



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.04.1996
SEC(96) 625 final

94/0325 (SYN)

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

on

**the common position adopted by the Council
on 25 March 1996 concerning the proposal for
a Council Directive on access to the groundhandling
market at Community airports**

I. BACKGROUND

On 13 December 1994, the Commission adopted a proposal for a Council Directive on access to the groundhandling market at Community airports.

This proposal was sent to the Council and Parliament on 10 April 1995.

The Economic and Social Committee delivered its opinion on 14 September 1995.

The Committee of the Regions gave its opinion on this proposal on 17 January 1996.

After receiving the opinion of Parliament on 16 November 1995, the Commission sent the Council a proposal modified the 12 March 1996 [COM(96) 75 final 94/0325 (SYN)].

The Council adopted a common position on 25 March 1996.

II. SUBJECT OF THE COMMISSION PROPOSAL

The proposed Directive aims to open up access to the groundhandling market while taking account of the specific characteristics of the industry, the particular problems experienced by airports as regards capacity, safety and security and the implications, in particular social implications, of open access to this market.

III. COMMISSION COMMENTS ON THE COMMON POSITION

A. General comment

Overall, the Council's common position reflects the Commission's aim of organizing genuine access to the groundhandling market and thus giving carriers a real choice of services suited to their needs, while at the same time taking account of the particular problems facing airports and the interests of workers in this sector. It includes a number of amendments proposed by Parliament and accepted by the Commission. However, the common position omits a number of Parliament amendments which were supported by the Commission on first reading. Furthermore, it deprives the Commission of its power to check whether there is a genuine separation of the activities of service suppliers and to ensure that there is reciprocity.

B. European Parliament amendments

(1) Amendments accepted by the Commission and included in the common position

Amendment 1 (Recital 1)

This amendment refers to economic and social progress.

Amendment 5 (Recital 8b)

The Council has accepted the amendment as reformulated by the Commission and referring to the Parliament Resolution of 14 February 1995 on European civil aviation.

Amendment 11(Recital 19)

In a new Recital, the Commission and Council have extended the requirement for separate accounts so that it applies to all suppliers wishing to offer groundhandling services to third parties at airports.

Amendment 12 (Recital 21a)

The idea of ensuring an adequate level of social protection has been included, as an option for the Member State, in Recital 24 of the common position.

Amendment 14 (Recital 22)

This amendment refers to the notion of suppliers or users authorized by agreement to provide groundhandling services or to self-handle.

Moreover, the common position now also mentions the fact that a Member State can introduce the charging of fees for access to groundhandling facilities.

Amendment 18 (Article 4)

The common position has taken up the idea of separate accounts for all suppliers of groundhandling services to third parties and of an independent examiner appointed by the Member State.

Amendment 22 (Article 7, paragraph 2)

This amendment makes it impossible for a Member State to restrict self-handling to fewer than two airport users with regard to the categories of service listed in this paragraph. However, the common position has left a greater margin of manoeuvre for the smallest airports (fewer than one million passengers or 25 000 tonnes of freight annually), which may ban self-handling or restrict it to a single airport user.

Amendment 23 (Article 8)

The common position no longer limits the right of the Member State to reserve access to the centralized infrastructures for the technical management only.

Amendment 24 (Article 9)

This amendment allows the Member State to ban self-handling or to restrict it to a single airport user for the categories of groundhandling services referred to in this paragraph. It also refers to the notion of available space or capacity.

Moreover, the proper functioning of the airport is the criterion for drawing up the rules of conduct provided for in Article 15 of the common position.

Amendment 27 (Article 12)

In Article 14 of the common position, concerning approval, the Commission and Council have taken up the idea suggested in paragraph 2 of the amendment that the grounds for withholding or withdrawing approval must be communicated to the managing body of the airport.

Amendment 28 (Article 13, paragraph 1)

In the common position, the reference to national legislation on safety, security and conditions of employment has been included in Articles 17, 18 and 19.

Amendment 29 (Article 14, paragraph 3)

The principle that a Member State may introduce charges for access to groundhandling facilities has been recognized in Article 16 of the common position. Furthermore, in an official statement annexed to the common position, the Commission has made it clear that these fees could be understood as a way of commercializing the lucrative potential offered by the airport.

Amendment 33 (Article 19)

In the spirit of amendment 33, Article 23 of the common position lays down that Member States must bring into force the national laws, regulations and administrative provisions necessary to comply with the Directive not later than one year from the date of its publication in the Official Journal of the European Communities.

Amendment 35 (Article 20a)

The reference to protection of the rights of workers, which the Commission included in Article 20a of its amended proposal, appears in Article 18 of the common position.

(2) Amendments accepted by the Commission and not included in the common position

Amendment 16 (Article 1)

For the sake of economy, the order of the first two Articles has been reversed.

Article 2 of the common position does not incorporate Parliament's proposed definition of the airport managing body: instead it retains the initial definition but with a reference to the wide range of activities which may be undertaken by an airport managing body.

Amendment 17 (Article 3, paragraph 1)

This amendment concerns situations in which an airport or airport system is managed by several separate bodies. The common position has retained the Commission's original wording.

Amendment 20 (Article 5)

In paragraph 1 of this Article, the common position has not incorporated the suggested wording accepted by the Commission but has retained the original formulation. It has also merged the text into a single paragraph, given the purely advisory role of the Committee.

Amendment 21 (Article 6, paragraph 2)

The two categories of service proposed in this amendment, mainly aircraft cleaning and the airside transportation of passengers, baggage and freight, were not included in the drafting of the common position. It should be noted, however, that point 10 of the Annex excludes from groundhandling services transportation to and from the aircraft.

Amendment 26 (Article 11)

The wording proposed by the Commission and referring to consultation on the fees charged by the airport for access to groundhandling facilities has not been included in Article 13 of the common position - which provides, instead, for the possible introduction by the Member State of a commercial type of fee-charging system.

(3) New features of the common position

Article 1

Articles 1 and 2 have been arranged in reverse order to make the text more comprehensible. The common position provides for the gradual opening up of the market between 1998 and 2001. In the medium term, however, the threshold of two million passengers or 50 000 tonnes of freight is maintained, as the Commission wished.

Furthermore, the common position introduces a special clause for airports which reach the freight traffic threshold without reaching the corresponding passenger movement threshold. Under this clause, access to services reserved exclusively for passengers can be restricted.

Article 2

The definition of self-handling has been widened to include undertakings belonging to one and the same group. The common position hinges on the concept of majority holding, thus reflecting the Commission's wish not to extend the concept of self-handling too far and thus to prevent services provided to third parties being disguised and self-handling, which would enable suppliers to avoid compliance with the Directive.

Article 4

The common position has abandoned the idea of separate management for groundhandling activities and other types of activity and retains, instead, a simple separation of the accounts. Moreover, in accordance with the wishes of Parliament, it makes this separation of accounts obligatory for all suppliers of groundhandling services to third parties.

Finally, it introduces a provision prohibiting the airport managing body from using revenue from airport charges to subsidize any groundhandling activities.

The common position does not use the wording proposed by the Commission for the final paragraph, concerning the powers of the examiner. The Commission regrets that this wording has been removed, as it would appear not only to deprive the Commission of any control but also makes no provision for action to be taken in the event of non-compliance with the obligations in question.

Article 6

The common position makes it possible for the Member State to require that suppliers of groundhandling services be established within the Community. Thanks to this provision it will be possible, in particular, to check whether the supplier of services has complied with the relevant national legislation and whether the separation of accounts required under Article 4 is being implemented in practice.

This same Article, moreover, introduces a special provision concerning duopolies. These are authorized until 1 January 2001 with a possible extension until 1 January 2003, though this extension may be granted only under special circumstances and with the agreement of the Commission assisted by a Committee composed of representatives of the Member States. This gradual opening up of the groundhandling market is in harmony with the adaptation to different circumstances, as the Commission desires.

Article 9

The principle that the Commission should examine the exemptions granted by the Member States remains. Similarly, the basis on which exemptions are renewed and the principle governing the duration of those granted under paragraph 1(a), (b) and (d) remain unaltered. The exemptions granted under paragraph 1(b), namely those enabling a monopoly to be preserved, may not last more than two years and no further exemption may be granted within this framework for more than one additional period of two years.

Article 10

In this new Article, the common position provides for the setting up of an Advisory Committee made up of representatives of the Member States, the role of which is to advise the Commission on the granting of exemptions and, more generally, on any matters concerning the application of the Directive.

The Commission supports the idea of a consultative committee assisting the Commission concerning problems in view of the application of the Directive. The Commission believes, however, that the text of the consultation procedure should be established in accordance with article 2 of the Council decision 87/373/CE of the 13.7.1987 (OJ n° L 197 of the 18.7.87, page 33).

Article 11

In its common position, the Council has somewhat altered the selection procedure for suppliers of services. Where the number of operators is limited and the airport managing body supplies groundhandling services, the selection is carried out, on the basis of an invitation to tender, by an independent authority and not by the Airport Users' Committee. The latter has only an advisory role in the selection procedure.

Article 12

In this new Article, the common position allows for particularly difficult situations obtaining at certain small airports in the Community and, in the context of the selection of suppliers of groundhandling services, allows Member States to require a would-be supplier of services at a particular airport to provide services at other airports located on islands in the same geographical region.

Articles 14 and 15

The approval criteria (Article 14) and the rules of conduct which a Member State may draw up (Article 15) must be applied in a non-discriminatory manner, must relate to the intended objective and must not, in practice, reduce market access to a level below that provided in the Directive. Compliance with these principles is in line with the Commission's wish to avoid restricting the opening-up of the market.

Article 20

In its common position, the Council has removed the Commission's right to monitor the decisions taken with regard to reciprocity. The Member State alone will decide what action to take in dealing with a non-Community country which treats its suppliers of services in a discriminatory manner. The Commission, which is simply to be informed, regrets that it is not to be more closely involved in the decision-making process with a view, in particular, to coordinating Member States' responses to such third countries.

Article 22

The Commission's report on the application of the Directive, referred to in Article 22 of the common position, must be drawn up by the year 2003. Since the measures referred to in Article 1 are to be introduced gradually, this deadline allows a more reasonable period of time within which to observe the initial effects of opening up the market and thus to draw up a report.

IV. CONCLUSION

The Commission supports the common position since it reflects the desire for a genuine but gradual opening up of the groundhandling market. Moreover, the common position includes many of the amendments proposed by Parliament, particularly as regards the transparency of accounts and the protection of the rights of workers in this sector.

Nevertheless, the Commission maintains its position regarding its ability to check whether there is a real separation between the activities of the suppliers and as regards the decision-making and coordinating role it wishes to play in relations with non-Community countries.