EU Regulation

GROUNDHANDLING SERVICES AT EU AIRPORTS

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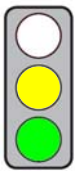
Centrum für Europäische Politik

MAIN ISSUES

Objective of the Regulation: The Commission wishes to further open up access to groundhandling markets.

Parties affected: Groundhandling service suppliers, airport operators and airlines.



Pros: (1) The rule that there should be no less than three groundhandling service suppliers at large airports boosts competition and thus leads to lower prices and improved quality.

(2) The possibility for airlines to choose from a minimum of at least either two or three service suppliers in all parts of the airport prevents suppliers from having a monopoly position in individual parts of the airport.

Cons: The legal form of the Regulation is inappropriate and therefore unlawful.

CONTENT

Title

Proposal COM(2011) 824 of 1 December 2011 for a **Regulation** of the European Parliament and of the Council **on groundhandling services at Union airports** and repealing Council Directive 96/67/EC on access to the groundhandling market at Community airports.

Brief Summary

- **Context and objectives**
  - "Groundhandling services" are carried out for airlines at airports (Art. 2 lit. d). The Regulation Proposal covers 11 service categories, e.g. marshalling the aircraft, passenger, baggage, freight, fuel and oil handling as well as aircraft services (Annex).
  - The Commission wishes to improve the quality of groundhandling services (Recital 5). It criticizes that the existing Directive (96/67/EG) does not suffice (p. 3) to:
    - sufficiently open up the market to groundhandling services or
    - keep pace with the changing requirements regarding "reliability, resilience, safety and security and the environment".
  - Directive 96/67/EC is to be replaced by the proposed Regulation in order to enhance the efficiency and overall quality of groundhandling services at airports for airlines, passengers and freight forwarders (Recital 5).
  - The Commission makes a distinction between the size of airports:
    - "medium-sized airports" have processed at least 2 million air passengers or 50,000 tons of freight per year in the previous three years.
    - "Large airports" have processed at least 5 million air passengers or 100,000 tons of freight per year in the three previous years.

- **Market access**
  - All airlines are entitled to provide groundhandling services themselves ("self-handling", Art. 5 in conjunction with Art. 2 lit. e).
  - Suppliers of groundhandling services ("suppliers") provide groundhandling services for airlines. In principle, they have free access to medium-sized and large airport ("third party handling", Art. 6 (1) in conjunction with Art. 2 lit. f).
  - The Member States may limit the number of suppliers for individual service categories – baggage handling, ramp handling, fuel and oil handling, freight and mail handling (Art. 6 (2)), but only to:
    - at least two suppliers per service category at medium-sized airports;
    - at least three suppliers per service category at large airports.
  - Where the number of suppliers is restricted, in all parts of the airport airlines must be entitled to choose from at least (Art. 6 (4)):
    - two suppliers at medium-sized airports;
    - three suppliers at large airports.
  - At medium-sized and large airports, airport operators must provide all groundhandling service suppliers and self-handling airport users with access to "centralized infrastructures and installations" (e.g. baggage conveyor systems), whose capacity cannot be divided and which are necessary for the provision of groundhandling services (Art. 2 lit. g, Art. 27 (1) and (6)).

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– If an airport operator provides groundhandling services itself, it must operate a legally independent enterprise to that purpose (Art. 29 (1)). It must not receive any financial cross-subsidisation from "aeronautical activities" with which it could reduce the fees for providing groundhandling services (Art. 29 (3)).

- **Exemptions**
  – Where "specific constraints" in the form of "space or capacity" at an airport do not allow free access to the market and/or self-handling, Member States may restrict self-handling pursuant to Art. 5 and the number of suppliers, even beyond the restrictions stipulated under Art. 6 ("exemptions"; Art. 14 (1)).
  – An exemption must not lead to distortion of competition (Art. 14 (3)).
  – The Commission examines the exemption decisions of the Member States (Art. 14 (4) to (9)); it may reject them where a constraint is not given (Art. 14 (7)).

- **Appropriate approval**
  – In order to be allowed to provide services at both medium-sized and large airports, groundhandling service suppliers require appropriate approval from independent 'approving authorities' of the Member States (Art. 16 (1) and 2).
  – An approval is valid for five years (Art. 23 (1)).
  – A groundhandling service supplier must be granted approval in particular if (Art. 17):
    - established and registered in a Member State;
    - it can comply with the financial conditions (Art. 18);
    - it can prove its good repute (Art. 19) and the qualification of staff (Art. 20);
    - it submits an operations manual; (Art. 21) and
    - has liability insurance (Art. 22 (1)).
  – An approval issued in one Member State is recognised by all other Member States (Art. 26).

- **Tender procedure in the case of a limited market entry**
  – Where the number of suppliers is limited pursuant to Art. 6 or Art. 14, they must be selected according to a "non-discriminatory" two-phase tender procedure (Art. 7 to Art. 10).
    - Phase 1 ("qualification procedure", Art. 8): The tendering authority makes a pre-selection by verifying whether or not applicants meet a set number of "minimum criteria", e.g. appropriate approval (Art. 16 et sqq.) or a written commitment to comply with statutory requirements (e.g. collective labour agreements).
    - Phase 2 ("award procedure", Art. 9): the tendering authority makes a selection according to set "award criteria" such as quality, business plan, training programme and environmental friendliness.
  – The selected suppliers are authorised to offer groundhandling services at a certain airport for a certain period ("authorisation").
  – The tendering authority may be (Art. 7 (2)):
    - the airport operator, unless they are also a groundhandling service supplier, they control groundhandling service suppliers or are involved in such business; or
    - an independent authority.
  – The authorisation for groundhandling may be issued for a minimum period of seven years and a maximum period of 10 years (Art. 10 (1)).
  – Where the number of suppliers is limited at an airport pursuant to Art. 6, the following parties are exempted from the tendering procedure (Art. 11 Abs. 1):
    - the airport operator providing groundhandling services;
    - a groundhandling service supplier who is controlled by the airport operator under company law or who controls the airport operator.

- **Coordination and quality assurance**
  – For the coordination of groundhandling services, the airport operator is responsible as a "ground coordinator". They must pay particular attention to the compliance with all "airport rules of conduct" (Art. 30 (1), Art. 31).
  – At large airports, either the airport operator or the competent authority stipulates the "minimum quality standards" for the groundhandling services (Art. 32 (2)). These must be in line with specifications defined by the Commission (Art. 32 (6), Art. 42). The minimum quality standards affect in particular education and training, safety, security, contingency measures and the environment (Art. 32 (4)).
  – Every employee must attend regular training (Art. 34 (1)).

Changes to the Status quo

- To date, Member States have had the right to limit the number of groundhandling service suppliers to two airlines at medium-sized airports. Now all airlines are to be given the right to self-groundhandling.
- To date, Member States could limit market access to two service suppliers, not only at medium-sized but also at large airports. In future, at large airports they will only be allowed to limit market access to not less than three service suppliers.

- To date, the conditions for authorization have only had to be in line with certain principles. Now the Commission intends to prescribe concrete requirements.
- To date, the duration of the authorisation for the provision of groundhandling services was a maximum of seven years. Now it is for a minimum period of seven years and a maximum period of 10 years.
- Newly introduced is the coordination of groundhandling services through the airport operator.
- Newly introduced is the obligation for regular training.

Statement on Subsidiarity by the Commission

According to the Commission, the objectives of the proposed Regulation cannot be achieved at national level by Member States themselves, as airlines operate within the European internal market and also groundhandling service suppliers operate "on a European or international market". Any individual action of Member States would "potentially prejudice" the functioning of the internal market". (p. 9)

Policy Context

In 1996, the Commission enabled a minimum opening of the market for the provision of groundhandling services at EU airports (Directive 96/67/EC). In its report on the application of this Directive [COM(2006) 821], it established that this led to reduced prices for groundhandling services and to an increase in service quality, but that there were also "negative trends" (p. 5). In 2009, it carried out a consultation on the functioning of groundhandling services and a revision of the Directive. The result was that the stakeholders' interests regarding a further opening up of market access differ tremendously. Airlines and groundhandling suppliers favoured a further opening up of the market while airport operators and employees of groundhandling undertakings rejected it.

Legislative Procedure

December 1, 2012	Adoption by Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Mobility and transport
Committees of the European Parliament:	Transport and Tourism (leading); Employment and Social Affairs; Environment, Health and Consumers; Internal Market and Consumer Protection
Committees of the German Bundestag:	N.N.
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes))

Formalities

Legal competency:	Art. 100 (2) TFEU (Aviation)
Form of legislative competency:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The rule that in future a minimum of three rather than two groundhandling service suppliers must be admitted at large airports boosts competition. For the more competition there is, the more difficult it is to share a market. **Tougher competition creates** advantages for airlines at first: they can choose from a greater variety of offers, **lower prices and better quality,** all the more so as the quality of groundhandling services can be easily controlled. The consumer also benefits from these factors, as well as passenger and freight forwarders as end consumers of groundhandling services. But also groundhandling service suppliers can benefit from the opening of new markets.

The rule that airport operators providing groundhandling services themselves must, in order to do so, operate a legally independent enterprise and that this may not be cross-subsidised prevents airport operators from gaining a competitive advantage over third parties.

Increasing groundhandling authorisation to up to ten years increases the planning safety of service suppliers and their employees. At the same time, an authorisation period of only five years leads to service suppliers maintaining the prescribed standards and therewith the quality of their performance.

The competence of the airport operator for the coordination of the groundhandling services and the minimum quality standard requirements enable him to combat any possible loss of reputation through poor groundhandling services. The Commission does not address the question of who bears the coordination costs.

Impact on Efficiency and Individual Freedom of Choice

The right of airlines to self-groundhandling increases their options to enhance efficiency, as this enables airlines to decide for themselves which aspects of the service provision they carry out themselves and which are bought in.

The rule that airlines must be enabled to choose between at least either two or three service suppliers in all parts of the airport prevents spurious competition, for they cannot divide a medium-sized or large airport up amongst themselves in such a way that they end up with a monopoly position in individual parts of the airport (e.g. through exclusive services of a single supplier to single terminals) and can consequently dictate excessively high prices.

Impact on Growth and Employment

More competition increases innovation dynamics and thus has a positive impact on growth and employment in an economy. For the existence of additional competition at an airport increases the incentives for suppliers to foster innovation and thus creates competitive advantages. Although this can lead on the one hand to an increased use of machines which replace human resources, on the other hand, however, it would also represent a positive impulse to jobs in those sectors which demand transport services and would now find better services and/or lower costs for passenger and freight transport.

Impact on Europe as a Business Location

Better and cheaper groundhandling services increase the quality of Europe as a business location for investment, in particular in airport hubs.

Legal Assessment

Competency

Unproblematic. The EU may adopt "appropriate provisions" (Art. 100 (2) TFEU) for aviation under the scope of Common Transport Policy (Art. 90 to 99 TFEU).

Subsidiarity

Unproblematic. Both airlines and groundhandling service suppliers act in the internal aviation market. To this end, the intended degree of harmonisation is appropriate.

Proportionality

The Commission intends to replace the existing legal form of a Directive, which provides Member States with a certain degree of freedom within the framework of national acts of transposition (Art. 288 (3) TFEU), with a Regulation, which has a direct legal effect (Art. 288 (2) TFEU). According to the Commission, only a Regulation can "meet the need for harmonization of groundhandling markets at EU level" and thus solve difficulties which are mainly linked to "divergent implementation among Member States" (p. 10).

However, particularly in the core area – the scope of the opening up of markets – the Regulation Proposal does not provide for full harmonisation either, but remains limited to the stipulation of minimum standards. At the same time, the Regulation Proposal grants substantial design and decision rights to Member States which require national implementation. **The transition from** the legal form of **a Directive to a Regulation is** therefore **inappropriate and thus unlawful**.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

The proposed Regulation applies directly in each Member State (Art. 288 TFEU), hence no further implementing acts are needed at national level and the provisions of the German Regulation on groundhandling services at airports (*Bodenabfertigungsdienst-Verordnung, BADV*) will become obsolete. Particularly in terms of the decision right of Member States regarding the number of authorized service suppliers for certain service categories at individual airports (Art. 6), adjustments are needed to the BADV (§ 3 in conjunction with Annex 5).

Conclusion

The rule that in future a least three rather than two groundhandling service suppliers will be allowed to operate at large airports boosts competition and thus leads to lower prices and an improved service quality. The possibility for airlines to choose from between either two or three service suppliers in all parts of the airport prevents suppliers in individual parts of the airport from acquiring a monopoly position. However, the transition from the legal form of a Directive to a Regulation is inappropriate and therefore unlawful.