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COUNCIL DIRECTIVE 96/67/EC
of 15 October 1996
on access to the groundhandling market at Community airports

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COUNCIL DIRECTIVE 96/67/EC

of 15 October 1996

on access to the groundhandling market at Community airports

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the Economic and Social Committee ([2]),

Acting in accordance with the procedure laid down in Article 189c of the Treaty ([3]),

(1) 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 as a lasting contribution to promoting economic and social progress;

(2) Whereas the objective of Article 59 of the Treaty is to eliminate the restrictions on freedom to provide services in the Community; whereas, in accordance with Article 61 of the Treaty, that objective must be achieved within the framework of the common transport policy;

(3) Whereas through Council Regulations (EEC) No 2407/92 ([4]), (EEC) No 2408/92 ([5]) and (EEC) No 2409/92 ([6]) that objective has been attained with regard to air transport services as such;

(4) Whereas groundhandling services are essential to the proper functioning of air transport; whereas they make an essential contribution to the efficient use of air transport infrastructure;

(5) Whereas the opening-up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users;

(6) Whereas in the light of the principle of subsidiarity it is essential that access to the groundhandling market should take place within a Community framework, while allowing Member States the possibility of taking into consideration the specific nature of the sector;

(7) Whereas in its communication of June 1994 entitled 'The way forward for civil aviation in Europe' the Commission indicated its intention of taking an initiative before the end of 1994 in order to achieve access to the groundhandling market at Community airports; whereas the Council, in its resolution of 24 October 1994 on the situation in European civil aviation ([7]), confirmed the need to take account of the imperatives linked to the situation of airports when opening up the market;

(8) Whereas, in its resolution of 14 February 1995 on European civil aviation ([8]), the European Parliament repeated its concern that account should be taken of the impact of access to the groundhandling market on employment and safety conditions at Community airports;

([1]) OJ No C 142, 8. 6. 1995, p. 7 and OJ No C 124, 27. 4. 1996, p. 19.
([2]) OJ No C 301, 13. 11. 1995, p. 28.
([3]) Opinion of the European Parliament of 16 November 1995 (OJ No C 323, 4. 12. 1995, p. 106), common position of the Council of 28 March 1996 (OJ No C 134, 6. 5. 1996, p. 30) and Decision of the European Parliament of 16 July 1996 (OJ No C 261, 9. 9. 1996).
([4]) OJ No L 240, 24. 8. 1992, p. 1.
([5]) OJ No L 240, 24. 8. 1992, p. 8. Regulation as amended by the 1994 Act of Accession.
([6]) OJ No L 240, 24. 8. 1992, p. 15.
([7]) OJ No C 309, 5. 11. 1994, p. 2.
([8]) OJ No C 56, 6. 3. 1995, p. 28.

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(9) Whereas free access to the groundhandling market is consistent with the efficient operation of Community airports;

(10) Whereas free access to the groundhandling market must be introduced gradually and be adapted to the requirements of the sector;

(11) Whereas for certain categories of groundhandling services access to the market and self-handling may come up against safety, security, capacity and available-space constraints; whereas it is therefore necessary to be able to limit the number of authorized suppliers of such categories of groundhandling services; whereas it should also be possible to limit self-handling; whereas, in that case, the criteria for limitation must be relevant, objective, transparent and non-discriminatory;

(12) Whereas if the number of suppliers of groundhandling services is limited effective competition will require that at least one of the suppliers should ultimately be independent of both the managing body of the airport and the dominant carrier;

(13) Whereas if airports are to function properly they must be able to reserve for themselves the management of certain infrastructures which for technical reasons as well as for reasons of profitability or environmental impact are difficult to divide or duplicate; whereas the centralized management of such infrastructures may not, however, constitute an obstacle to their use by suppliers of groundhandling services or by self-handling airport users;

(14) Whereas in certain cases these constraints can be such that they may justify restrictions on market access or on self-handling to the extent that these restrictions are relevant, objective, transparent and non-discriminatory;

(15) Whereas the purpose of such exemptions must be to enable airport authorities to overcome or at least reduce these constraints; whereas these exemptions must be approved by the Commission, assisted by an advisory committee, and must be granted for a specific period;

(16) Whereas, if effective and fair competition is to be maintained where the number of suppliers of ground-handling services is limited, the latter need to be chosen according to a transparent and impartial procedure; whereas airport users should be consulted when it comes to selecting suppliers of ground-handling services, since they have a major interest in the quality and price of the ground-handling services which they require;

(17) Whereas it is therefore necessary to arrange for the representation of airport users and their consultation when authorized suppliers of ground-handling services are selected, by setting up a committee composed of their representatives;

(18) Whereas it is possible in certain circumstances and under specific conditions, in the context of selecting suppliers of ground-handling services at an airport, to extend the public service obligation to other airports in the same geographical region of the Member State concerned;

(19) Whereas the managing body of the airport may also supply ground-handling services and, through its decisions, may exercise considerable influence on competition between suppliers of ground-handling services; whereas it is therefore essential, in order to maintain fair competition, that airports be required to keep separate accounts for their infrastructure management and regulatory activities on the one hand and for the supply of ground-handling services on the other;

(20) Whereas an airport may not subsidize its ground-handling activities from the revenue it derives from its role as an airport authority;

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(21) Whereas the same transparency requirements must apply to all suppliers wishing to offer ground-handling services to third parties;

(22) Whereas, in order to enable airports to fulfil their infrastructure management functions and to guarantee safety and security on the airport premises as well as to protect the environment and the social regulations in force, Member States must be able to make the supply of ground-handling services subject to approval; whereas the criteria for granting such approval must be objective, transparent and non-discriminatory;

(23) Whereas, for the same reasons, Member States must retain the power to lay down and enforce the necessary rules for the proper functioning of the airport infrastructure; whereas those rules must relate to the intended objective and must not in practice reduce market access or the freedom to self-handle to a level below that provided for in this Directive; whereas the rules must comply with the principles of objectivity, transparency and non-discrimination;

(24) Whereas Member States must retain the power to ensure an adequate level of social protection for the staff of undertakings providing ground-handling services;

(25) Whereas access to airport installations must be guaranteed to suppliers authorized to provide ground-handling services and to airport users authorized to self-handle, to the extent necessary for them to exercise their rights and to permit fair and genuine competition; whereas it must be possible however, for such access to give rise to the collection of a fee;

(26) Whereas it is justified that the rights recognized by this Directive should only apply to third-country suppliers of ground-handling services and third-country airport users subject to strict reciprocity; whereas where there is no such reciprocity the Member State should be able to suspend these rights with regard to those suppliers and users;

(27) Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

(28) Whereas this Directive does not affect the application of the rules of the Treaty; whereas in particular the Commission will continue to ensure compliance with these rules by exercising, when necessary, all the powers granted to it by Article 90 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive applies to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic in the following circumstances:

(a) The provisions of Article 7 (1) relating to categories of ground-handling services other than those referred to in Article 7 (2) shall apply to any airport regardless of its volume of traffic as from 1 January 1998.

(b) The provisions relating to the categories of groundhandling services referred to in Article 7 (2) shall apply as from 1 January 1998 to airports whose annual traffic is not less than 1 million passenger movements or 25 000 tonnes of freight.

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(c) The provisions relating to the categories of groundhandling services referred to in Article 6 shall apply as from 1 January 1999 to airports:

— whose annual traffic is not less than 3 million passenger movements or 75 000 tonnes of freight; or

— whose traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight during the six-month period prior to 1 April or 1 October of the preceding year.

2. Without prejudice to paragraph 1, the provisions of this Directive shall apply as from 1 January 2001 to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic, whose annual traffic is not less than 2 million passenger movements or 50 000 tonnes of freight.

3. Where an airport reaches one of the freight traffic thresholds referred to in this Article without reaching the corresponding passenger movement threshold, the provisions of this Directive shall not apply to categories of groundhandling services reserved exclusively for passengers.

4. The Commission shall publish, for information, in the *Official Journal of the European Communities* a list of the airports referred to in this Article. The list shall first be published within three months following the entry into force of this Directive, and thereafter annually.

Member States shall, before 1 July of each year, forward to the Commission the data required to compile the list.

5. Application of this Directive to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

6. Application of this Directive to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

Article 2

Definitions

For the purposes of this Directive:

(a) ‘airport’ means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

(b) ‘airport system’ means two or more airports grouped together to serve the same city or conurbation, as referred to in Annex II to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes;

(c) ‘managing body of the airport’ means a body which, in conjuntion with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport or airport system concerned;

(d) ‘airport user’ means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from, or to the airport in question;

(e) ‘groundhandling’ means the services provided to airport users at airports as described in the Annex;

(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