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**REPORT**

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From: General Secretariat  
To: Council  
No Cion doc.: 18008/11 AVIATION 256 CODEC 2288  
Subject: Proposal for a Regulation of the European Parliament and of the Council on  
groundhandling services at Union airports and repealing Council Directive  
96/67/EC  
- General approach

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**I. Introduction**

1. On 1 December 2011, the Commission submitted to the European Parliament and the Council three legislative proposals which aim at fostering the competitiveness of European airports and increasing their performance in terms of efficiency, quality and resilience. The above mentioned proposal is part of the so called “airports package”, and its main objective is to stimulate competition among groundhandling suppliers while ensuring a level playing field, and to ensure high quality of service in the groundhandling sector.

## II. Work within the Council

2. In January 2012, the Aviation Working Party started the examination of the above proposal. In line with the Inter-Institutional Approach to Impact Assessments, the Working Party also discussed and evaluated the Commission's impact assessment.<sup>1</sup>
3. Following the discussions held at various meetings of the Aviation Working Party, the Presidency has amended several provisions of the Commission proposal in order to take account of the Member States' concerns. Recitals will be adapted to the substantive provisions at a later stage.

DE, FR, MT and UK have a parliamentary scrutiny reservation. AT has a general scrutiny reservation on the text.

4. On 16 March 2012, the draft general approach was submitted to the Permanent Representatives Committee (Coreper). During this Coreper meeting, several Member States argued strongly for keeping the delicate balance of the current Presidency compromise, and opposed further changes to the text; while some other Member States reiterated their concerns and presented new draft suggestions. The Presidency took note of the delegations comments and, in order to solve some outstanding issues and to facilitate reaching a general approach, the Presidency accepted some of the proposals tabled by delegations. However, a few questions still need to be discussed at Council level, as some delegations maintain their reservations on the text. The changes in Annex I to this report compared to the report to Coreper are indicated in **bold** and ~~strikethrough~~.

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<sup>1</sup> Better Regulation: Inter-Institutional Common Approach to Impact Assessment (IA) 14901/05 JUR 486 COMPET 263

The Commission supports reaching a general approach at the forthcoming Council meeting. Nevertheless, it reserves its position on the entire compromise proposal. Its reservation pertains in particular to the solutions found on minimum quality standards, legal separation, relations with third countries and approvals.

## **OUTSTANDING ISSUES**

### **a) Price regulation in case of monopoly / duopoly**

**(Article 7(7a) and Article 10(5a), footnotes 13 and 15)**

5. In cases where the tendering procedure (Article 7) fails to provide the minimum number of suppliers required by the proposal, or when a supplier ceases its activity at an airport (Article 10), a temporary monopoly or duopoly may occur. The Commission proposed that in these cases Member States regulate the prices until a further supplier starts providing groundhandling services.

CZ and PL, however, consider that it would be preferable if markets would set the prices. Only if prices seemed excessive, competition rules should allow for the intervention of national authorities. Therefore, in their view, Member States should only be given a simple possibility to set prices, and in the above paragraphs the Presidency's compromise, "*shall, as necessary*", should be replaced by "*may*".

6. In Coreper, the majority of Member States stressed that making further changes to the Presidency compromise text would upset the overall balance between a market-based and a regulatory approach to groundhandling, which had been reached throughout the proposal with great effort. Therefore the Presidency has decided to keep the text of its compromise proposal in the above paragraphs.

**b) Approvals (Articles 16 - 25, footnotes 20 and 21)**

7. Some Member States expressed concerns on the added value of a Union wide approval system, as proposed by the Commission. The administrative burden that the setting up of such an approval system would put on Member States, in particular those which do not have an approval system in place, also raised significant doubts. Therefore, the Presidency modified the text and kept the principle of a voluntary approval system, as it is the case under Directive 96/67/EC. Nevertheless, the structure of the Commission proposal was kept, and the Presidency compromise text in Article 17 contains a list of important aspects, to which the approval criteria must relate to. Regarding the list of criteria, PL would like to clarify that the list contained in Article 17 is just as an "indicative" one.
8. Several Member States argued that the voluntary system of approvals should not be further weakened by adding "indicative" in the text. The Presidency, therefore, has decided to keep the text of the compromise proposal. AT and IT keep their overall reservation on the Chapter of approvals.

**c) Decisions on centralised infrastructure and groundhandling fees  
(Article 27a(5), (8), and Article 28(6), (7) (8), footnotes 22 - 25)**

9. According to the Presidency's compromise proposal, decisions on the centralisation of scarce airport infrastructure and on the level of groundhandling fees are taken by the airport managing body, or its controlling body, following a consultation with interested parties. If the consulted interested parties disagree with the decision of the airport managing body, they have the right to appeal to the national authority, which will take a final decision on the degree of centralisation or the level of the groundhandling fee.
10. Two delegations (CZ and PL) oppose the above system of appeals, since they consider that it imposes too much administrative burden on Member States' authorities, which do not have sufficient resources for the handling of these appeals. In their view, disputes should be resolved at the level of the interested parties, and overall they would prefer to have a less binding system.

11. Furthermore, the UK considers that the deadline of four weeks for an interim decision (and four plus two months for a final decision) are not sufficient to ensure a "due process".
12. In order to accommodate some of the concerns, the Presidency proposes to replace "*shall*" by "*may*" in Article 27a(5) and Article 28(6), thereby returning to the Commission's initial proposal, and giving Member States greater flexibility regarding their system of appeals.

**d) Other issues**

13. In Article 35 on subcontracting, at the Coreper meeting on 16 March 2012, IT proposed a new text which would open the possibility for Member States to introduce a threshold on subcontracting, expressed in terms of the annual turnover of the main contractor (footnote 30). AT, DE and EL keep their reservation on the same Article 35 (footnote 29).
14. Other concerns and reservations expressed by delegations appear in the footnotes of the Annex.

**III. Conclusion**

The Council is invited to examine the text as set out in the Annex to this report, to resolve the outstanding issues and adopt a general approach at its meeting on 22 March 2012.

2011/0397 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on groundhandling services at Union airports and repealing Council Directive 96/67/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100 (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

- (1) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports<sup>4</sup> provides for a gradual opening of the groundhandling market.
- (2) Airports and groundhandling services are essential to the proper functioning of air transport and are a key function in the aviation chain. Groundhandling services cover all ground-based aviation-related activities carried out for individual airlines at airports.
- (3) The Declaration adopted at the Bruges Aviation Summit in October 2010 recognised the need to reform Union rules to foster the competitiveness of each link in the aviation transport chain (such as. airports, carriers, other service providers).
- (4) The White Paper Roadmap to a Single European Transport Area<sup>5</sup> identifies the improvement of market access and the provision of quality services at airports as vital for the quality of life of citizens and as an essential action to achieve the Single European Transport Area.
- (5) Further gradual opening of the groundhandling market and the introduction of harmonised requirements for the provision of groundhandling services are likely to enhance the efficiency and overall quality of groundhandling services for airlines as well as for passengers and freights forwarders. This should improve the quality of overall airport operations.
- (6) Considering the new need for minimum, harmonised quality standards at airports to implement the gate-to-gate approach for the realisation of the Single European Sky and the need for further harmonisation to fully exploit the benefits of the gradual opening of the groundhandling market in terms of increased quality and efficiency of groundhandling services, Directive 96/67/EC should therefore be replaced by a Regulation.
- (7) Free access to the groundhandling market is consistent with the efficient operation of Union airports, provided relevant safeguards are put in place. Free access to the groundhandling market should be introduced gradually and be adapted to the requirements of the sector.

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<sup>4</sup> OJ L 272, 25.10.1996, p. 36.

<sup>5</sup> COM(2011) 144 final.

- (8) Gradual opening of the market under Directive 96/67/EC has already produced positive results in terms of improved efficiency and quality. It is therefore appropriate to proceed with further gradual opening.
- (9) Every airport user should be allowed to self-handle. At the same time it is necessary to maintain a clear and restrictive definition of self-handling in order to avoid abuse and negative impacts on the third-party handling market.
- (10) For certain categories of groundhandling services, access to the market may come up against safety, security, capacity and space availability constraints. It should therefore be possible to limit the number of authorised suppliers of such groundhandling services.
- (11) In certain cases the safety, security, capacity and space availability constraints can be such that they may justify further restrictions on market access or on self-handling, provided that these restrictions are relevant, objective, transparent and non-discriminatory. In such cases Member States should be entitled to request exemptions from the provisions of this Regulation.
- (12) The purpose of these exemptions should be to enable airport authorities to overcome or at least reduce these constraints. Such exemptions should be approved by the Commission.
- (13) If effective and fair competition is to be maintained where the number of suppliers of groundhandling services is limited, those suppliers need to be chosen according to an open, transparent and non-discriminatory tender procedure. The details of such a procedure should be further specified.
- (14) Airport users should be consulted in the selection of suppliers of groundhandling services, since they have a major interest in the quality and price of groundhandling services.
- (15) It is therefore necessary to arrange for the representation of airport users and their consultation, in particular when authorised suppliers of groundhandling services are selected.



- (16) In the context of the selection of suppliers of groundhandling services at an airport, it should be possible in certain circumstances and under specific conditions to extend a public service obligation to other airports in the same geographical region of the Member State concerned.
- (17) 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. Discontinuity of staff can have a detrimental effect on the quality of groundhandling services. It is therefore appropriate to clarify the rules on the takeover of staff beyond the application of Directive 2001/23/EC on transfers of undertakings enabling Member States to ensure adequate employment and working conditions.
- (18) In order to ensure the proper and smooth functioning of air transport operations at airports, guarantee safety and security on airport premises as well as protect the environment and ensure compliance with the applicable social provisions and rules, the provision of groundhandling services should be subject to an appropriate approval. Given that systems for approving the provision of groundhandling services currently exist in the majority of Member States but differ widely, a harmonised approval system should be introduced.
- (19) To make sure that all service suppliers and self-handling airport users possess sufficient economic solidity, good repute, sufficient insurance coverage, and proper knowledge of groundhandling operations and the airport environment, and in order to establish a level playing field, the granting of approval should be subject to minimum requirements.
- (20) Open access to the centralised infrastructure of the airport and a clear legal framework for the definition of the centralised infrastructure is essential for the efficient provision of groundhandling services. It should be possible, however, to collect a fee for the centralised infrastructure.
- (21) The fees should be non-discriminatory and the calculation should be transparent. The fees should not exceed what is necessary to cover the costs of the provision of the centralised infrastructure including a reasonable return on assets.

- (22) The managing body of the airport and/or any other managing body of the centralised infrastructure of that airport should regularly consult airport users on the definition of the infrastructure and the level of fees.
- (23) The managing body of the airport may also supply groundhandling services itself. As at the same time, through its decision, the managing body of the airport may exercise considerable influence on competition between suppliers of groundhandling services, airports should be required to keep their groundhandling services in a legal entity separate from the legal entity for infrastructure management.
- (24) In order to enable airports to fulfil their infrastructure management functions, to guarantee safety and security on airport premises and to ensure the resilience of groundhandling services also in crisis situations the managing body of the airport should be responsible for the proper coordination of groundhandling activities at the airport. The managing body of the airport should report on the coordination of airport groundhandling activities to the Performance Review Body of Eurocontrol in view of a consolidated optimisation.
- (25) The managing body of the airport, a public authority or any other body controlling the airport should also have the power to lay down the necessary rules for the proper functioning of the airport infrastructure.
- (26) It is necessary to define obligatory minimum quality standards to be met by suppliers of groundhandling services and self-handling airport users in order to ensure the overall quality of service and establish a level playing field among suppliers.
- (27) With a view of enhancing performance across the whole aviation chain and implementing the 'gate-to-gate' approach, the suppliers of groundhandling services and self-handling airport users should report to the Commission about their performance.

- (28) In a labour-intensive sector such as groundhandling, continuous staff development and training have a strong impact on service quality. Minimum training requirements should therefore be set to ensure the quality of operations in terms of reliability, resilience, safety and security, and to create a level playing field among operators.
- (29) Subcontracting increases flexibility for suppliers of groundhandling services. Nevertheless, subcontracting and cascade subcontracting may also result in capacity constraints and have negative effects on safety and security. Subcontracting should therefore be limited and the rules governing subcontracting should be clarified.
- (30) The rights recognised by this Regulation should only apply to third-country suppliers of groundhandling services and third-country self-handling airport users subject to strict reciprocity. Where there is not such reciprocity, the Commission should be enabled to decide that a Member State or Member States should suspend these rights with regard to such suppliers or users.
- (31) Member States should retain the power to ensure an adequate level of social protection for the staff of undertaking providing groundhandling services.

- (32) In order to ensure that harmonised insurance requirements apply for suppliers of groundhandling services and self-handling airport users, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of insurance requirements for suppliers of groundhandling services and self-handling airport users. In order to ensure that harmonised and properly updated obligations apply concerning the minimum quality standards for groundhandling services and concerning the reporting obligations for suppliers of groundhandling services and self-handling airport users, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifications for minimum quality standards for groundhandling services and in respect of specifications for the content and dissemination of reporting obligations for suppliers of groundhandling services and self-handling airport users. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level and involving the specific Sectoral Social Dialogue Committee set up under Decision 98/500/EC.
- (33) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (34) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers<sup>6</sup>.
- (35) The advisory procedure should be used for adopting implementing decisions on exemptions to the degree of opening of the market for groundhandling services for third parties and for self-handling airlines given that those acts are only of limited scope.

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<sup>6</sup> OJ L 55, 28.2.2011, p. 13.

- (36) The advisory procedure should also be used for adopting implementing decisions on the extension by Member States of a public service obligation to an island airport given that those acts are only of limited scope.
- (37) The examination procedure should be used for adopting implementing decisions on the whole or partial suspension of the right of access to the groundhandling market within a Member States' territory for suppliers of groundhandling services and airport users from a third country.
- (38) Since the objective of this Regulation, namely more homogenous application of Union legislation with regard to groundhandling services cannot be sufficiently achieved by the Member States due to the international character of air transport, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (39) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006, during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on Gibraltar Airport made in London on 2 December 1987, and the full compliance with it will be deemed to constitute compliance with the 1987 declaration.
- (40) Directive 96/67/EC should therefore be repealed.

HAVE ADOPTED THIS REGULATION:

## Chapter I — Scope and definitions

### *Article 1*

#### *Scope*

The Regulation shall apply to any airport located in the territory of a Member State subject to the Treaty and open to commercial traffic.

The application of this Regulation to the airport of Gibraltar is without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

### *Article 2*

#### *Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (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;
- (aa) 'airport network' means a group of airports duly designated as such by the Member State and operated by the same airport managing body;
- (b) 'airport managing body' means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws, regulations or contracts the administration and management of the airport or airport network infrastructures, and the coordination and supervision of the activities of the different operators present in the airports or airport network concerned;

- (c) 'airport user' means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air to or from the airport concerned;
- (d) 'groundhandling' or 'groundhandling services' means the services provided to airport users at airports as set out in the Annex;
- (e) 'self-handling' means a situation where an airport user directly provides for itself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services<sup>7</sup>.
  - [...]
  - [...]

For the purpose of this Regulation, among themselves airport users are not be deemed to be third parties where:

- one holds a majority holding in the other; or
  - a single body has a majority holding in each;
- (f) 'supplier of groundhandling services' means any natural or legal person supplying third parties with one or more categories of groundhandling services;
  - (g) 'centralised infrastructure' means specific installations and/or facilities including, where relevant, services necessary for the proper management of such installations and/or facilities at an airport which cannot, for technical, environmental, cost or capacity reasons, be divided or duplicated and whose availability is essential and necessary for the performance of subsequent groundhandling services;

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<sup>7</sup> A recital clarifying the relationship between self-handling and code sharing, franchising and alliances will be drafted.

- (ga) 'airport installations' means any installations and/or facilities used for groundhandling at the airport that are not designated as 'centralised infrastructure';
- (gb) 'infrastructure' means centralised infrastructure and airport installations taken together;
- (gc) 'managing body of the infrastructure' means the airport managing body or, where relevant, another body entrusted with the management of infrastructure.
- (h) 'subcontracting' means the conclusion of a contract by a supplier of groundhandling services, in its technical and organisational capacity as the main contractor, by a self-handling airport user, with a third party termed 'subcontractor', under which the subcontractor is required to perform groundhandling services.
- (i) [...]
- (j) 'independent supervisory authority' means the authority notified in accordance with Article 11(4) of Directive 2009/12/EC;
- (k) 'control' means a relationship constituted by rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising a decisive influence on a supplier.



## Chapter II — General preliminary requirements

### *Article 3*

#### *Airport managing body*

1. Where an airport is managed and operated not by a single body but by several separate bodies, each of these bodies shall be considered part of the airport managing body for the purposes of this Regulation.
2. Where only a single airport managing body is set up for several airports, each of those airports shall be considered separately for the purposes of this Regulation, except, where applicable, in the case of an airport network, for the application of Article 28(4).

### *Article 4*

#### *Airport Users' Committee*

1. At airports whose annual traffic has been over 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years, the airport managing body shall establish a committee of representatives of airport users or of organisations representing airport users ('Airport Users' Committee').
2. All airport users shall have the right to participate in the work of the Airport Users' Committee, or, if they so wish, to be represented on it by an organisation designated to that effect. However, if they are represented by such an organisation, this organisation shall not provide groundhandling services at the concerned airport.
3. The Airport Users' Committee shall establish in writing its own rules of procedures, including its own voting rules.

The voting rules shall include specific provisions on how to avoid any conflict of interests in the Airport Users' Committee resulting from the presence of airport users that provide groundhandling services at the airport concerned. In particular, where the Airport Users' Committee is consulted in the course of the selection procedure in accordance with in Articles 8 and 9, airport users applying for an authorisation to provide one or more groundhandling services to third parties shall not be entitled to vote.

4 [...]

(a) [...]

(a) [...]

5. The airport managing body shall provide the secretariat of the Airport Users' Committee and this secretariat shall keep minutes of each meeting of the Airport Users' Committee.

## Chapter III — Opening of the groundhandling market

### SECTION 1 SELF-HANDLING

#### *Article 5*

#### *Self-handling*

All airport users shall be free to practice self-handling.

### SECTION 2 GROUNDHANDLING FOR THIRD PARTIES

#### *Article 6*

#### *Groundhandling for third parties<sup>8</sup>*

1. Suppliers of groundhandling services, which are established within the EU, shall have free access to the market for the provision of groundhandling services to third parties on any airport whose annual traffic has been over 2 million passenger movements or 50 000 tonnes of freight for at least the previous three years.
  
2. For airports referred to in paragraph 1 Member States may limit the number of suppliers authorised to provide the following categories of groundhandling services:
  - (a) baggage handling;
  - (b) ramp handling;
  - (c) fuel and oil handling;
  - (d) 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.<sup>9</sup>

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<sup>8</sup> Reservation: AT, DE.

<sup>9</sup> A recital clarifying the specific situation of door to door service providers for post and cargo will be drafted.

- 2a. For airports whose annual traffic has been over 2 million passenger movements or 50 000 tonnes of freight but it does not exceed 5 million passengers or 100 000 tonnes of freight for at least the previous three years, Member States shall not limit the number of suppliers to fewer than two for each category of groundhandling services.<sup>10</sup>
- 2b. For airports whose annual traffic has been over 5 million passengers or 100 000 tonnes of freight for at least the previous three years, Member States shall not limit the number of suppliers to fewer than three suppliers for each category of groundhandling services.<sup>11</sup>
3. At airports where the number of suppliers is limited to two or more suppliers in accordance with this Article, or Article 14 (1) (a) and (c), at least one of the authorised suppliers shall not be directly or indirectly controlled by:
- (a) the airport managing body,
  - (b) any airport user who has carried more than 25 % of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected,
  - (c) a body directly or indirectly controlling, or controlled by the airport managing body as referred to in point (a) or any such user referred to in point (b).

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<sup>10</sup> A recital clarifying that when the market only provides for one supplier there is no obligation of tendering will be drafted.

<sup>11</sup> UK proposes to introduce a new threshold of 20 million passengers with the obligation of having a fourth supplier.

4. Where the number of authorised suppliers is restricted pursuant to paragraph, 2a and 2b, Member States may not prevent an airport user, whatever part of the airport is allocated to him, from having, in respect of each category of groundhandling service subject to limitation, an effective choice, under the conditions laid down in paragraphs 2 and 3, between at least:
- two suppliers of groundhandling services, or
  - three suppliers of groundhandling services for airports whose annual traffic has been over 5 million passengers or 100 000 tonnes of freight for at least the previous three years.
5. Where an airport reaches one of the freight traffic thresholds laid down in this Article without reaching the corresponding passenger movement threshold, this Regulation shall not apply to categories of groundhandling services and to infrastructure reserved exclusively for passengers.
- Where an airport reaches one of the passenger traffic thresholds laid down in this Article without reaching the corresponding freight movement threshold, this Regulation shall not apply to categories of groundhandling services and to infrastructure reserved exclusively for freight.
6. Any airport referred to in paragraphs 2a and 2b, whose annual traffic subsequently falls under the thresholds set out therein, shall maintain its market open to third-party handling suppliers as long as its traffic does not fall under the given threshold for three consecutive years.
7. [...]

*Article 7*  
*Selection of suppliers*

1. Suppliers authorised to provide groundhandling services at an airport where their number is limited under Article 6(2) or Article 14(1) (a), (b) and (c) shall be selected according to a transparent and non-discriminatory tender procedure, open to all interested parties. The tendering authority may divide these groundhandling services in subcategories, and organize a separate tender procedure for each subcategory.<sup>12</sup>
  
2. The tendering authority shall be the airport managing body, provided that it does not provide similar groundhandling services, it has no direct or indirect control over any undertaking which provides such services and it has no involvement in any such undertaking.
  - (a) [...]
  
  - (b) [...]
  
- 2a. In cases where paragraph 2 does not apply, the tendering authority shall be a competent authority, independent of the airport managing body.
  
3. The tendering authority shall ensure that the Airport Users' Committee and the airport managing body has access to a summary of the applicants' submissions so as to enable them to deliver an appropriate opinion during the selection procedure. The tendering authority shall ensure that the summary of the applicants' submissions contains no confidential information.

The Airport Users' Committee and the airport managing body, if it is not the tendering authority, shall not have access to the applicants' submissions at any stage of the selection procedure.

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<sup>12</sup> AT proposes that the applicant should only be able to apply for categories and not only for specific subcategories.

4. After having informed the Commission, and subject to Union rules on state aid, the Member State concerned may include among the tender specifications a public service obligation to be met by suppliers of groundhandling services in respect of airports serving peripheral or developing regions which are part of its territory, where suppliers are not willing to provide groundhandling services without public support, (i.e. exclusive rights or compensation payments), but where such airports are of vital importance as regards accessibility for the Member State concerned.
5. The invitation to tender shall be launched and published in the *Official Journal of the European Union*.
6. The selection of the suppliers by the tendering authority shall be done in two stages:
  - (a) a qualification procedure to examine the suitability of the applicants, as described in Article 8; and
  - (b) an award procedure to select the authorised supplier(s), as described in Article 9.
- 6a. The tendering authority shall inform the Airport Users' Committee and, if applicable, the airport managing body of decisions taken under Articles 7, 8, 9 and 10.
7. If a tender is not successful in finding the sufficient number of suppliers according to Article 6(2), the tendering authority shall launch a new tender within 18 months after the end of the previous tender procedure. The tendering authority may, after consulting the Airport Users' Committee, extend this period up to a maximum of 36 months.

- 7a. If the failure to find the sufficient number of suppliers leads to a temporary monopoly for the provision of groundhandling services at an airport, the Member State shall, as necessary,<sup>13</sup> regulate the prices of those groundhandling services for which a temporary monopoly exists until a second supplier starts providing these groundhandling services at the airport.

*Article 8*

*Qualification procedure*

1. Where the number of suppliers is limited under Article 6(2) or Article 14(1) (a), (b) and (c), in the qualification procedure the tendering authority shall verify that the applicants meet a number of minimum criteria. The tendering authority shall establish these minimum criteria after consulting the Airport Users' Committee and the airport managing body, if the latter is not the tendering authority.
  - 1a. Airport users that apply to provide third-party handling or which operate their own self-handling for at least one of the groundhandling services that are part of the tender shall not be consulted in the qualification procedure for the services they provide themselves.
2. The minimum criteria shall include that the applicant:
  - (a) where relevant, obtains a valid approval issued in accordance with Chapter IV on Approvals; and
  - (b) demonstrates its ability to apply the relevant provisions and rules including applicable labour laws, applicable collective agreements, rules of conduct at the airport and quality requirements at the airport and commits in writing to such application.<sup>14</sup>

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<sup>13</sup> CZ and PL would prefer "may", instead of "shall, as necessary".

<sup>14</sup> A recital clarifying that collective labour agreements applicable to groundhandling staff should be the ones relevant to the specific activity carried out at the airport concerned will be drafted.



3. The tendering authority shall short-list the applicants meeting the criteria of the qualification procedure.

*Article 9*

*Award procedure*

1. Where the number of suppliers is limited under Article 6(2) or Article 14(1) (a), (b) and (c), in the award procedure the tendering authority shall select a supplier or suppliers among the short-listed applicants and award the authorisation to the selected supplier(s) after consulting, on the basis of a summary of the applicants' submissions, the Airport Users' Committee and the airport managing body, if the latter is not the tendering authority. The Airport Users' Committee and / or the tendering authority of the airport may interview the candidates.
2. The selection of the supplier(s) for the award of the authorisation shall be based on comparison of the applicants' submissions against a list of award criteria. The award criteria shall be relevant, objective, transparent and non-discriminatory. The tendering authority shall establish the award criteria after consulting the Airport Users' Committee and the airport managing body, if the latter is not the tendering authority.
3. The award criteria shall include the following:
  - (a) consistency and plausibility of the business plan as assessed for the next three years;
  - (b) level of quality of operations as assessed on the basis of a representative flight schedule described in the tender documents including, where relevant, efficient use of staff and equipment, last acceptance of baggage and cargo, delivery times for baggage and cargo and maximum turnaround times;
  - (c) adequateness and expected availability of material resources for the proposed activity and ability to ensure their maintenance and renewal;

- (d) adequateness of planned human resources in terms of workers' experience and skill and adequateness of training programme;
  - (e) quality of planned information and communication technology;
  - (f) procedure proposed for the organisational planning of the activity;
  - (g) procedures and safeguards established to ensure compliance with safety and security requirements;
  - (h) procedures and safeguards established to ensure compliance with environmental requirements.
4. The relative weighting of the award criteria shall appear in the invitation to tender and the relevant documents. A range of points with an appropriate maximum spread shall be applied to each award criterion. The tendering authority may set a minimum number of points that a successful applicant has to reach for certain specific award criteria. The setting of a minimum number of points shall be non-discriminatory and shall be clearly stated in the invitation to tender and the relevant documents. The tendering authority may not eliminate any of the award criteria, add others or subdivide those initially laid down in the invitation to tender.
  5. The authorisation to provide groundhandling services at the respective airport shall be awarded to the applicant achieving the highest number of points while also meeting any minimum number of points required for certain award criteria.
  6. Airport users that apply to provide third-party handling or which operate their own self-handling for at least one of the groundhandling services that are part of the tender shall not be consulted in the award procedure for the services that they provide themselves.
  7. The tendering authority shall ensure that the award decision and the reasons for this decision are made public.

## *Article 10*

### *Selection period and termination of activity*

1. Where the number of suppliers is limited under Article 6(2) or Article 14(1) (a), (b) and (c), suppliers of groundhandling services shall be authorised for a minimum period of seven years and a maximum period of ten years. The exact period for which the suppliers are authorised and the date to start operations shall be clearly indicated in the invitation to tender.
2. [...] (new) If after 6 months from the start date indicated in the invitation to tender the supplier has not started its activities and cannot demonstrate its willingness to do so, the tendering authority may decide that the authorisation will cease to be valid. In such a case, Member States may impose financial penalties on the supplier and may authorise the supplier which has obtained the second highest number of points in accordance with Article 9(5).
3. The tendering authority shall anticipate the end of the authorisation period and shall ensure that any supplier selected after a new invitation to tender is authorised to start its operations the day following the last day of the authorisation period of the previously selected supplier(s).
4. Where a supplier of groundhandling services ceases its activity before the end of the period for which it was authorised, the supplier shall be replaced on the basis of the selection procedure described in Articles 7, 8, 9 and in this Article. Any supplier ceasing its activity shall inform the relevant tendering authority of its intention to cease activity at least six months in advance before it leaves the airport. The Member State may impose financial penalties on the supplier if it does not inform the tendering authority at least six months in advance, unless the supplier can demonstrate force majeure.

5. Where a supplier ceases its activity before the end of the period for which it was authorised and does not leave sufficient time to the tendering authority to select a new supplier before it leaves the airport, with the result that there is a temporary monopoly or duopoly for certain groundhandling services at this airport, the Member State shall authorise for a limited period of time not exceeding twelve months a supplier of groundhandling services to provide groundhandling services at that airport without having recourse to the selection procedure laid down in Articles 7, 8, 9 and this Article.
- 5a. If the Member State does not succeed in finding a supplier of groundhandling services for this limited period of time, the Member State shall, as necessary<sup>15</sup>, regulate the prices of those groundhandling services for which a temporary monopoly exists until a further supplier starts providing these groundhandling services at the airport.
6. [...]
7. [...]

### *Article 11*

#### *The airport managing body as supplier of groundhandling services*

1. Where the number of suppliers of groundhandling services is limited in accordance with Article 6(2), the airport managing body may itself provide groundhandling services without being subject to the selection procedure laid down in Articles 7 to 10. Similarly, it may, without following this procedure, authorise an undertaking to provide groundhandling services at the airport concerned:
  - (a) if it controls that undertaking directly or indirectly;
  - (b) if the undertaking controls it directly or indirectly.

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<sup>15</sup> CZ and PL would prefer "may", instead of "shall, as necessary".

2. Where an airport managing body supplying groundhandling services in accordance with paragraph 1 no longer meets the conditions of paragraph 1, this supplier may continue to provide groundhandling services for a period of five years without being subject to the selection procedure laid down in Articles 7 to 10. At the end of this five-year period, the supplier shall inform the relevant tendering authority at least six months before the expiry of the five-year period. The Member State may impose financial penalties on the supplier if it does not inform the tendering authority at least six months in advance. Financial penalties shall not be imposed if the supplier can demonstrate force majeure. If the supplier ceases its activity before the end of the five-year period, Articles 10 (4) and 10 (5) shall apply.

*Article 12<sup>16</sup>*

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

1. This Article applies only to groundhandling services for which the Member State concerned has limited the number of suppliers in accordance with Article 6 or 14. It shall be without prejudice to Article 40 and shall not apply when Directive 2001/23/EC applies.
  - 1a. Member States may entrust management and labour at the appropriate level with defining through negotiated agreement the practical arrangements implementing this Article.
2. Where, following the selection procedure laid down in Articles 7 to 10, a supplier of groundhandling services mentioned in paragraph 1 loses its authorisation to provide these services, Member States may<sup>17</sup> require supplier(s) of groundhandling services which subsequently provide these services to grant staff previously hired to provide these services the rights to which they would have been entitled if there had been a transfer within the meaning of Council Directive 2001/23/EC.<sup>18</sup>

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<sup>16</sup> Reservation on this Article and Article 40: AT, DE.

<sup>17</sup> AT proposes to have "shall", instead of "may".

<sup>18</sup> AT proposes to add at the end of the sentence: "..., irrespective of the application of this Regulation."

3. Member States shall limit the requirement in paragraph 2 to the employees of the previous supplier who are involved in the provision of services for which the previous supplier lost authorisation.
4. Member States shall limit the requirement in paragraph 2 so that it is to be proportionate to the volume of activity effectively transferred to the other supplier(s).
5. Where a Member State imposes a requirement as referred to in paragraph 2, tender documents for the selection procedure laid down in Articles 7 to 10 shall list the staff concerned and give the relevant details of employees' contractual rights and the conditions under which employees are deemed to be linked to the services in question.
6. Where a supplier of groundhandling services stops providing to an airport user groundhandling services which constitute a significant part of the groundhandling activities of this supplier in cases not covered by paragraph 2, or where a self-handling airport user decides to stop self-handling, Member States may require the supplier(s) of groundhandling services or self-handling airport user which subsequently provide these groundhandling services to grant staff previously hired to provide these services the rights to which they would have been entitled if there had been a transfer within the meaning of Council Directive 2001/23/EC.<sup>19</sup>
7. Member States shall limit the requirement in paragraph 6 to the employees of the previous supplier who are involved in the provision of groundhandling services that the previous supplier stops providing.
8. Member States shall limit the requirement in paragraph 6 to the employees of the self-handling airport user who are involved in the provision of groundhandling services for which the self-handling airport user decides to stop self-handling.

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<sup>19</sup> AT proposes to add at the end of the sentence: "... , irrespective of the application of this Regulation."

9. Member States shall limit the requirement in paragraph 6 so that it is to be proportionate to the volume of activity effectively transferred to the other supplier or self-handling airport user.
10. [...]
11. Member States shall inform the Commission on any measures taken in accordance with this Article.

*Article 13*  
*Island airports*

For the selection of suppliers of groundhandling services at an airport as provided for in Articles 7 to 10, a Member State may include in the tender specifications a public service obligation for other airports in that Member State provided that:

- (a) those airports are located on islands in the same geographical region;
- (b) such airports each have a traffic volume of no less than 100 000 passenger movements per year; and
- (c) such an inclusion is approved by the Commission.

The decision on approving the inclusion constitutes an implementing act which shall be adopted in accordance with the advisory procedure referred to in Article 43 (2). This Article shall be without prejudice to Union rules on state aid.

### Section 3 Exemptions for self-handling and third-party groundhandling

#### *Article 14*

#### *Exemptions*

1. Where specific constraints of available space or capacity at an airport, arising in particular from congestion and area utilisation rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Regulation, the Member State concerned may decide:
  - (a) to limit to not fewer than two suppliers the number of suppliers for one or more categories of groundhandling services other than those referred to in Article 6 (2) in all or part of the airport, whereby Article 6 (3) shall apply;
  - (b) to reserve to a single supplier one or more of the categories of groundhandling services referred to in Article 6 (2) for airports whose annual traffic is over 2 million passengers annually or 50 000 tonnes of freight;
  - (c) to limit to one or two suppliers one or more of the categories of groundhandling services referred to in Article 6 (2) for airports whose annual traffic is over 5 million passengers or 100 000 tonnes of freight, whereby in the case of a limitation to two suppliers Article 6 (3) shall apply;
  - (d) to reserve self-handling as referred to in Article 5 to a limited number of airport users, provided that those users are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.



2. All exemptions under paragraph 1 shall:
  - (a) specify the category or categories of groundhandling services for which the exemption is granted and the specific constraints of available space or capacity which justify it;
  - (b) be accompanied by a plan of appropriate measures to overcome the constraints, including an indicative timescale for delivery.
3. Exemptions shall not:
  - (a) give rise to distortions of competition between suppliers of groundhandling services and/or self-handling airport users;
  - (b) extend further than necessary.
4. Member States shall notify the Commission, at least six months before they enter into force, of any exemptions they intend to grant pursuant to paragraph 1 and of the grounds which justify them.
5. Upon receipt, the Commission shall publish a summary of the notified exemption decisions in the *Official Journal of the European Union* and shall invite interested parties to submit comments.
6. The Commission shall closely examine exemption decisions notified by Member States. To that end the Commission shall make a detailed analysis of the situation and a study of the appropriate measures notified by the Member State to check that the alleged constraints exist and that it is impossible to open up the market and/or implement self-handling to the degree provided for in this Regulation.

7. Further to that examination and after consulting the Member State concerned, the Commission may approve the Member State's decision or oppose it if it deems that the alleged constraints have not been proven to exist or that they are not severe enough to justify the exemption. After consulting the Member State concerned the Commission may also require the Member State to amend the extent of the exemption or restrict it to those parts of an airport where the alleged constraints have been proved to exist.
8. The decision of the Commission shall be taken no later than six months after complete notification by the Member State and shall be published in the *Official Journal of the European Union*.
9. The implementing decisions referred to in paragraphs 7 and 8 of this Article shall be adopted in accordance with the advisory procedure referred to in Article 43 (2).
10. Exemptions granted by Member States pursuant to paragraph 1 may not exceed a duration of three years except for exemptions granted under paragraph 1 (b) and (c). Not later than six months before the end of that period the Member State shall take a new decision on each request for exemption, which shall also be subject to the provisions of this Article.
11. Exemptions granted by Member States under paragraphs 1 (b) and (c) may not exceed a duration of two years. However, a Member State may in accordance with the considerations referred to in paragraph 1, request that this period be extended by a single period of two years. The Commission shall decide on such a request. The implementing decision shall be adopted in accordance with the advisory procedure referred to in Article 43 (2).

## *Article 15*

### *Consultations of the suppliers of groundhandling services and of airport users*

The airport managing body shall organise a procedure for consultation on the application of this Regulation between itself, the Airport Users' Committee and the undertakings providing groundhandling services. This consultation shall cover, inter alia, the quality of services and the price of those groundhandling services for which an exemption has been granted pursuant to Article 14 (1) (b) and (c) and the organisation of the provision of those services. A consultation meeting shall be held at least once a year. The airport managing body shall make a record of that meeting which shall be sent to the Commission at its request.

## **Chapter IV — Approvals<sup>20</sup>**

### *Article 16*

#### *Approvals in EU Member States*

For airports whose annual traffic has been over 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years, Member States may make the groundhandling activity of a supplier of groundhandling services or a self-handling user conditional upon obtaining an approval of a competent authority ('approving authority') independent of any airport managing body.

2. [...]

3. [...]

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<sup>20</sup> Reservation: AT and IT.

*Article 17*

*Criteria for granting an approval*

1. When a Member State, or where relevant any approving authority issues an approval, the<sup>21</sup> criteria for such an approval must relate to the following:
  - (aa) compliance with or expected compliance with the requirements set out in this Regulation, and ~~respect of~~ the national provisions of ~~each~~ Member State in which the applicant operates, concerning:
    - social protection;
    - environmental protection; and
    - airport safety and security, including the safety and security of installations, aircraft, equipment and persons;
  - (c) compliance with financial conditions, including not being in insolvency or in similar proceedings or bankruptcy, demonstrated in particular by the submission of its audited accounts for the two previous financial years, where applicable, as well as having sustainable operations, demonstrated in particular by the submission of a business plan for at least, the first two years of operation.
  - (d) proof of good repute, including a proof of having paid its taxes and social security contributions in the most recent year for the Member States where it carries out an activity, if any, or, in the case where an undertaking from a third country carries out no activity in the Union, for its country of origin.

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<sup>21</sup> PL proposes to add the word "indicative".

- (e) a staff policy that ensures that its current and future employees have the training and professional experience necessary for the performance of the activity it applies for.

*[Articles 18 - 24 deleted]*

*Article 25*

*Approval procedure*

1. The procedure for granting approvals shall be transparent, non-discriminatory, and may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Regulation.
  - 1a. The approving authority shall take a decision on an application as soon as possible, and not later than two months after all the necessary information has been submitted, taking into account all available evidence. The decision of the approving authority shall be communicated to the applicant and to the approving authorities in the other Member States. A refusal shall indicate the reasons therefor.
2. [...]
3. The procedures and the list of issued approvals shall be made public by the approving authority.

*[Article 26 deleted]*

## Chapter V — Obligations for managing bodies of the infrastructure

### *Article 27*

#### *Access to infrastructure*

1. Suppliers of groundhandling services and self-handling airport users shall have open access to infrastructure to the extent necessary to enable them to carry out their activities. The managing body of the infrastructure may make this access subject to conditions that are relevant, objective, transparent and non-discriminatory.
2. The space available for groundhandling at an airport shall be divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on the basis of relevant, objective, transparent and non-discriminatory rules and criteria.

### *Article 27a*

#### *Centralised infrastructure*

1. This Article shall apply only to airports whose annual traffic has been over 2 million passenger movements or 50 000 tonnes of freight for at least the previous three years.
2. *[moved to paragraph 9]*
3. The management of the centralised infrastructures may be reserved for the managing body of the infrastructure which may make their use compulsory for suppliers of groundhandling services and self-handling airport users. The management of centralised infrastructures shall be carried out in a transparent, objective and non-discriminatory manner.

4. The airport managing body, or where appropriate the public authority or any other body which controls the airport managing body shall decide on an objective basis and after consulting the Airport Users' Committee and the undertakings providing groundhandling services at the airport, on infrastructure to be centralised.

The airport managing body, or where appropriate the public authority or any other body which controls the airport managing body, shall ensure that infrastructure falling under the definition of 'centralised infrastructure' shall be designated as such and that the requirements set out in this Chapter in respect of centralised infrastructure are complied with.

5. Where the Airport Users' Committee adopts an opinion that disagrees with the decision of the airport managing body to centralise, or not to centralise, it ~~shall~~ **may** ask the independent supervisory authority or any other competent authority of the Member State concerned, independent of the airport managing body ('the independent authority'), to decide whether the infrastructure concerned is to be centralised or not and to what extent.<sup>22</sup>

6. *[moved to Article 27]*

7. *[moved to Article 27]*

8. If a decision on the scope of the centralised infrastructure is brought before the independent authority as set out in paragraph 5 of this Article, it shall not take effect until the independent authority has examined the matter. The independent authority shall, within four weeks<sup>23</sup> of the matter being brought before it, take an interim decision on the entry into force of the scope of the centralised infrastructure, unless the final decision can be taken within the same deadline. To make its decisions, the independent authority or any other competent authority shall examine the justifications of the parties in relation to the scope of the centralised infrastructure.

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<sup>22</sup> Reservation: CZ and PL.

<sup>23</sup> UK considers the four-week deadline too short.

9. Where the use of the centralised infrastructure is subject to a groundhandling fee, as referred to in Article 28, the airport managing body shall make public a list of the centralised infrastructure at the airport. In cases where another body is in charge of managing centralised infrastructure, it shall communicate the list of the centralised infrastructure to the airport managing body for the purpose of the publication.

*Article 28*

*Groundhandling fees for infrastructure*

1. This Article shall apply only to airports whose annual traffic has been over 2 million passenger movements or 50 000 tonnes of freight at least the previous three years.
2. Where the use of the infrastructures is subject to a groundhandling fee, ~~the~~ the managing body of the infrastructure shall ensure that the level of the groundhandling fee is set out on the basis of relevant, objective, transparent and non-discriminatory criteria.
3. The managing body of the infrastructure shall be entitled to recover its costs and to make a reasonable return on assets from the groundhandling fees charged. The groundhandling fees shall constitute consideration for a service.
4. Any groundhandling fees as referred to in paragraph 2 shall be set at the level of the individual airport after consulting the Airport Users' Committee or the airport users, the representatives or associations as referred to in Article 6(1) of Directive 2009/12 and with the undertakings providing groundhandling services at the airport. In the case of an airport network, Member States may allow the managing body of the network to introduce a common and transparent charging system to cover the infrastructure of airports forming part of the airport network.



- 4a. The managing body of the infrastructure, shall at least once a year, unless otherwise agreed in the latest consultation, provide the Airport Users' Committee or the airport users, the representatives or associations as referred to in Article 6(1) of Directive 2009/12 and the undertakings providing groundhandling services at the airport with information on the components serving as the basis for determining the groundhandling fees. The information shall include at least the following:
- (a) a list of the various services and infrastructure provided in return for the groundhandling fees;
  - (b) the methodology used for setting the groundhandling fees;
  - (c) the overall cost structure with regard to the facilities and services to which the groundhandling fees relate;
  - (d) the revenue from the different groundhandling fees, the total cost of the services covered by them;
  - (e) any financing from public authorities for the facilities and services to which the fee relates;
  - (ee) forecasts of the situation at the airport as regards the groundhandling fees, traffic growth and proposed investments in infrastructure;
  - (ef) the actual use of infrastructure over a given period; and
  - (f) the predicted outcome of any major proposed investments in terms of their effects on airport capacity.

- 4b. Where a multi-year agreement between the airport users and managing body of the infrastructure exists, the consultations shall take place as foreseen in such agreement. Member States shall retain the right to request more frequent consultations.
- 4c. Subject to national legislation, the information provided on the basis of paragraph 4a shall be considered as confidential or economically sensitive and handled accordingly. In case the managing body of the infrastructure is quoted on the stock exchange, stock exchange regulations in particular shall be complied with.
5. The airport managing body shall publish the levels of groundhandling fees, including a detailed list of the services provided. In cases where another body is in charge of managing the infrastructure, it shall communicate the levels of groundhandling fees, including a detailed list of the services provided, to the airport managing body<sup>24</sup> for the purpose of the publication.
6. Where the Airport Users' Committee, or the airport users, the representatives or associations as referred to in Article 6(1) of Directive 2009/12 disagree with a groundhandling fee set by the managing body of the infrastructure, it ~~shall~~ **may** ask the independent supervisory authority of the Member State concerned to decide on the level of the groundhandling fee<sup>24</sup>.
7. If a decision on the levels of groundhandling fees is brought before the independent supervisory authority, as set out in paragraph 6 of this Article, it shall not take effect until the independent supervisory authority has examined the matter. The independent supervisory authority shall, within four weeks of the matter being brought before it, take an interim decision on the entry into force of the levels of groundhandling fees, unless the final decision can be taken within the same deadline. To make its decisions, the independent supervisory authority shall examine the justifications of the parties in relation with the levels of groundhandling fees.

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<sup>24</sup> Reservation: CZ and PL.

8. A Member State may decide not to apply paragraphs 6 and 7 in relation to changes to the level or the structure of the groundhandling fees at those airports for which there is a mandatory procedure under national law whereby groundhandling fees, or their maximum level, shall be determined or approved by the independent supervisory authority. The procedures, conditions and criteria applied for the purpose of this paragraph by the Member State shall be relevant, objective, non-discriminatory and transparent.

*Article 28a*

*Decisions on centralised infrastructure and the level of groundhandling fees*

1. Member States shall ensure, in respect of disagreements referred to in Article 27a (5) and (8), and Article 28 (6) and (7), that measures are taken to:
- (a) establish a procedure for resolving disagreements between the parties involved;
  - (b) determine the conditions under which a disagreement may be brought to the independent supervisory authority or any other competent authority. The authority shall, in particular, dismiss complaints which it deems are not properly justified or adequately documented; and
  - (c) determine the criteria against which disagreements will be assessed for resolution.
2. Without prejudice to Article 27a (8) and Article 28 (7), the independent supervisory authority or the competent authority shall issue a final decision as soon as possible, and in any case within four months<sup>25</sup> of the matter being brought before it. This period may be extended by two months in exceptional and duly justified cases. The decisions of the independent supervisory authority or the competent authority shall have binding effect, without prejudice to parliamentary or judicial review, as applicable in the Member States.

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<sup>25</sup> UK considers the four-month deadline too short.

*Article 29*  
*Separation of accounts*<sup>26</sup>

1. At airports whose annual traffic volume has been over 2 million passenger movements or 50 000 tonnes of freight for at least the previous three years, the managing body of the infrastructure shall, if it provides groundhandling services for third parties, have separate accounts for its groundhandling activities from other activities. This separation of accounts shall cover separate balance sheets and profit and loss accounts.<sup>27</sup>
2. [...]
3. The entities providing groundhandling services as referred to in paragraph 1 may not receive any financial cross-subsidisation from aeronautical activities related to the management of airport infrastructure, or from aeronautical activities related to the management of centralised infrastructure, which would allow them to reduce the prices they charge for their groundhandling services to third parties.
4. For the purpose of this Article 'aeronautical activities' of an airport managing body means any activity that the airport managing body carries at its respective airport out which is related to the provision of services or infrastructures to airport users, suppliers of groundhandling services in their activity of air transport, or air passengers using the airport, such as levying of airport charges, allocation of infrastructures and installations, security and safety measures at the airport. Non-aeronautical activities include real estate activities or any activities in another sector than air transport.

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<sup>26</sup> DE considers that the requirement of separate balance sheets and profit and loss accounts creates too much burden on the managing body.

<sup>27</sup> AT would like to extend the separation of accounts to all groundhandling suppliers.

5. At the close of each financial year an independent auditor shall verify that the separation of accounts referred to in paragraph 1 is in place and that the financial cross-subsidisation referred to in paragraph 3 has not occurred. The managing body of the infrastructure shall, if it provides groundhandling activities, provide the competent authority with evidence of the above mentioned verification each year. Where the entities providing groundhandling services as referred to in paragraph 1 receive cross-subsidisation from non-aeronautical activities, they shall demonstrate that this is compliant with paragraph 3.

## **Chapter VI — Coordination of activities and standards**

### *Article 30*

#### *Role of the airport managing body for the coordination of groundhandling services*

1. The airport managing body shall be in charge of the proper coordination of groundhandling activities at its airport. As ground coordinator, the airport managing body shall in particular ensure that the operations of suppliers of groundhandling services and self-handling airport users comply with the airport rules of conduct as defined in Article 31.
2. In addition, at airports whose annual traffic has been over 5 million passengers or 100 000 tonnes of freight for at least three consecutive years:
  - (a) the operations of suppliers of groundhandling services and self-handling airport users shall comply with minimum standards, as specified in Article 32;
  - (b) the airport managing body shall ensure that the operations of suppliers of groundhandling services and self-handling airport users are coordinated through-a proper contingency plan and, where applicable, as set out in Annex II, through Collaborative Decision Making (CDM).

3. [...]
4. The airport managing body shall provide an annual report on the application of the measures presented in paragraph 2 to the Commission. This annual report shall respect the specifications defined in an implementing act to be adopted in accordance with the examination procedure referred to in Article 43(3). The Commission may require the Performance Review Body of Eurocontrol to provide a consolidated report to the Commission.
5. The airport managing body, where relevant, shall report to the authority which has granted the approval any problem with the suppliers of groundhandling services or self-handling airport users at its airport.
6. The provisions of this Article shall be without prejudice to the EU competition rules.

*Article 31*

*Rules of conduct*

1. [...]
2. The Member State, the airport managing body, a public authority or any other body which controls the airport may lay down rules of conduct to ensure the proper functioning of the airport.
  - 2a. [...]

3. The rules of conduct shall comply with the following principles:
  - (a) they shall be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;
  - (b) they shall relate to the intended objective;
  - (c) they may not, in practice, reduce market access or the freedom to self-handle to a degree below that provided for in this Regulation.
  
4. A Member State may, where appropriate on a proposal from the airport managing body:
  - (a) require the payment of a financial penalties, restrict or prohibit the activities of a supplier of ground handling services or a self-handling airport user, if that supplier or user fails to comply with the rules of conduct as referred to in paragraphs 1 and 2 of this article. The Member State shall inform the Commission and, where relevant, the approval authority concerned of any measure taken according to this paragraph.
  - (b) require suppliers of groundhandling services at an airport to participate in a fair and non-discriminatory manner in carrying out the public service obligations laid down in national laws or rules, including the obligation to ensure continuous service.

*Article 32*

*Minimum standards*

1. For the purposes of this Article, 'minimum standards' means minimum requirements for groundhandling services.

2. At airports whose annual traffic has been over 5 million passenger movements or 100 000 tonnes of freight for at least the previous three years, the airport managing body or, where appropriate, the Member State, the public authority or any other body which controls the airport shall set minimum standards for the performance of groundhandling services. Such standards **must** take into account and are consistent with the safety rules, arrangements and management systems of the airport operator and affected air operators as referred to in Regulation (EC) No 216/2008 of the European Parliament and Council.<sup>28</sup>
3. Suppliers of groundhandling services and self-handling airport users shall respect these minimum standards. The Member State, or where appropriate, the airport managing body may require that suppliers of groundhandling services and self-handling airport users must establish and implement a safety management system which corresponds to the size of the undertaking, the nature and complexity of the activities, is compatible with the management systems of the airport operator, and complies with any other safety requirements set down in national or ~~European~~ **European Union** law. In addition, airport users and suppliers of groundhandling services shall respect the minimum standards in their contractual relations.
4. The minimum standards shall cover the following fields: operational performance, training, information and assistance to passengers, in particular as referred to in Regulations (EC) No 261/2004 of the European Parliament and of the Council and EC (No) 1107/2006 of the European Parliament and of the Council, CDM, where applicable, as set out in Annex II, safety, security, contingency measures, and environmental standards.
- 4a. The airport managing body or where appropriate the Member State may require that each airport user must appoint a representative or be legally represented at the airport to ensure the proper implementation of the minimum standards.

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<sup>28</sup> A recital on the need for consistency between locally set minimum standards and the requirements on safety management systems will be drafted.



5. The minimum standards shall be fair, transparent, non-discriminatory and without prejudice to applicable Union legislation, including Regulations (EC) No 261/2004 and (EC) No 1107/2006. They shall be consistent, proportionate and relevant in relation to the quality of airport operations. Without prejudice to Member States' prerogatives in this regard, due account shall be taken of the quality of customs, airport security and immigrations procedure.
6. [...]
7. Prior to establishing these standards the airport managing body shall consult the Airport Users' Committee and the suppliers of groundhandling services.
8. Member States may decide to apply the provisions of this Article at airports other than those referred to in paragraph 2.
9. Without prejudice to the requirements of national or European Union legislation, if a supplier of groundhandling services or a self-handling airport user fails to comply with the minimum standards referred to in this Article, the airport managing body shall, in the first instance, seek to address the problem with reference to the Airport User's Committee. If this does not ensure compliance, a Member State may, where appropriate on a proposal from the airport managing body-require the payment of a financial penalties, restrict or prohibit the activities of a supplier of ground handling services or a self-handling airport user. The Member State shall inform the Commission and, where relevant, the competent authority concerned of any measure taken in accordance with this paragraph.

*[Article 33 deleted]*

*Article 34*

*Training*

1. Suppliers of groundhandling services and self-handling airport users shall ensure at their own expense that all their employees involved in the provision of groundhandling services, including managing staff and supervisors are sufficiently trained to perform the tasks assigned to them, in particular when taking up a new job.
2. [...]
3. [...]
4. **The airport managing body or, where appropriate, the Member States, or where relevant, the approval authority concerned the public authority or any other body which controls the airport** shall, where appropriate, define minimum training requirements standards, including the areas of training relevant to the specific activity of groundhandling services in question and may request the suppliers of groundhandling services and self-handling airport users to provide information on the **demonstrating** compliance with this Article.

*Article 35*  
*Subcontracting*<sup>29</sup>

1a. [...]

1. Without prejudice to paragraphs 2, 3 and 4, suppliers of groundhandling services may engage in subcontracting.<sup>30</sup>
2. Self-handling airport users may subcontract groundhandling services only if they are temporarily unable to perform self-handling due to force majeure.
3. Subcontractors may not subcontract groundhandling services.
4. A supplier of groundhandling services as referred to in Article 11 (1) may subcontract groundhandling services only if it is temporarily unable to provide these groundhandling services due to force majeure.
5. Any supplier of groundhandling services and self-handling airport user using one or more subcontractors shall ensure that the subcontractors comply with the obligations on suppliers of groundhandling services under this Regulation, including, where relevant, the obligation to hold an approval for the provision of groundhandling services.
6. Any supplier of groundhandling services and self-handling airport user using one or more subcontractors shall inform the airport managing body and the airport users concerned of the name and activities of the subcontractors concerned.
7. Where a supplier of groundhandling services applies for an authorisation to provide groundhandling services under the selection procedure laid down in Article 7, it shall indicate the number, activities and names of the subcontractors it intends to use.

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<sup>29</sup> Reservation: AT, DE, EL.

<sup>30</sup> IT proposes to add the following new paragraph 1a: "*The Member State, or where appropriate, the approving authority may request the main contractor to respect an appropriate threshold of its annual turnover for subcontracted groundhandling services.*"

*Article 35a [ex Article 22]*

*Insurance*

Suppliers of groundhandling services and self-handling airport users in the Union shall be appropriately insured in respect of their groundhandling-specific liability for damage caused on the territory of a Member State and for which a right to compensation exists.<sup>31</sup>

**Chapter VII — International relations**

*Article 36*

*Relations with third countries*

1. Without prejudice to the international commitments of the Union and bilateral air services agreements of the Member States, whenever it appears that a third country, with respect to access to the groundhandling or self-handling market acts in a discriminatory manner, as described in paragraph 2a, a Member State may,<sup>32</sup> take measures, including the complete or partial suspension of the right of access to the groundhandling market within its territory in respect of suppliers of groundhandling services and self-handling airport users from that third country, with a view to remedying the discriminatory behaviour of the third country concerned.
2. [...]
- 2a. Within the meaning of paragraph 1, a third country shall be deemed to act in a discriminatory manner, if it:

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<sup>31</sup> A recital concerning the insurance of the equipment of persons with reduced mobility will be drafted.

<sup>32</sup> IT would prefer to have "shall", instead of "may".

- (a) does not, de jure or de facto, grant suppliers of groundhandling services and self-handling airport users from a Member State treatment comparable to that granted by the Member State to suppliers of groundhandling services and self-handling airport users from that third country at its airports; or
  - (b) de jure or de facto, grants suppliers of groundhandling services and self-handling airport users from a Member State less favourable treatment than that it accords to its own suppliers of groundhandling services and self-handling airport users; or
  - (c) grants suppliers of groundhandling services and self-handling airport users from other third countries more favourable treatment than suppliers of groundhandling services and self-handling airport users from a Member State.
- 2b Member States shall inform the Commission of any measures taken in accordance with paragraph 1.
3. [...]

## **Chapter VIII — Reporting and monitoring obligations**

### *Article 37*

#### *Reporting obligations for the Member States*

1. Member States shall, before 1 July of each year, forward to the Commission the list of airports subject to at least one of the limitations on access to the groundhandling market laid down in Article 6 (2) or Article 14.
2. Where relevant, the approving authority of the Member States shall, before 1 July of each year, provide the Commission with the list of suppliers of groundhandling services and self-handling airport users approved in accordance with Chapter IV on Approvals.

### *Article 38*

#### *Publication of lists of airports*

By the end of each year, the Commission shall publish in the Official Journal of the European Union the following information:

- (a) list of Union airports whose annual traffic has been over 5 million passenger movements or 100 000 tonnes of freight for at least the previous three years;
- (b) list of Union airports whose annual traffic has been over 2 million passenger movements or 50 000 tonnes of freight for at least the previous three years;
- (c) list of Union airports open to commercial traffic;
- (d) list of airports subject to limitations in accordance with Articles 6 (2) or 14;
- (e) list of suppliers of groundhandling services and self-handling airport users approved in accordance with Chapter IV on Approvals.

### *Article 39*

#### *Evaluation and information report*

1. 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 application of this Regulation. The report shall in particular assess any significant impact on the quality of groundhandling services, employment and working conditions. The report shall include the following set of indicators and criteria for a sample of airports:

- (a) average number of suppliers of groundhandling services at Union airports, for the 11 categories of services;
- (b) number of self-handling airport users at each Union airport, for the 11 categories of services;
- (c) number of airports where the number of suppliers of groundhandling services is limited, and value of the limitation(s);
- (d) number of companies having an approval from a Member State and operating in another Member State;
- (e) where relevant, the opinion of stakeholders on the approval systems in Member States (approval criteria, implementation, price etc.);
- (f) total number of suppliers of groundhandling services and self-handling airport users operating in the Union;
- (g) price and management system for the centralised infrastructures at each airport;
- (h) market share of the airport managing body in the groundhandling business at each airport, for the 11 categories of services;
- (i) market share of airport users providing third-party handling at each airport, for all categories of services;
- (j) safety accidents involving groundhandling services;

- (k) opinion of stakeholders on the quality of groundhandling services at airports in terms of staff competence, environment, security, and coordination of activities (CDM, contingency measures, training in the airport context, subcontracting);
  - (l) minimum standards for groundhandling undertakings;
  - (m) training features;
  - (n) transfer of staff and its impact on the protection of employees;
  - (o) employment and working conditions in the groundhandling sector.
2. The Commission and the Member States shall cooperate in the collection of information for the report referred to in paragraph 1.
  3. On the basis of this report the Commission may decide if a revision of this Regulation is necessary.

## **Chapter IX – Social protection**

### *Article 40*

#### *Social protection*

Without prejudice to the application of this Regulation, and subject to the other provisions of Union law, Member States may take the necessary measures to ensure protection of rights of workers.

Member States may apply any national measures aiming to safeguard employees' rights in the event of transfer of staff employed by any provider of groundhandling services, insofar as such measures are in conformity with Union law and do not prejudice the effectiveness of this Regulation.



## **Chapter X — Appeal against decisions or individual measures**

### *Article 41*

#### *Rights of appeal*

1. Member States or, where appropriate, airport managing bodies shall ensure that any party with a legitimate interest has the right to appeal against the decisions or individual measures taken pursuant to Article 6 (2) (Groundhandling for third parties), Articles 7 to 10 (Selection procedure), Article 13 (Island airports), Article 25 (Approval procedure), Article 27 (Access to infrastructure), 27a (Centralised infrastructure), Article 28 (Groundhandling fees for infrastructure) Article 31 (Rules of conduct) and Article 32 (Minimum standards).
2. An appeal may be brought before a national court or a public authority other than the airport managing body and, where appropriate, independent of the public authority controlling the airport managing body. Where specified in this Regulation and subject to national rules on judicial proceedings, the appeal shall be brought before the independent supervisory authority or any other competent authority.

## **Chapter XI – Provisions on implementing powers**

*[Article 42 deleted]*

*Article 43*  
*Committee procedure*

1. The Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) 182/2011 shall apply.

**Chapter XII — Final provisions**

*Article 44*  
*Repeal*

Directive 96/67/EC is repealed with effect from the date of application of this Regulation.

References to the repealed Directive shall be construed as references to this Regulation.

*Article 45*

*Transitional provisions*

1. Suppliers selected in accordance with Article 11 of Directive 96/67/EC before the date of application of this Regulation shall continue to be authorised under the conditions laid down in Directive 96/67/EC until the initially planned selection period has expired.
2. At airports where only two suppliers were selected per category of services pursuant to Article 6 (2) of Directive 96/67/EC and where a minimum number of three suppliers are to be selected pursuant to Article 6 (2) of this Regulation, a selection procedure in accordance with Articles 7 to 10 of this Regulation shall be organised so that the third supplier is selected and able to start operations not later than 18 months after the date of application of this Regulation.
3. [...]
4. [...]
5. [...]

*Article 46*

*Entry into force and application*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from XX.XX.20XX [30 months after the date of adoption].<sup>33</sup>

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<sup>33</sup> AT and DE propose 5 years as a transitional period.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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**LIST OF GROUNDHANDLING SERVICES CATEGORIES**

1. Ground administration and supervision comprise the following subcategories:
  - 1.1. representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;
  - 1.2. load control, messaging and telecommunications;
  - 1.3. handling, storage and administration of unit load devices;
  - 1.4. any other supervision services before, during or after the flight and any other administrative service requested by the airport user.
2. Passenger handling comprises any kind of assistance - including those provided in the framework of the relevant EU legislation on passenger rights - to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.
3. Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.
4. Freight and mail handling comprises the following subcategories:

- 4.1. for freight: physical handling of incoming and outgoing freight, including export, transfer and import, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;
- 4.2. for mail: physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.
5. Ramp handling comprises the following subcategories:
  - 5.1. marshalling the aircraft on the ground at arrival and departure;
  - 5.2. assistance to aircraft packing and provision of suitable devices;
  - 5.3. communication between the aircraft and the air-side supplier of services;
  - 5.4. the loading and unloading of the aircraft, including the provision and operation of suitable means, the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal, as well as the loading and unloading of wheelchairs or other mobility equipment or assisting devices of persons with reduced mobility;
  - 5.5. the provision and operation of appropriate units for engine starting;
  - 5.6. the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;
  - 5.7. the transport, loading on to and unloading from the aircraft of food and beverages.

6. Aircraft services comprise the following subcategories:
  - 6.1. the external and internal cleaning of the aircraft, and the toilet and water services;
    - 6.2.1. the cooling and heating of the cabin;
    - 6.2.2. the removal of snow and ice and the de-icing of the aircraft;
  - 6.3. the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.
7. Fuel and oil handling comprises the following subcategories:
  - 7.1. the organization and execution of fuelling and defuelling operations, including the storage of fuel, also if adjacent to the airport, and the control of the quality and quantity of fuel deliveries;
  - 7.2. the replenishing of oil and other fluids.
8. Aircraft maintenance comprises the following subcategories:
  - 8.1. routine services performed before flight;
  - 8.2. non-routine services requested by the airport user;
  - 8.3. the provision and administration of spare parts and suitable equipment;<sup>34</sup>
  - 8.4. the request for or reservation of a suitable parking and/or hangar space.
9. Flight operations and crew administration comprise the following subcategories:

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<sup>34</sup> A recital clarifying the relationship between this Regulation and EASA certification rules will be added to the text.

- 9.1. preparation of the flight at the departure airport or at any other point;
  - 9.2. in-flight assistance, including re-dispatching if needed;
  - 9.3. post-flight activities;
  - 9.4. crew administration.
10. Surface transport comprises the following subcategories:
- 10.1. the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;
  - 10.2. any special transport requested by the airport user.
11. Catering services comprise the following subcategories:
- 11.1. liaison with suppliers and administrative management;
  - 11.2. storage of food and beverages and of the equipment needed for their preparation;
  - 11.3. cleaning of this equipment;
  - 11.4. preparation and delivery of equipment as well as of bar and food supplies.

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**COORDINATION OF GROUNDHANDLING SERVICES**

**(in accordance with Article 30(2) (b))**

The following airports shall have a CDM in place:

- by XXX (date of application) all airports with more than 45 million passengers in the year preceding that date;<sup>35</sup>
- by XXX ( 5 years from date of application) all airports with more than 30 million passengers in the year preceding that date;<sup>36</sup>
- by XXX ( 8 years from date of application) all airports with more than 20 million passengers in the year preceding that date.

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<sup>35</sup> For information: Heathrow, Paris CDG, Frankfurt, Madrid and Amsterdam airports would be covered by this provision.

<sup>36</sup> For information: Heathrow, Paris CDG, Frankfurt, Madrid and Amsterdam, Fiumicino, London Gatwick and Munich airports would be covered by this provision.