

liberalization on the employment situation, with the purpose of cataloguing the social consequences and proposing solutions. If similar studies are being conducted elsewhere in the Commission, they should be made available to this panel of experts.

4.5. The ESC considers that on such an important issue the Commission is urged to ensure as broad a debate as possible by issuing a draft Directive under Article 100a of the Treaty.

4.6. Since Part II was published and the Committee started work, the Commission has issued many papers, amendments and statements on its future actions.

Some of the Commission's intentions forestall actions called for in the Committee's Opinion. The Committee has not had an opportunity to consider the effects of the Commission action but hopes it will be able to do so shortly.

Done at Brussels, 13 September 1995.

The President
of the Economic and Social Committee
Carlos FERRER

Opinion on the proposal for a Council Directive on access to the groundhandling market at Community airports⁽¹⁾

(95/C 301/10)

On 22 May 1995 the Council decided to consult the Economic and Social Committee, under Article 84(2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 10 July 1995. The rapporteur was Mr von Schwerin.

At its 328th Plenary Session (meeting of 13 September 1995), the Economic and Social Committee adopted the following Opinion by a large majority, with 14 votes against and 23 abstentions.

1. Introduction

1.1. The proposed Directive based on Article 84(2) of the EC Treaty was adopted by the Commission on 14 December 1994. The submission of a proposed Directive was advocated by the Committee on 14 September 1994.

1.2. Within the fifteen Member States there is a reasonable degree of choice of service provider on the land side. Thus in most European airports, airline companies are able to exercise direct control over the services they offer to their customers. However on the air side, that is baggage and cargo handling, ramp

services and surface transport, the situation is very different. Seven Member States have liberalized to a greater or lesser extent and there is already a choice of service providers at their airports. Eight Member States, on the other hand, do not offer any choice; they operate monopolies, of which three are held by national airport operators and five by national airlines.

1.3. The proposed Directive follows on from a Commission consultation paper on which the Committee issued an Opinion in September 1994⁽²⁾.

⁽¹⁾ OJ No C 142, 8. 6. 1995, p. 7.

⁽²⁾ ESC Opinion on groundhandling services in OJ No C 393, 31. 12. 1994, p. 110.

In that Opinion the Committee welcomed in principle the Commission's efforts — in the context of the liberalization of groundhandling services — to ensure rapid, functional handling at Community airports.

1.4. The Committee Opinion of 14 September 1994 stressed *inter alia* that:

1.4.1. It was imperative to differentiate between land and air sides when considering liberalization.

Liberalization was much easier to achieve on the land side, and had already been implemented in many cases. On the air side (particularly ramp services) it was much more difficult to tackle.

1.4.2. The Committee did not support the principle that services should be fully liberalized, but thought that there was room between the existing monopoly situation and the proposed full liberalization for a moderate opening of the market with the introduction of a second and/or third handler. This would enable users to choose between competing service providers. On this point the Committee shared the Commission's view that varying degrees of market opening had to be considered as a possible solution.

1.4.3. The possible consequences of opening up the market had to be borne in mind. One fundamental point noted was that revenue from groundhandling services accounted for a considerable proportion of airport operators' earnings.

1.4.4. The differing conditions at individual airports also had to be borne in mind.

For example:

a) Funding of airport investment

In the event of the market being opened up, the cost of any necessary investment would in any event have to be divided up between all service providers.

Open and covert support measures would have to be borne in mind here just as much as the fact that some airports owned the land they were built on while others had to pay a fee for the use of the land.

b) Safety and security

The air side of an airport was a sensitive area in terms of both safety and security. Maintaining and improving high-level safety standards had to be given absolute priority in connection with the liberalization of groundhandling services.

c) Employment and social interests

The effects which liberalization had on the employment situation would have to be investigated separately with due regard to all social interests, and given priority when the Directive was implemented.

d) Environmental impact

To ensure a secure future for the whole air transport sector, it was necessary not to tamper with environmental protection measures. There were already considerable problems in gaining public acceptance for the operation and expansion of airports.

e) Capacity

There were already capacity bottlenecks at some airports which militated against liberalization. The problems caused by this could only be solved by allowing for the local circumstances in each case.

f) Ground turn-round times

Ground turn-round times were an important factor affecting capacity projections and productivity for airlines and airports. The opening up of the market should not lead to an increase in ground turn-round and passenger transit times.

Overall control of operations had to remain in the hands of the airport operators.

2. Gist of the Commission proposal

2.1. The proposal plans to open up the market in groundhandling services at Community airports.

2.2. The Commission proposals in detail⁽¹⁾:

2.2.1. Groundhandling covers the supply of a variety of airport services which are essential to carriers for performing their air transport activities. These services are directly related to air transport and range from passenger and baggage registration and handling to leading the aircraft on the ground as well as aircraft cleaning and refuelling. Without these services flights would not be able to take off. These services must be distinguished from activities directly related to air traffic operations, such as the provision of installations, of navigational aids and of emergency, fire and meteoro-

⁽¹⁾ Paragraphs 2.2.1 to 2.2.7 and 2.2.9 of this section refer to the Explanatory Memorandum of the Commission's proposal, which has not been published in the Official Journal and is not of a legal nature. Paragraphs 2.2.8 and 2.2.10 refer to the text published in the Official Journal (see OJ No C 142 of 8. 6. 1995) which is of a legal nature.

logical services, as well as from non-aviation activities, such as the letting, concession or use of business premises at the airport.

The International Air Transport Association (IATA) has established a nomenclature on the basis of which it is possible to group groundhandling services into eleven categories:

- 1) ground administration and supervision,
- 2) passenger handling,
- 3) baggage handling,
- 4) freight and mail handling,
- 5) ramp services,
- 6) cleaning and aircraft servicing,
- 7) fuelling,
- 8) aircraft maintenance,
- 9) flight operations and crew administration,
- 10) surface transport,
- 11) catering services
(Commission proposal, page 4, points 9 and 10).

2.2.2. The supply of groundhandling services is subject to a number of practical constraints, which vary according to the type of service. These constraints concern in particular the capacity and space available. Many European airports are coming up against problems of available capacity and space and, in some cases, are reaching saturation point.

Some groundhandling services, however, require a considerable amount of space, either in the terminal buildings as is the case of services directly related to the passengers or in the restricted areas of the airport as in the case of services requiring direct access to the aircraft. Sometimes these services require the use of sophisticated centralized systems which cannot be duplicated, as in the case of baggage sorting. (Commission proposal, page 5, point 16).

2.2.3. Airports require high security and safety standards. Maintaining such standards is one of the fundamental tasks of the airport managing body. It is therefore essential for the airport management to retain, *de jure* and *de facto*, the power to regulate, coordinate and control access to all restricted areas as well as staff and vehicle movements in these areas. Air-side services are most affected by these constraints. (Commission proposal, page 6, point 16).

2.2.4. It is obvious that not all groundhandling services are equally suitable for market access, particularly in the short term and even in the longer term. For each type of service it will be necessary to determine the access in a way which remains compatible with the efficient operation of the airport infrastructure. It will therefore be essential to adopt a differentiated approach which takes account of the technical features of the

various types of services, of the varying degrees of the constraints and of the specific problems at certain airports. (Commission proposal, page 6, point 17).

2.2.5. The Commission feels that access to the groundhandling market should be such as to allow users to choose the supplier who comes closest to their quality and cost requirements. However, access should also be adapted to the features of the various types of services, taking account of existing constraints, of social repercussions as well as the need to keep the airports operating efficiently. (Commission proposal, page 6, point 18).

2.2.6. The objective of the liberalization measures is to ensure access to the market. However, the heterogeneous nature of groundhandling services and the diverse nature of airport situations call for a differentiated approach as well as for the introduction of mechanisms which make it possible to take account of specific situations.

The genuine liberalization of this sector should therefore take the form of free access for some services and a more limited access for others. (Commission proposal, page 7, point 19).

2.2.7. The right to self-handle is to be guaranteed. However, exemptions may be granted in certain cases in order to take account of the considerable capacity and space constraints at certain airports. A key feature of self-handling is that it excludes a service contract with a third party. (Commission proposal, page 7, points 19 and 22).

2.2.8. The proposal applies basically to airports with an annual traffic volume of not less than two million passenger movements or 50 000 tonnes of freight or with a traffic volume over the preceding 18 months of not less than one million passenger movements or 25 000 tonnes of freight during any period of six consecutive months. (Commission proposal, page 21, Article 2).

2.2.9. The Commission considers, however, that market access must be based on a balanced approach which takes account of the different situations, the requirements of air transport and the interests of airports, carriers, suppliers and workers throughout the industry. (Commission proposal, page 13, point 48).

2.2.10. The Commission proposes that the laws, regulations and administrative provisions necessary to comply with this Directive be brought into force by the Member States by 30 June 1996. (Commission proposal, page 29, Article 19).

3. General comments

3.1. The Committee welcomes in principle the Commission's efforts to liberalize groundhandling services in order, in particular, to ensure rapid, functional handling at European airports, especially for passengers and freight.

It is in the interests of all parties to improve economic efficiency. The same applies to the preservation of the social consensus. It is imperative, however, to differentiate between land and air sides when considering liberalization. The Committee also understands that a proposal has been submitted to the Commission making a technical distinction between land- and air-side activities. The Committee thinks therefore that the Commission should make a technical distinction between the land side and the air side, where the individual areas of activity should be listed in detail. This would have to be incorporated in Articles 6 and 7 and would make it much easier to implement sensible liberalization measures.

3.2. The complexity of the rules and regulations which will be needed to implement the proposal is out of all proportion to the objective being pursued. Overall, the proposal lacks clear definitions in many respects. Initially it will be necessary to establish business transparency. It will be impossible to contemplate any further measures for opening up the market until transparency has been created and one can see how services relate to prices at the moment.

One fundamental shortcoming is that the Commission does not adopt a gradual approach spread over a long timescale. Hence the danger that safety, environmental and employment concerns are not heeded, with users' and passengers' interests suffering as a result.

3.2.1. The Directive's complete failure to consider the social consequences must be sharply criticized. The Commission has not even awaited the findings of the study it commissioned on the social consequences of opening up the groundhandling market. This is completely incomprehensible.

3.2.2. This disregard for the social consequences, together with the vagueness of the definitions and ensuing legal uncertainty, may lead to opposition and protests. The Commission must clarify whether Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses must also be applied in these cases.

3.3. The national authorities are to be able to restrict the opening up of the market under certain conditions. This option was called for in the 'Expanding Horizons' report from the Comité des Sages and again by the Council in its Resolution of 24 October 1994. The exemption criteria provided for in the Commission proposal are too imprecise and not as legally binding as

they should be. The Committee thinks that these criteria must be very precise and legally binding so that Member States really are in a position to grant exemptions.

3.4. Investments which will have to be borne by airport operators as a result of liberalization measures could constitute direct interference in the system of property ownership, in breach of EU Treaty Article 222. In order to avoid legal uncertainty here, the proposal ought to provide for all service providers to pay a proportionate share of the infrastructure costs in accordance with national laws.

The airport owner or management must continue to have sole overall responsibility for an airport's general operation.

3.5. The Committee is concerned about the Commission's role in the following areas and thinks that it should be reconsidered:

1) By being able to examine airports' and some airlines' accounting systems for groundhandling services, the Commission would assume the role of a direct supervisory authority.

2) Article 16(1) of the proposed Directive gives the Commission unprecedented political powers with regard to third countries.

4. Specific comments

4.1. Article 2 — Scope

If one closely scrutinizes the practical operations at airports, one can see that the scope of the proposal ought to be reconsidered. The number of airports covered would be reduced considerably if the definition of 'airports of common interest' contained in the Commission proposal for trans-European networks were to be used as a basis, viz.:

Annual traffic volume of no less than

— 4,5 million passenger movements or

— 100 000 commercial aircraft movements or

— 150 000 tonnes freight throughput.

The Committee regards this as a practical approach.

4.2. Article 4(2) — Transparency

In the interests of fair competition and in order to avoid cross-subsidization, the Committee thinks that all

airlines, airport companies and other providers of groundhandling services operating for third parties should be obliged to unbundle their accounting and management.

4.3. *Article 5 — Users' Committee*

There is a need for more details about the establishment and operation of the Users' Committee. Provision should be made for the consultation of workers' representatives. It is necessary to define guidelines for (a) the distribution of voting rights in accordance with the presence of undertakings at the particular airport and (b) the voting and decision-taking procedures. The allocation of costs must also be regulated.

4.4. *Article 7 — Self-handling*

The Committee proposes a clear distinction between land- and air-side activities. The right to self-handling should be fully liberalized on the land-side so long as this does not result in more self-handlers than an airport can reasonably accommodate. Self-handling on the air-side could be liberalized as soon as there is sufficient space and capacity.

4.5. *Article 9(3) — Grounds for exemption*

The procedure for applying for and justifying exemptions must be defined more precisely by the Commission in order to avoid legal uncertainty in countering unequal treatment and distortions of competition.

4.6. *Article 9(4) — Commission opposition*

The Commission's decision-making powers are too extensive in this instance. The rejection of an application for an exemption must be governed by precise readily-understandable criteria in order — with due regard to national legislation — to avoid legal uncertainty for all interested parties. Member States and other interested parties should be granted the right to appeal before legal action is initiated.

4.7. *Article 9(6) — Capacity-related exemptions*

It may be impossible to eliminate capacity bottlenecks by developing airports because of geographical or environmental constraints or the proximity of human settlements. Exemptions must not be subject to a time-limit in these instances as long as the prerequisites continue to obtain. Here, too, it would make sense, after the exemptions have expired, to grant Member States the right of protest vis-à-vis the Commission and to

make consultations thereafter obligatory before official legal action is initiated.

4.8. *Article 10 — Selection of suppliers*

The Committee thinks that in order to be more precise the expression 'technical specifications' in Article 10(1)(a) should be replaced by 'safety, environmental, economic and social specifications'.

4.9. *Article 12(1) — Approval criteria*

The approval criteria must take account of the findings of the study on the social consequences which still has to be submitted. The Committee would welcome the application of valid collective agreements.

4.10. *Article 13(1) — Rules of conduct*

The Committee thinks that the following points (d) and e) should be added to Article 13(1):

- '(d) the security checks carried out on a service provider's personnel must comply with national provisions and be approved in the selection procedure;
- (e) the workers must be employed in accordance with current legal provisions.'

4.11. *Article 14 — Access to installations*

Apart from paying for access costs, service providers and users must also pay a share of the infrastructure costs. Proof should be provided of the actual costs incurred.

4.12. *Article 15 — Safety and security*

The Directive's provisions do affect the rights and obligations of the Member States in respect of safety and security at airports. Since, for example, the airport administration cannot vet or determine the suppliers' recruitment practices, certain supervisory obligations cannot be satisfied. It will be necessary to make a detailed analysis of the effects on safety and security and draw the necessary conclusions. The validity of national safety and security provisions must be made binding.

4.13. *Article 19 — Implementation*

In view of the wealth of unanswered questions and objections to the Commission's approach, implemen-

tation of the Directive by July 1996 in the interests of all parties does not make much sense. This is also true in

particular of the Commission's basic idea that the proposal ought to improve economic efficiency.

Done at Brussels, 13 September 1995.

The President
of the Economic and Social Committee
Carlos FERRER

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments, which received at least one quarter of the votes cast, were defeated during the discussion:

a) Page 6, point 3.2

Delete the last sentence of first paragraph.

Reasons

The transparency and so-called comparability of prices put forward by the Rapporteur are not valid arguments to prevent liberalization from proceeding.

Voting

For: 28, against: 70, abstentions: 8.

b) Page 7, point 4.1

Replace the existing text with:

'The Committee endorses the Commission proposal regarding the scope of the measures which imply that, for third party handling, their application is restricted to airports whose annual traffic is not less than:

- 2 million passenger movements or
- 50 000 tonnes of freight or
- to airports whose traffic over the preceding 18 months is not less than one million passenger movements or 25 000 tonnes of freight during any period of six consecutive months.'

Reason

The draft Opinion suggests that the definition of 'airports of common interest' contained in the Commission proposal for trans-European transport networks should be used as a basis as to scope of the proposed Directive. However the traffic volumes mentioned in 4.1 refer only to one of the criteria ('community connecting points') for 'airports of common interest'. There are two more criteria: one being 'regional connecting points' and the other 'accessibility points'; see COM(95) 298 final of 19/6/1995, with much lower thresholds, even lower than those in the current Commission proposal. There is no need to reconsider the Commission proposal as it is a balanced compromise between those who propose free access to the groundhandling market and those opposed to liberalization.

Voting

For: 31, against: 68, abstentions: 11.

c) Page 7, point 4.2

Delete the entire paragraph.

Reason

The Commission proposal on unbundling is quite clear. Its main aim is to counter abuse of dominant position by a third party handler. In accordance with Article 4.1, all airport authorities are required to unbundle the groundhandling services from other airport activities. This also clearly applies to users with more than 25% of similar services — Article 4.2. The Opinion requirement for unbundling by all airlines, airport companies and other third party handlers is excessively bureaucratic and out of proportion to what is needed.

Voting

For: 32, against: 83, abstentions: 5.

d) Page 8, point 4.7

Replace the existing text with:

'Even when it may be impossible to totally eliminate capacity bottlenecks by developing airports because of geographical or environmental constraints or human settlements, the main objective of the Commission proposal is still to introduce a minimum degree of liberalization on the air-side. Therefore the time provided by the exemption procedure should be used to introduce a second and/or third handler on the air-side.'

Reason

Total rewrite for clearer understanding. Exemptions must not be allowed to be used repeatedly — to maintain monopolies. Given that a Member State will be permitted to take up to two years to implement the proposed Directive and is allowed three years for an exemption, a total of five years is considered enough time for action to be taken to achieve the introduction of additional handlers.

Voting

For: 29, against: 78, abstentions: 3.
