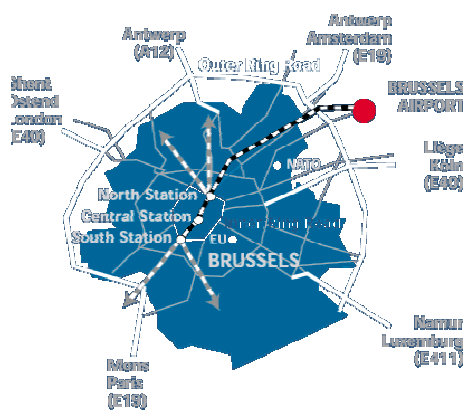


The Brussels Airport EIA Case

Renewal of a Permit

The Airport – Situation



The Airport – Overview



The Airport – Presentation

- ▶ Flemish Region
- ▶ Close to Brussels Capital Region (11 km of *Grand Place*)
- ▶ Opened in 1948 – renewed and extended several times
- ▶ Now nearly 20 million passengers a year
- ▶ Before 1 May 1999: building (planning) permits for building activities + operational permit for some installations

Different installations subject to Environmental & Planning Permit



Different installations subject to Environmental & Planning Permit



Different installations subject to Environmental & Planning Permit



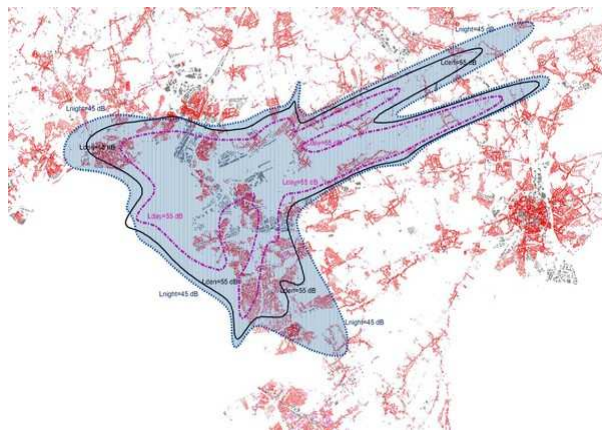
Environmental Permit

- ▶ Amendment of Flemish Environmental Permit Regulation (VLAREM I) – Ex. Order. Flemish Government of 15 February 1999
 - Operation of an Airport with Runways + 800 meters *as such* becomes subject to Environmental Permit with effect 1 May 1999
 - Existing Facility – 6 Months to Apply – Simplified Procedure (no EIA/public participation) – Validity: max 5 years
 - Aim= mitigating noise produced by the airport
 - Chapter 5.57 VLAREM II: noise contours, limitation of incoming and departing aircraft possible in Environmental Permit

Environmental Permit 1.02.2000

- ▶ Provincial Government of Flemish Brabant
- ▶ Night noise levels
- ▶ Max. 25.000 night flights a year
- ▶ Noise contours (yearly update)
- ▶ 5 year validity
- ▶ Expires 31.12.2005

Noise contours



Application of new permit

- ▶ 5 January 2004
- ▶ Max 20 years (renewable)
- ▶ No EIA
- ▶ Public participation
- ▶ Provincial government: issues permit 8 July 2004
- ▶ Appeal with the Flemish Environmental Minister: issues permit on 30 December 2004

Appeal with Council of State

- ▶ Brussels Capital Region
- ▶ Some municipalities
- ▶ Some local groups
- ▶ Some individuals
 - Main argument: Permit is illegal, because an EIA was necessary
- ▶ Judgment nr. 195.230 of 14 July 2009
 - No EIA necessary under Flemish regulation – “construction or thorough change” of Airport or “displacing or extending the runways”

Reference for Preliminary Ruling

- ▶ Conformity with EIA Directive ?
- ▶ Annex I, 7 (a) – Construction of ... airports with a basic runway length of 2 100 meters
 - EIA necessary for “operation “ of airport ?
 - EIA necessary for a renewal of environmental permit without change or extension ?
 - Make it difference: existence of previous EIA’s for some installations; airport already in operation in time Directive became operational ?
- ▶ Annex II, 13 – Changes or extensions of project Annex I which may have significant adverse effects on the environment

ECJ, 17 March 2011, C-275/09, *Brussels Hoofdstedelijk Gewest and Others*

- ▶ Renewal of an existing permit to operate an airport is not a “project” nor a “construction” in the absence of any works or interventions involving alterations to the physical aspect of the site
- ▶ Taking account of
 - National legislation
 - Cumulative effect of number of works or interventions since entry into force of Directive
- ▶ “Is permit part of a consent procedure carried out in several stages... with the final aim to enable activities – which constitute a project.. Annex II, pt. 13 jo. Annex I, pt. 7” ? – National judge shall ensure that an EIA is carried out before permit is granted

Council of State, nr. 222.678, 28 February 2013

- ▶ No EIA was needed
 - No change in the material situation of existing airport – Only permit to continue the operation
 - No part of consent procedure carried out in several stages...
 - Opposite opinion of Court Auditor
- ▶ A well known EU Environmental Lawyer told me:
 - *“I use Brussels Airport for more than 30 years, they are (re-) constructing there all the time”*

Opposite Opinion Auditor

- ▶ Various planning permits haven been delivered contributing to alterations of the physical aspect of the airport site
 - New Control Tower (2001)
 - Various Roads (1999–2006)
 - New Terminal (2001–2002)
 - Cargo Handling + Parking (2009–2010)
 - Adaptation of Runways (2000–2007)
 - Part of “Masterplan Zaventem 2000” (dd. 1985– EIA 1990)

