



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.08.1996

COM(96) 435 final

94/0325 (SYN)

Re-examined proposal for a

COUNCIL DIRECTIVE

on the groundhandling market at Community airports

(presented by the Commission pursuant to Article 189 c (d)
of the EC Treaty)

Explanatory memorandum

At its plenary session of 16 July 1996 the European Parliament approved at second reading the common position formally adopted by the Council on 28 March 1996 relating to access to the groundhandling market at Community airports.

The European Parliament adopted a number of amendments to the proposed text, relating mainly to the guaranteeing of employees' rights, the latter's participation in the procedure for selecting suppliers of services, and protection of the rights of suppliers already providing groundhandling services and of carriers with significant traffic at an airport.

The Commission has accepted the amendment to Article 9(1)(a), which makes the text clearer by providing for the possibility of requesting and granting exemptions for one or more categories of runway service for which the number of suppliers may be restricted in all or part of the airport.

The Commission has also accepted in part the amendments relating to:

- Article 5(1), already accepted at first reading, which requires Member States to take the necessary measures to set up the users' committee.
- Article 14(1), imposing the approval procedure.

Lastly, the Commission has agreed to take on board, in a different formulation, the principles set out by Parliament regarding:

- Article 14(1), second paragraph, on the reference criteria for granting approval;
- Article 22, second paragraph, concerning the contents of the Commission report and proposals for revising certain aspects of the Directive.

The Commission is unable to accept the amendments concerning:

- Article 2(f), because the definition of 'self-handling' reflects a balanced approach arrived at in agreement with the Member States to prevent self-handling being misused to provide services to third parties in disguised form and thus sidestep the selection procedure and the obligation of keeping separate accounts. At the same time carriers are left sufficient freedom of action within a given group.
- Article 9(6a) (new), because it runs counter to the purpose of the Directive, which is the eventual removal of all monopolies.

- Article 11(1a) (new), which would delay the actual implementation of the Directive since the maintenance of existing contracts concerns runway activities where the number of suppliers may be restricted.
- Article 11(3a) (new), (i) because unlike airports, which enjoy owners' rights and ensure neutrality of service *vis-à-vis* all users, carriers must be considered independent suppliers of services where these are performed for third parties, (ii) because to give advantages to the established carrier would constitute discrimination *vis-à-vis* independent suppliers and other carriers and (iii) because the Commission cannot reinforce the rights of an undertaking which already enjoys a dominant market position.
- Article 18, because references to the protection of employees' rights were already included in the common position following Parliament's amendments at first reading and because references to training and certification might shut off access to the market and thus impede the liberalization of the sector.
- Article 22, second paragraph, regarding the date of the Commission's report, because the proposed date would not allow enough time for a proper study of the consequences of the liberalization of services to third parties as of 1 January 1999.

Re-examined proposal for a
Council Directive
on the groundhandling market at Community airports

Article 5
Airport Users' Committee

Twelve months at the latest following the entry into force of this Directive, Member States shall introduce the measures necessary to set up, for each of the airports concerned, a committee of representatives of airport users or organizations representing airport users, on the understanding that all airport users shall have the right to be on this committee or, if they so wish, to be represented on it by an organization appointed to that effect.

1. Twelve months at the latest following the entry into force of this Directive, Member States shall ensure that, for each of the airports concerned, a committee of representatives of airport users or organizations representing airport users is set up.

2. All users shall have the right to be on the committee or, if they so wish, to be represented on it by an organization appointed to that effect.

Article 9
Exemptions

1. Where at an airport specific constraints of available space or capacity, arising in particular from congestion and area utilization rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Directive, the Member State in question may decide:

(a) to limit the number of suppliers of all categories of groundhandling services other than those referred to in Article 6(2); in this case the provisions of Article 6(2) and (3) shall apply.

1. Where at an airport specific constraints of available space or capacity, arising in particular from congestion and area utilization rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Directive, the Member State in question may decide:

(a) to limit the number of suppliers of **one or more** categories of groundhandling services other than those referred to in Article 6(2) **in all or part of the airport**; in this case the provisions of Article 6(2) and (3) shall apply;

(b) unchanged;
(c) unchanged;
(d) unchanged.

Article 14 Approval

1. Member States may make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport

The criteria for such approval must relate to the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and the relevant social legislation.

1. Member States shall make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport

The criteria for such approval must relate to **a sound financial situation and sufficient insurance cover**, the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and **compliance with the relevant social legislation.**

Article 22 Information report and revision

Member States shall communicate to the Commission the information required by it to draw up a report on the application of this Directive.

The report, accompanied by proposals for revision of the Directive, shall be drawn up in the two years following the dates referred to in Article 1.

Member States shall communicate to the Commission the information required by it to draw up a report on the application of this Directive.

The report, **accompanied by any proposals for revision of the Directive, shall be drawn up by 31 December 2001 at the latest and may include a detailed description of the general and operational safety rules in force at airports and of the Member States' regulations concerning the social provisions relating to employees of undertakings engaging in groundhandling activities at the airports covered by this Directive.**

(Amendment 10)
Article 2(f)

(f) "self-handling" means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall not be deemed to be third parties where:

- one holds a majority holding in the other; or
- a single body has a majority holding in each;

(f) "self-handling" means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services;

- 1 OJ C 323, 4.12.1995, p. 94.
- 2 OJ C 142, 8.6.1995, p. 7.
- 3 OJ C 124, 27.4.1996, p. 19.

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(Amendment 39)

Article 5

Twelve months at the latest following the entry into force of this Directive, Member States shall introduce the measures necessary to set up, for each of the airports concerned, a committee of representatives of airport users or organizations representing airport users, on the understanding that all airport users shall have the right to be on this committee or, if they so wish, to be represented on it by an organization appointed to that effect.

1. Twelve months at the latest following the entry into force of this Directive, Member States shall ensure that, for each of the airports concerned, a committee of representatives of airport users or organizations representing airport users is set up.

2. All users shall have the right to be on the committee or, if they so wish, to be represented on it by an organization appointed to that effect. Airport workers and representative organizations of passengers using the airport, where such organizations exist, shall also have the right to participate in this committee. The decision-making procedure of the committee may take account of the volume of activity of the various users of the airport in question, while still ensuring that all interests are represented.

The chairperson of the committee shall be appointed by the Member State and shall be independent of both the management body of the airport and the users.

3. The Users' Committee shall assist the managing body of the airport in the selection of suppliers for groundhandling services, and shall have regular consultations with that body in order to help ensure that airport services and facilities are used efficiently.

(Amendment 12)
Article 9(6a) (new)

6a. These time limits and the provisions of paragraph 2(b) shall not apply if the managing body of the airport can show that the extension and alteration of the airport that would otherwise be necessary is not possible for relevant, objective and transparent reasons.

(Amendment 13)
Article 11(1a) (new)

1a. Implementation of the Directive shall not affect the existing selection decisions until expiry of the contracts, provided that sufficient competition conforming to the Directive exists in the airport and that the expiry date of the contracts is reasonably close. This provision shall apply in particular to contracts concluded prior to 31 December 1994. Member States shall notify the Commission of such contracts. After their expiry, selection shall take place in conformity with this article.

(Amendment 3)
Article 11(3a) (new)

3a. Where the number of groundhandling service suppliers is limited in accordance with the provisions of Article 6(2) and Article 9(1)(b), an airline which accounts for more than 25% of traffic at the airport or, in the case of island airports, more than 25% of the scheduled traffic at the airport, shall be entitled either to enter the market at the airport in question, or to continue to provide groundhandling services for third parties at this airport, without being subject to the selection procedure provided for in paragraph 1 of this article.

1. Member States may make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport.

The criteria for such approval must relate to the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and the relevant social legislation.

1. Member States shall make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport.

The criteria for such approval must relate to appropriate organization, sound economic and financial situation, sufficient insurance cover and personnel qualifications of the supplier of groundhandling services and to the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and the respect of relevant social legislation.

(Amendment 35)
Article 18

Social and environmental protection

Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States may take the necessary measures to ensure protection of the rights of workers and respect for the environment.

Social protection

The provisions of this Directive shall in no way affect the rights and obligations of Member States to ensure protection of workers' rights including the fields of safety standards, technical competence, training and certification and membership of and representation by a trade union.

(Amendment 36)

Article 22, 2nd paragraph

The report, accompanied by proposals for revision of the Directive, shall be drawn up in the two years following the dates referred to in Article 1.

The report shall be drawn up not later than 31 December 1999 and shall include a detailed description of the general and operational safety rules in force at airports and the Member States' laws and regulations for the approval of groundhandling activities and for training and social provisions relating to employees of such undertakings. The report shall be accompanied by proposals for revision of the Directive, including the need for Community rules in these areas, subject to the principle of subsidiarity.

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