



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

COUNCIL DIRECTIVE

**ON ACCESS TO THE GROUNDHANDLING MARKET
AT COMMUNITY AIRPORTS**

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

**AMENDED PROPOSAL FOR A
COUNCIL DIRECTIVE
ON ACCESS TO THE Groundhandling MARKET
AT COMMUNITY AIRPORTS**

Explanatory memorandum

During its plenary session on 16 November 1995 the European Parliament approved the proposal for a Council Directive presented by the Commission on access to the groundhandling market at Community airports. It also adopted a certain number of amendments to the text put forward.

The Commission accepted the amendments concerning recitals 1 and 21a since they bolster the social aspects of the directive, and recital 22 since it enables better account to be taken of the security problems that are inherent in airports. It also accepted the amendment concerning Article 7.2 which permits better understanding of the scope for limitation concerning the number of users who can practice air-side self handling.

Likewise it adopts the amendment concerning Article 19 in order better to adapt the date of entry into force of the provisions of the directive at national level to the progress made in the work before the Council.

The Commission also partially accepted the amendments concerning:

- Article 5.1 which clarifies the process for setting up the users' committee.
- Article 6.2 which includes aircraft cleaning, and air-side passenger, baggage and freight transport services among the categories whose number may be subject to limits.
- Article 8 in that it extends to the operational management of the centralized infrastructures the right of a Member State to confer the management of those structures solely on the airport or on another entity.
- Article 9.1d which enables air side self handling to be banned under the exemptions, and Article 9.2a which improves the text.
- Article 12.2 which allows the management body to be informed of the decision taken by the Member State in respect of approval
- Article 13.1 c(c) c(d) which strengthens the obligation to obey the national safety and labour-law rules.

Finally, the Commission accepted to set out Parliament's ideas as regards the following in another paper:

- Recitals 2 and 8b, and Articles 20a and 20b since these references strengthen the obligation to comply with existing social regulations at both national and Community level.
- Recital 19 and Article 4.2 which extend the principle of transparency to all involved in providing assistance to third parties.
- Articles 1.6, 3, 4.3, 11 and 14.3 which they help to made the wording easier to understand.

However, the Commission was unable to accept the amendments concerning:

- Recitals 2a, 8a and 21b since their content does not meet the aim of the directive.
- Articles 4a and 10.1a since these provisions are already covered by the directive on acquired rights.
- Recitals 9, 10, 11, 13 and 16 which conflict with the aim of opening up the market
- Articles 10, 15a, 15b, 17 and 21a which restrict access to the market in such a way that they form a barrier to the liberalization of the sector.
- Recital 23 which would deny the Commission any rights as regards reciprocity with non-Community carriers and service providers.

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Whereas the Community has gradually introduced a common air transport policy with the aim of completing the Internal Market in accordance with Article 7a of the Treaty,

Whereas the Internal Market comprises an area free of internal frontiers in which the free movement of goods, persons, services and capital is assured,

Whereas in its Communication of June 1994 "The Way Forward for Civil Aviation in Europe" the Commission indicated its intention to take an initiative before the end of 1994 in order to achieve market access for groundhandling services at Community airports and whereas the Council in its Resolution of 24 October 1994 has confirmed the need to take account of the imperatives linked to the situation of airports when effecting the opening of the market,

Whereas the same transparency requirements must apply to users and in particular users who have attained a significant volume of traffic at an airport and wish to provide groundhandling services to third parties,

Whereas the Community is gradually introducing a common air transport policy with the aim of completing the internal market in accordance with Article 7a of the Treaty in order to promote enduring economic and social progress;

Whereas the internal market comprises an area free of internal frontiers in which the free movement of goods, persons, services and capitals must be assured; whereas convergence towards social progress should be ensured;

Whereas in its communication of 1 June 1994 "The Way Forward for Civil Aviation in Europe" the Commission indicated its intention to take an initiative before the end of 1994 in order to achieve market access for groundhandling services at Community airports, and whereas the Council, in its Resolution of 24 October 1994, has confirmed the need to take account of the imperatives linked to the situation of airports when effecting that opening of the market;

Whereas in its Resolution of 14 February 1995 on civil aviation in Europe, Parliament restated its concern to take account of the impact of access to the groundhandling market on employment and safety considerations at Community airports;

Whereas the same transparency requirements must apply to users who have attained a significant volume of traffic at an airport and wish to provide groundhandling services to third parties, and to providers of services;

Whereas for the same reasons Member States must retain the power to lay down and apply the necessary rules for the proper functioning of the airport infrastructure; whereas these rules must, however, comply with the principles of objectivity, transparency and non-discrimination,

Whereas access to airport installations must be guaranteed to suppliers wishing to provide groundhandling services and to carriers wishing to self-handle to the extent necessary for them to exercise their rights,

Whereas, for the same reasons, Member States must retain the power to lay down and apply the necessary rules for the proper functioning of the airport infrastructures; whereas these rules must, however, comply with the principles of objectivity, transparency and non-discrimination

Whereas, in order to avoid the risk of social dumping Member States should guarantee an adequate level of social protection for the staff of those companies providing groundhandling services;

Whereas access to airport installations must be guaranteed to those suppliers who are authorized to provide groundhandling services and to those carriers who are authorized self-handle to the extent needed for them to exercise their rights;

Article 1

Definitions

For the purposes of this Directive:

6) "managing body of the airport" means body which by national law or regulation has as its objective the management of the airport infrastructures, the coordination and control of the activities of the different operators present in the airport or airport system concerned;

For the purposes of this directive:

6) "managing body of the airport" means public or private legal body, which by national law or regulation is responsible for managing one or several airports and for coordinating and monitoring the activities of the various operators at that or those airports.

Article 3

Managing body of the airport

1. Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of these shall be considered part of the managing body for the purposes of this Directive.

1. Where, at an airport or in an airport system, several bodies are responsible for managing and performing airport activities or services, each of these shall comply with this directive.

Article 4

Unbundling

1. Where the managing body of an airport provides groundhandling services it must unbundle the management and accounts of its groundhandling activities from its other activities.
2. Similarly, a user who in the previous year has carried in excess of 25% of the freight or passengers recorded at an airport may not provide groundhandling services to third parties at that airport without unbundling the management and accounts of the transport activity from the supply of groundhandling services to third parties.
3. An independent examiner must check that the unbundling is carried out as required under points 1 and 2 of this Article.

He shall in particular check the absence of any financial flow from other activities to those of groundhandling.

He shall have at all times access to the accounts of the undertaking. He shall report to the Commission at least once a year and each time he ascertains a failure to maintain the mandatory unbundling.

1. Where the managing body of an airport, a user or provider of services provide groundhandling services, they must in accordance with the commercial practices applying, unbundle the management and accounts from their other activities.

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2. an independent examiner appointed by the Member State, must check that the unbundling is carried out as required under paragraph 1.

He shall, in particular, check the absence of any financial flow from other activities to those of groundhandling.

He shall have at all times access to the accounts of the undertaking. He shall report to the Commission at least once a year and each time he ascertains a failure to maintain the mandatory unbundling.

Article 5

The Users Committee

1. Twelve months at the latest following the entry into force of this Directive, Member States shall introduce the measures necessary to set up a committee of users' representatives for each of the airports referred to in the second subparagraph of Article 2 (1).
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Article 6

Groundhandling for third parties

2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services:
 - baggage handling
 - ramp handling
 - fuelling
 - freight and mail handling.
2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services:
 - baggage handling
 - air side operations
 - fuelling
 - freight and mail handling
 - aircraft cleaning
 - the carriage of passengers, baggage and freight between the aircraft and any other point at the airport.

Unchanged

Unchanged

Article 7

Self handling

2.

Member States may reserve the right to self-handle to a limited number of users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

2.

Member States may reserve the right to self-handle to at least two users for each category of service, provided that they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

Article 8

Centralized infrastructures

1. Without prejudice to the application of Articles 6 and 7, Member States may reserve the technical management of the centralized baggage sorting, de-icing, water purification and fuel distribution infrastructures either for the managing body of the airport or for another body. They may make it obligatory for suppliers of groundhandling services and self-handling users to use these infrastructures.

1. Without prejudice to the application of Articles 6 and 7, Member States may reserve the technical and operational management of the centralized package sorting, deicing, water purification, fuel distribution infrastructures either for the managing body of the airport or for another body. They may make it obligatory for suppliers of groundhandling services and self-handling users to use these infrastructures.

Article 9

Exemptions

1. Where specific constraints of available space or capacity so warrant, the Member State in question may decide

- (a) stet
- (b) stet
- (c) stet

1. Where specific constraints of available space or capacity so warrant, the Member State in question may decide

- (a) stet
- (b) stet
- (c) stet

(d) to prohibit self handling for the categories of groundhandling service referred to in Article 7.2 or to restrict these to a single user.

2. All exemptions decided by virtue of point 1 must

(a) specify the category or categories of services for which the exemption is granted and the technical constraints which justify it;

(b) stet

2. All exemptions decided by virtue of point 1 must

(a) specify the category or categories of service for which the exemption is granted and the specific space or available-capacity constraints which justify it.

(b) stet

Article 11

Consultations

Member States shall take the necessary measures to organize a compulsory consultation procedure between the managing body of the airport, the Users' Committee and the undertakings providing services. This consultation shall cover, *inter alia*, the price of those services which have been exempted by the Commission pursuant to Article 9 of this Directive as well as the organization of the provision of these services. Such consultation shall be organised at least once every year.

Member States shall take the necessary measures to organize a compulsory consultation procedure between the managing body of the airport and the Users' Committee and the undertakings providing services. That consultation shall cover, *inter alia*, the price of those service which have been exempted by the Commission pursuant to Article 9 as well as the organization of the provision of the services, where it is covered by the payment exacted by the airport for access to the airport installations in order to perform groundhandling operations. Such consultation shall be organized at least once every year.

Article 12

Approval

2. Approval may be withheld only if the supplier does not meet, for reasons of his doing, the criteria referred to in paragraph 1.

The grounds for withholding approval must be communicated to the supplier concerned.

2. Approval may be withheld only if, for reasons of his doing, the supplier does not meet the criteria referred to in paragraph 1.

The grounds for withholding approval must be communicated to the supplier concerned and to the airport management body.

Article 13

Rules of conduct

1. A Member State may withdraw its approval of a supplier or prohibit a user from self-handling if that supplier or user fails to comply with the rules imposed upon him to ensure the proper functioning of the airport.

1. stet

The rules must embody the following principles:

- (a) they must be applied in a non-discriminatory manner to the various suppliers and users;
- (b) they must relate to the intended objective;
- (c) they may not in practice reduce market access or the freedom to self-handle to a lesser degree than that provided for in this Directive.

(a) stet

(b) stet

(c) stet

(d) The security checks carried out on the staff of a service provider shall comply with the national regulations and be approved during the selection procedure;

(e) The staff employment conditions shall comply with the regulations in force.

2. stet

2. stet

Article 14

Access to installations

3. Access to airport installations for suppliers of groundhandling services and users wishing to self-handle may give rise to the collection of a fee intended to cover the costs which this access occasions for the airport and reflecting the level of the costs. This fee must be determined according to objective, transparent and non-discriminatory criteria.

3. Access to airport installations for suppliers of groundhandling services and users wishing to self-handle may give rise to the collection of a fee. This fee must be determined according to objective, transparent and non-discriminatory criteria.

Article 19

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive by 30 June 1996. They shall immediately inform the Commission thereof.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive by 31 December 1996. They shall immediately inform the Commission thereof.

Stet

Article 20

Stet

Article 20a

Without prejudice to the implementation of the provisions of this directive and while complying with the social provisions of the Treaty and of the regulations deriving there from, Member States may take the measures needed in order to ensure compliance with the standards in force and the upholding of employees social rights.

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