD”) with the ground handlers, the BRUC and the Belgian Civil Aviation Authority (BCAA). In addition, there is a monthly consultation between the operator and the ground handler about the performance and results already delivered.

20. In addition, BAC undertakes in the agreement to consult or inform the ground handlers and the BRUC in advance of any changes to the SLAs or whether any additional quality and safety requirements, indicators or data are required.

21. The individual service standards are included in the BHB, which can be consulted online by ground handlers via secure access.

⁶ *Belgian Official Gazette* 17 November 2010.

22. During the selection procedure, the ground handlers who have applied for the contract can become acquainted with the contents of the overall agreement via the specifications. They also have access to the individual service standards via a temporary link to the BHB and a temporary password.
23. The Regulatory Body is of the opinion that BAC has thus sufficiently demonstrated that it has respected the information obligation provided for in Article 19 of the Licence Decree.
24. The Regulatory Body also notes that Article 33, §2 of the Privatization Decree was respected by the operating licence holder. The request for approval of the agreement was transmitted by BAC to the Regulatory Body by e-mail dated 7 October 2021 and by registered post dated 12 October 2021.

4.2. Content analysis of the service contract submitted

a) Legal requirements

25. Article 20 of the Licence Decree states the following:

“For ground handling service providers who are in similar circumstances, the provisions of the agreements regarding the level of service must be the same with respect to:

- 1° the fees for the services provided for their benefit by the holder and any refunds;*
- 2° the level of quality, availability and reliability required for the provision of services.”*

26. Article 33, §1-3 of the Privatization Decree states that:

“§1. The operating licence shall specify the services, the quality level of which shall be the subject of service level agreements concluded with ground handling service providers in application of Article 30, 6°. §2. The service level agreements drawn up in application of Article 30, 6° and any modification of these agreements shall be subject to the approval of the economic regulatory authority.

§3. The economic regulatory authority may require adjustments to these agreements or refuse to approve them if they:

- 1° constitute a breach of the provisions of this Decree or of the operating licence;*
- 2° constitute an infringement of mandatory provisions emanating from international conventions or international acts adopted pursuant to such conventions and relating to the operation of airport facilities;*
- 3° make it impossible to achieve the quality levels defined by the economic regulatory authority with reference to the practices observed at the reference airports.”*

27. Art. 16, §2 of the GHRD states the following:

“§2. The spaces available for ground handling services at the airport must be distributed among the various service providers and the various self-handling users, including new entrants, to the extent necessary for the exercise of their rights and in order to achieve effective and fair competition based on relevant, objective, transparent and non-discriminatory rules and criteria.”

b) Analysis of the legal requirements by the Regulatory Body

The non-discrimination principle of Article 20, 2° of the Licence Decree with regard to the quality, availability and reliability of the services

28. Fuel and oil supplies constitute a restricted category of ground handling under Article 5, §2 of the GHRD, which is performed on behalf of third parties.

The Regulatory Body has therefore based its examination of the respect for the non-discrimination principle from Article 20, 2° of the Licence Decree on the umbrella agreement and the service standards on quality that apply to the other restricted categories of ground handlers that carry out activities at Brussels Airport on behalf of third parties. The most recent content of these texts was approved by the Regulatory Body in decision D-2020-03-L.⁷ On this basis, there will be an examination of whether ground handlers providing fuel and oil supplies will be treated in the same way as ground handlers providing baggage handling, catering transport, freight and post handling and ramp handling.⁸

29. The Regulatory Body notes that the file submitted by the operator contains the same basic “Service Level Agreement (SLA) and Monitoring System” as the one in force for the other restricted categories of ground handling.

30. The file submitted also contains two service standards from the list of quality indicators approved by the Regulatory Body that will apply specifically to ground handling companies for the supply of fuel and oil, namely the service standard “Punctuality in context of the aircraft process” and “Fuel consumption GSE/AFE and related CO2

⁷ Decision D-2020-03-L on the service level agreement concluded by Brussels Airport Company with the (future) providers of ground handling services at Brussels Airport, restricted category, on behalf of third parties, www.regul.be.

⁸ See Art. 5, §§2 and 3 of the GHRD.

emissions per total movements (km)". One new service standard has been created regarding "Fuel spills".

31. As future ground handlers will have to meet the punctuality targets for fuel and oil supplies, the Regulatory Body asked the operator on 26 October 2021 to apply the service standard "Quality of the delay codes" to them as well. After all, information provided by BAC had shown that this category of ground handlers can indeed cause delays linked to their specific activities. The Regulatory Body also believes that two other service standards, specifically "TOBT Accuracy" and "Equipment cleared of staging area" could be equally applicable.
32. On 2 November 2021, BAC confirmed that it would apply the "Quality of the delay codes" service standard to fuel and oil supply ground handlers. To this end, it sent the amended documents to the Regulatory Body. BAC gave further justification that the "TOBT Accuracy" could only apply to ramp handlers and not to into-plane handlers. Since the latter do not use support equipment in carrying out their activities that can be temporarily left on-site, the Equipment cleared of staging area service standard is not applicable here either. The Regulatory Body agrees with this line of argument.
33. Consequently, the Regulatory Body deemed that BAC is in compliance with its legal obligations as referred to in Article 20, 2° of the Licence Decree by:
 - applying the "Service Level Agreement (SLA) and Monitoring System" umbrella agreement, which applies to all other restricted categories of ground handling, to fuel and oil supply ground handlers, and
 - applying the service standards "Punctuality in context of the aircraft process", "Fuel consumption GSE/AFE and related CO2 emissions per total movements (km)" and "Quality of the delay codes", which apply to all other restricted categories of ground handling, to the ground handlers of fuel and oil supplies.
34. The non-discrimination principle from Article 20, 2° of the Licence Decree does not extend to the "Fuel spills" service standard, as there are no other ground handlers in comparable circumstances with regard to this quality standard. It is obvious that only the ground handlers who supply fuel and oil could spill this fuel.

The non-discrimination principle from Article 20, 1° of the Licence Decree with regard to the ground handling fee and other fees

35. On 27 October 2021, the Regulatory Body asked BAC about the fee that ground handlers will have to pay for the use of the airport infrastructure, as well as the other fees that they will have to pay to the airport operator as part of their activities.

36. On 2 November 2021, BAC sent the relevant section of the tender specifications entitled “Fees” to the Regulatory Body.

37. In order to verify whether the non-discrimination principle is being respected here as well, the fees that will be charged to future suppliers of fuel and oil were compared to the fees to be paid by other ground handlers in the restricted categories. To this end, the Regulatory Body's reasoning was based on the text in question, which it examined within the framework of decision D-2017-02-LA⁹.

38. As regards the fees for:

- The availability of offices, service desks and expenses;
- Data and communications services;
- Equipment storage airside;
- Airside parking (parking stickers);
- Airport driving licences;
- Vehicle stickers and
- Landside parking for ground handling personnel

the Regulatory Body notes that, after indexation, these are the same fees as those applicable to the other restricted categories of ground handling operations.

39. Regarding ground handling personnel access badge fees, the Regulatory Body requested further explanation from BAC on 10 November 2021. Indeed, it had been noted that, compared to the fees payable by the other restricted categories of ground handlers, a clause had been added requiring an administrative fee of 100 euros to be paid in the event of a badge not being returned.

40. On 18 November 2021, BAC provided the Regulatory Body with an amendment to the section on access badges to bring it into line with the badge regulations. The text now

⁹ Decision D-2017-02-LA on the service level agreement concluded by Brussels Airport Company with the (future) providers of ground handling services at Brussels Airport, restricted category, on behalf of third parties, www.regul.be.

clarifies that the 100 euro fine will only be charged if the badge is brought to BAC more than one month after its expiry date (and not, for example, if it is merely lost):

“Expired permanent badges must be returned to the Badge Service within one month of their expiration date. Failure to return them within this predetermined period will result in the deposit of €100.00 being withheld and a fine of €100.00 being levied.”

41. According to the operator, this fine serves as an incentive for the ground handler to hand in the badges on time.
42. Since the provision on the administrative fee is taken from the airport's general badge regulations, the Regulatory Body concluded that it also applies to the other restricted categories of ground handling operations. The operator is thus in compliance with its obligation under Article 20, 1° of the Licence Decree.
43. Finally, the Regulatory Body has established that the ground handling fee that will be payable by fuel and oil supply handlers will be charged per aircraft handled. This is a departure from the other restricted ground handling categories, which pay a ground handling fee per Work Load Unit (WLU)¹⁰ or based on the revenue¹¹ they generate.
44. BAC bases the ground handling fee, in principle, on the actual volume handled by the ground handler. In the case of baggage handlers, freight and post handlers and ramp handlers, this volume takes the form of passengers or freight. For the catering transporters, it is difficult and complex to determine the volume handled. For this reason, their ground handling fee is calculated on turnover as an exception.
45. The Regulatory Body agrees with BAC that an aircraft being refuelled in the case of fuel and oil supply is to be regarded as the volume handled. Since the related ground handling fee cannot be calculated per WLU, it is by definition different from the fee paid by baggage handlers, freight and post handlers and ramp handlers. However, it is based on the same criterion, i.e. the volume handled. For this reason, the Regulatory Body is of the opinion that the non-discrimination principle from Article 20, 1° of the Licence Decree has been respected with regard to these other restricted categories of ground handling.

¹⁰ For ground handlers performing baggage handling, cargo and post handling and ramp handling.

¹¹ For ground handlers performing catering transport.

The distribution of the available spaces among the ground handlers in accordance with Article 16, §2 of the GHRD

46. Article 33, §3, 2° of the Privatization Decree stipulates that the Regulatory Body can demand modifications to the agreement with the ground handlers or can refuse to approve it if it violates “mandatory provisions emanating from international conventions or from international acts adopted pursuant to such conventions and relating to the operation of airport facilities”. This provision implies that the Regulatory Body may review the SLA in the light of the GHRD, which is the transposition of Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports.
47. Article 16, §2 of the GHRD stipulates that the spaces available for ground handling services must be distributed among the various service providers, including new entrants, to the extent necessary for the exercise of their rights and in order to achieve effective and fair competition based on relevant, objective, transparent and non-discriminatory rules and criteria.
48. On 10 November 2021, the Regulatory Body asked BAC some additional questions in light of this provision. The reason for this was the division of the available spaces for the ground handlers of fuel and oil supplies into sites that must be used and sites that “may” be made available that was made in the text on fees. It may be noted, on the one hand, that no such distinction is made for the other restricted categories of ground handling operations. On the other, with regard to the spaces that “may” be made available, there is a question as to what happens if a handler wants this space, but it is no longer available.
49. On 18 November 2021, BAC clarified by e-mail that the mandatory spaces to be used included the critical spaces necessary for the into-plane activities of the ground handlers concerned and located next to the fuelling facility. The spaces that “may” be made available by the operator refer to additional spaces that the handlers may request without any obligation. BAC indicated in its e-mail that, in such an event, it would investigate what spaces are available based on the stated needs. If space were not available at the location desired by the ground handler, BAC stated that it would work to provide alternatives for them. In this way, the operator would aim for equal treatment of ground handlers, taking into account the available capacity and the specific needs of the requesting parties.
50. The Regulatory Body agrees with the fact that the tasks of the fuel and oil handlers are so specific that, for operational reasons, they must be carried out in premises that are specially equipped for this purpose. In this sense, it is justifiable for the airport operator to oblige these handlers to use certain locations.

51. It is also likely that the operator cannot commit themselves in advance to the availability of all the premises listed in the document in question. After all, certain sites may already be occupied or may be applied for simultaneously by different ground handlers. In such an event, BAC will endeavour to reach a solution through consultation with the parties involved.

52. Therefore, based on the information provided by BAC, the Regulatory Body has no reason to assume that the requirements of Article 16, §2 of the GHRD would not be met.

5. Decision

Whereas BAC has complied with the procedural requirements of Article 19 of the Licence Decree and Article 33, §2 of the Privatization Decree in the service agreement with future fuel and oil supply handlers;

Whereas, in this agreement, BAC has complied with the non-discrimination principle from Article 20 of the Licence Decree;

Whereas, in this agreement, Article 16, §2 of the Ground Handling RD was respected;

the decision is as follows:

A. The Regulatory Body approves, pursuant to Article 33, §2 of the Privatization Decree, the agreement on the level of service concluded with future ground handlers for fuel and oil supply, with respect to the “Service Level Agreement (SLA) and Monitoring System” umbrella text in the version sent to it by e-mail on 2 November 2021 and the four quality standards listed below:

Nr	Key Performance Indicator (description)	Critical Success Factor	Target	Service Standard
1	Punctuality in context of the aircraft process	Smoothness/punctuality	100%	98% of delay codes for which handler is responsible
2	Quality of delay codes	Smoothness/ punctuality	100%	95% approved in the apoc daily meeting
3	Fuel consumption AFE and related CO2 emissions	Resource allocation/readiness	2% reduction rate/year	2% reduction rate/year/total movements
4	Fuel spills	Smoothness/environment	0	Average of last 3y – 10%/10.000 movements

- B. The Regulatory Body approves, pursuant to Article 33, §2 of the Privatization Decree, section 7 of the specifications, entitled “Fees”, including the adjustments to section 7.7 of this text, entitled “Fees for access badges and traffic regulations”, which were sent to it by e-mail on 18 November 2021.**

6. Right of appeal

Pursuant to Article 2 of the Act of 9 July 2004 containing various provisions, the parties concerned have the right to appeal against this decision to the Market Court. The appeal must be lodged at the latest 30 days after the notification of this decision, after which this right expires.

The appeal has no suspensive effect, except with regard to decisions by which the Regulatory Body has imposed an administrative fine on the holder of an operating licence by application of Article 49 of the Royal Decree of 27 May 2004 concerning the conversion of Brussels International Airport (BIAC) into a public limited company governed by private law and concerning the airport facilities, or where the Market Court orders the suspension of the contested decision.

The Judicial Code is applicable as far as the procedure is concerned, whereby the Market Court rules as in summary proceedings.

Issued in Brussels, 25 November 2021,

For the Regulatory Body for Railway Transport and for Brussels Airport Operations,

Serge Drugmand

Director