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AK Position Paper

AK Position Paper on the Regulation on groundhandling services at Union airports and repealing Council Directive 96/67/EC

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Herbert Tumpel
President

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Director

Executive Summary

On 01.12.2011, the European Commission, within the scope of the Airport Package, also adopted a proposal on the new regulation of the groundhandling services market.

Groundhandling services represent a very significant element of the susceptible aviation system. The groundhandling industry is currently experiencing a high level of personnel fluctuation that, even in the opinion of the EC, is a result of the current Directive. The service providers, which are selected within the scope of a tender procedure to provide services, which are subject to restricted access, are only permitted to undertake their activities for a limited period of time. Hence, the existing tendering system promotes personnel fluctuation; however, unsteadiness in the personnel situation has a very detrimental effect on the quality of groundhandling services. A positive development of air traffic to benefit European economies and to ensure the smooth transport of passengers, freight and mail may not be accompanied by employees being increasingly worse off.

The proposal of the Commission, to open the market even further, would not only worsen the social situation of the groundhandling staff, but also affect many employees in administrative and technical sectors. Employees working for airlines would also suffer massive disadvantages by pressing ahead with socially non-regulated competition.

The future structure of market access must conform to the objective laid down by the EU that the Union will apply its measures to promote social progress.

Based on the reasons referred to, the draft proposal, which recommends accentuating the obligation to tender by further opening up the market, is strictly rejected.

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The AK position in detail

The market for ground-handling services must not be allowed to open up any further as long as competition is predominantly focussed on dumping wages, inadequate staff training and low-level requirements on quality and safety of the service

In agreement with the trade unions and the works councils of the enterprises affected, the AK adopts the following fundamental position on the draft proposal on groundhandling services:

- Any further opening up of the market of the groundhandling services, in particular by the mandatory admission of additional handlers, is rejected
- Subcontracting only serves to undermine government regulations and promotes wage dumping and ruinous competition and is rejected
- The obligation to legally separate groundhandling services from airport companies does not improve the range of services, but only enforces the deterioration of the working conditions and is rejected
- A new regulation of market access must ensure that in future only those companies are allowed to provide services that adhere to the national collective agreement for airports of the respective Member State
- European law must ensure that when services are transferred, employees' jobs will be continued under the same conditions

- Sufficiently high and obligatory standards for employees' qualification must be introduced

- Additional service providers may only be admitted if no negative consequences are created for both productivity and security and if the limited space at airports has been taken into consideration.

Competition for services must focus on quality and appropriate prices. The majority of the main airlines establish and increasingly unite in alliances both in Europe and worldwide, resulting in the development of oligopolies, which represent dominating market power. All airports have to provide airlines with high-level quality services to ensure that customers do not desert them and to prevent airports losing their hub function. The market for groundhandling services must not be allowed to open up any further as long as competition is predominantly focussed on dumping wages, inadequate staff training and low-level requirements on quality and safety of the service. All measures have to ensure that groundhandling will continue to be able to contribute its significant share to achieve an effective and functioning air traffic system. Due to the fact that the present draft proposal does not meet the requirements referred to, the AK strictly rejects the draft.

According to estimates of the Commission, the total global groundhandling turnover (all service categories) amounts to EUR 50 billion. The number of employees working in this sector in Europe is estimated at being at least 60,000. Groundhandling services represent between 5 and 12 % of the airlines' operating costs. This does raise the question regarding the proportionality of the measures proposed as the options of reducing costs are confined to such a small area that any possible benefits for the airlines are in no relation to the deteriorations the ca. 60,000 employees are threatened with. For this reason alone, the proposal for a new regulation is rejected.

Apart from our general position, we would like to outline that from the point of view of the AK it would be much more effective if the planned revision of Directive 96/67/EC on access to the groundhandling market at Community airports, would again be in form of a Directive as only then it can be ensured that regional requirements are taken into consideration and that the national law prescribes minimum standards for all providers, which meet these regional requirements.

On the Recitals in detail:

Recital (5) and (8): it is alleged that the opening up of access to the groundhandling market improves the quality of service provided; hence, opening up the market should be continued. However, in particular the further opening up of the market contradicts the opinion of the Commission referred to above, i.e. that the "tendering system appears to promote personnel fluctuation. Unsteadiness in the personnel situation might have a detrimental effect on the quality of groundhandling services". The AK rejects any further opening up of access to the market.

Recital (10) and (11f): "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 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". This shall take place by means of application for exemption and approval by the Commission. The negative social consequences, which have taken place because of the Directive 96/67 EC, would be massively accentuated

by the new Airport Package. Moreover, this would cause a loss in productivity, as a larger number of providers mean falling economies of scale. Apart from that, additional providers require additional space, which, due to non-existing expansion possibilities, is not available at many airports. However, there is no mention that any further opening up of the market is not sensible when an airport incurs additional costs for the creation of additional space for new providers. In addition, these costs prevent any efficiency gain and reduce the efforts of the Commission to the point of absurdity.

Recital (17): In the opinion of the Commission ambiguity exists as to whether Member States may require the takeover of staff upon a change of provider for groundhandling services to which access is limited. Apart from that, the Commission emphasises the impact that unsteadiness in the personnel situation may have on the quality of groundhandling services. That is why it is appropriate to clarify the rules, which apply beyond the application of Directive 2001/23/EC on the safeguarding of employees' rights in the events of transfers of undertakings, businesses or parts of businesses, and thereby enable the Member States to ensure appropriate employment and working conditions. However, any reference to the obligation to comply with collective agreements is missing.

It should be generally noted at this point that it would be by far more effective with regard to employees if the Commission would commit the Member States to protect employees and not leave this issue at the discretion of individual governments.

Recital (24): In future, the managing body of the airport should be responsible for the proper coordination of groundhandling activities at the airport. However, this leaves the question open, who ensures that an airport provides all services when individual providers only offer certain groundhandling services for third parties.

Recital (28): In a labour-intensive sector such as groundhandling, continuous staff development and training have a strong impact on service quality. Hence, staff development and training should be subject to minimum requirements to ensure the quality of operations in respect of reliability, crisis resistance, aviation safety and averting of danger; apart from this, uniform framework conditions for all operators should be created. The costs for the employer, as included in the Austrian Federal Law on Dangerous Goods on Roads, have to be mentioned at this point and embedded in the Regulation. The minimum requirements referred to above should be determined in accordance with the requirements of the occupation "qualified aircraft handler", which is regulated in Germany.

Member States should retain the power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services

Recital (31): Member States should retain the power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services. It should be clarified that this in particular concerns the adherence to collective agreements and social and labour law requirements.

On the individual Articles:

Article 4 Airport Users' Committee:

Paragraph 1 stipulates that each of the airports concerned shall establish a committee of representatives of airport users. It would be desirable if the Commission would commit the Member States to integrate the social partners in this Users' Committee.

Article 5 Self-handling:

The complete opening up of the market for self-handlers does allow the airlines to reduce their handling costs by "cherry-picking" individual service, which are cheaper for the airlines; however, it results in the airport only being able obliged to provide those groundhandling services, which require a high level of investment. We therefore request to retain the restriction of self-handling as laid out in the existing Directive:

In accordance with Article 7 (2) of Directive 96/67/EC Member States may reserve the right to self-handle to no fewer than two airport users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria:

- baggage handling,
 - ramp handling,
 - fuel and oil handling,
 - freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.
- Furthermore, an opening up of the self-handling market for all airport users beyond the current level would result in pressure on the collective agreements of airport staff providing groundhandling services and is therefore rejected.

The draft does not clearly specify whether self-handling for airlines from third countries would be admissible and under which conditions it should be carried out. Apart from the reasons already referred to, an opening up of the market is also rejected on grounds of possible security problems.

It has to be ensured that all companies, providing groundhandling services in Austria have to be subject to the collective agreement related to the airport

Article 6 Groundhandling for third parties:

As the existing Directive already ensures that each airport user has the option of effectively choosing between two suppliers of groundhandling services, a compulsory further opening up of the market to an additional provider is rejected.

In order to prevent any future cherry-picking, the services, where the number of service providers can be limited, the obligation to offer these as packages should be continued. Only then can it be prevented that individual services, which require a low level of investment, are provided by several ground-handlers, but others, such as aircraft de-icing are not.. This Regulation must also apply to possible subcontractors. It has to be ensured that all companies, providing groundhandling services in Austria have to be subject to the collective agreement related to the airport.

Article 8 Qualification procedure:

Paragraph 2 stipulates that the applicant has a valid approval issued in accordance with chapter IV on Approval Procedures. As defined in paragraph 6, applicants should demonstrate their abilities in respect of all service packages.

Article 9 Award procedure:

According to paragraph 3, there are a number of award criteria, which, however, have to be supplemented by social standards.

(b) lays down according to which aspects the level of quality of operations shall be assessed. Reference for example is made to the efficient use of staff. However, it needs to be explained how the efficient use of staff shall be defined. Apart from that, no reference has been made as to whether the company provides fair conditions for its employees, in particular in respect of remuneration and working conditions.

Article 11 Managing body of the airport as supplier of groundhandling services:

Paragraph 1 lays down that in case of a limited number of suppliers of groundhandling services, the managing body of the airport may itself provide groundhandling services without being subject to the selection procedure. For better understanding, this Article should explain whether this is only permitted if it is not also managing body of the infrastructure.

No employee may be forced to transfer to another undertaking and to agree to possibly worse remuneration and working conditions in future

Article 12 Safeguarding of employees' rights in the event of transfer of staff for services subject to market access restrictions:

The AK generally welcomes the addition of this regulation to the draft proposal; however, it would like to point out that it should not be permitted to be at the discretion of each Member State whether it applies the Directive on transfer of staff, even if no such transfer has taken place. From our point of view, only changing the "may" into a "must" provision can ensure that competition is not taking place at the expense of employees.

The AK particularly welcomes the new regulation in paragraph 3, which grants employees the right to accept or reject an offer of transfer on a voluntary basis. No employee may be forced to transfer to another undertaking and to agree to possibly worse remuneration and working conditions in future.

Article 14 Exemptions:

Paragraph 1 lays down that where specific constraints of available space or capacity at an airport exist, arising in particular from congestion and area utilisation rate, to make it impossible to open up the market and/or implement self-handling to the degree provided for, the Member State in accordance with (b) may decide may reserve to a

single supplier for airports whose annual traffic is not less than 2 million passengers annually or 50,000 tons of freight. Airports, whose annual traffic is at least 5 million passengers or 100,000 tons of freight, may in accordance with (c) be limited to two suppliers, whereby at least one has to be independent of the managing body or a major airport.

Paragraph 11 stipulates that exemptions granted in accordance with paragraph 1 (b) and (c) may not exceed two years. However, a Member State may in accordance with the considerations referred to in in paragraph 1, request that this period be extended by a single period of two years.

Airports, whose passenger volume is low and that have a single provider, should be granted a period longer than two years, considering their investments in equipment and personnel. Hence, the AK requests that the period of exemption is extended to 10 years.

Article 17 Conditions for granting an approval:

Paragraph 1 regulates the conditions for approving an undertaking's access to the market. Paragraph 2 stipulates that self-handling airport users do not have to meet all of these requirements. However, due to the fact that self-handlers too require equipment and personnel on site in order to provide groundhandling services, the question arises why they, to be approved

In the opinion of the AK, it is also necessary to request the on-time payment of taxes and levies as some undertakings, although paying the legally required taxes and levies, only do so as a consequence of respective court decisions

of as self-handlers, do not also have to be registered in the Member State. Still open is also the question which social and labour law requirements and which collective agreements apply to the staff of self-handling airport users and how self-handling by foreign airlines within the EU should be dealt with.

Paragraph 3 stipulates that an undertaking applying for an approval or having obtained an approval shall respect the national provisions. From the point of view of the AK this requires an explanation as to which provisions have been referred to. Furthermore, the list should be supplemented by labour law provisions, whereby in particular the regulations on working hours, on social security, on labour relations and on the right of termination should be referred to.

Article 18 Financial conditions on granting an approval:

The AK welcomes the criteria in paragraph 1 and 2 an undertaking has to prove to the approving authority.

Paragraph 3 stipulates that the applicant has to submit its audited accounts for the two previous financial years. Due to the fact that very different cost accounting and accounting models exist in particular in the aviation sector, it should also be stipulated that the approving authority lays down the format of the documentation to be submitted.

Article 19 Proof of good repute:

In accordance with paragraph 1, an undertaking applying for approval must also provide proof that it has paid its taxes and levies. In the opinion of the AK, it is also necessary to request the on-time payment of taxes and levies as some undertakings, although paying the legally required taxes and levies, only do so as a consequence of respective court decisions.

Paragraph 2 stipulates that an undertaking shall also provide proof that the persons who will continuously and effectively manage the operations of the undertaking are of good repute and that they have not been declared bankrupt. In respect of nationals of other Member States, the documents issued of these other Member States have to be accepted.

However, paragraph 3 stipulates that in case where the Member State does not issue the relevant documents, a declaration on oath or a solemn declaration would be sufficient. The AK is decidedly against this option as misuse cannot be excluded. Hence, paragraph 3 should be deleted.

Article 20 Qualification of staff:

On the one hand, it has to be welcomed that the Commission also intends to lay down provisions on the qualification of staff in the new Regulation; however, from the point of view of the AK, the one and only short sentence referring to this issue does not really say very much. The qualification should at least include the requirements for the “qualified aircraft handler” as referred to above. Only if a high level of education and training standards is applied, it will be possible to meet the high level of quality required in the aviation sector, and to prevent social dumping and security risks.

Article 22 Insurance requirements:

Paragraph 1 lays down that suppliers of groundhandling services and self-handling airport users shall be insured in respect of their groundhandling-specific liability for damage. In Paragraph 2, the Commission creates the option for itself to be empowered to specify further details on insurance requirements and minimum amounts. From the point of view of the AK, the Commission should commit itself to specifying further such details and not just propose a “may” provision.

Article 23 Validity of an approval:

Paragraph 4 lays down in which cases the approving authority shall monitor compliance with the requirements for approval. This also applies if a potential problem is suspected, at the request of an approving authority of another Member State and at the request of the Commission. Apart from the cases referred to, the approving authority should also have the option to act on its own initiative. Only then it can be ensured that the suppliers of groundhandling services will pay special attention to the fact requirements are actually met at all times.

Article 25 Decision on approvals:

The approving authority shall take a decision on an application taking all facts into consideration. Some information on the reliability of an applicant is only available to trade unions and personnel representatives; it would therefore make sense to obtain this information prior to the decision on approvals. An appropriate right to be heard should therefore be embedded paragraph 1.

Article 29 Legal separation:

This article lays down that the managing body of the airport or the managing body of the centralised infrastructure, if it provides groundhandling services for third parties, shall establish a legal entity. This entity shall be independent in terms of its legal form, its organisation and its decision-making. From the point of view of the AK, this requirement can only be met if it does not concern a subsidiary of the airport. This would mean for the location of Vienna that a completely new undertaking providing groundhandling services would have to be found.

In the opinion of the AK, the establishment of a separate legal entity is disproportionate; hence, we request to retain the current regulation, which requires the strict segregation of accounts for all areas of activity. This strict segregation of accounts shall be monitored by an appointed independent authority that also examines whether any financial flow exist between the activities of an airport as a managing body or and as a supplier of groundhandling services. Article 4 of Directive 96/67/EC should definitely be retained.

Article 32 Minimum quality standards:

According to the draft, the managing body of the airport or the competent authority stipulates minimum quality standards for operational performance,

training and development, information and assistance for passengers, collaborative decision making (CDM), security, averting of danger, emergency measures and the environment. Here too, details should be provided with regard to training and development, and the training and development requirements of the German Regulation on qualified aircraft handlers should be embedded.

In this context, it is equally important to lay down that the costs for training and development measures have to be borne by the employer, as it has already been regulated for the transport of dangerous goods by road.

Article 34 Training:

All training costs have to be borne by the employer. See AK Position on Recital 28 and Article 32.

Article 35 Subcontracting:

This Article lays down that suppliers of groundhandling services may engage in subcontracting, that self-handling airport users may subcontract groundhandling services only where they are temporarily unable to perform self-handling due to force majeure and that subcontractors may not subcontract groundhandling services. Paragraph 5 stipulates that all suppliers of groundhandling services and self-handlers employing subcontractors shall ensure that the subcontractors comply with the obli-

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gations on suppliers of groundhandling services under this Regulation. From the point of view of the AK, the term "shall ensure" is not specific enough, and therefore should be replaced by "shall be responsible" that the subcontractors comply with the obligations. Apart from that, contractors also have to assume full liability for the services provided by the subcontractors.

Article 39 Evaluation and information report:

The Commission shall submit a report to the European Parliament and the Council on the implementation of this Regulation not later than 5 years after the date of the application of this Regulation. This report shall include the following set of indicators and criteria, which shall be supplemented by the following criteria:

- number of employees working at the supplier of groundhandling services,
- number of employees working for self-handling airlines who provide groundhandling services.

(o) provides for a report on employment and working conditions in the sector; however, it should be supplemented by details of wage development as well as of standard and real wages.

Article 40 Social protection:

From the point of view of the AK it has to be welcomed that the issue of social protection has been included in the draft proposal; however, social protection is then left to the discretion of the Member States. It is important to stipulate that the Member States have to take the required measures to ensure the protection of workers' rights.

Should you have any further questions
please do not hesitate to contact

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