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Committee on Employment and Social Affairs

2011/0397(COD)

5.6.2012

DRAFT OPINION

of the Committee on Employment and Social Affairs

for the Committee on Transport and Tourism

on the 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
(COM(2011)0824 – C7-0457/2011 – 2011/0397(COD))

Rapporteur:(*): Thomas Mann

(*): Associated committee – Rule 50 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

The hearing of the EMPL Committee on groundhandling services on 31 May 2012 was attended by representatives of trade unions, airport operators, airlines and the European Commission. The results have been taken into account in this opinion.

Groundhandling services are vital to the smooth operation of airports. There are 11 categories of groundhandling services: (1) ground administration and supervision, (2) passenger handling, (3) baggage handling, (4) freight and mail handling, (5) ramp handling, (6) cleaning services and aircraft services (7) fuel and oil handling (8) aircraft maintenance, (9) flight operations and crew administration, (10) surface transport, (11) catering services. At present it is permitted to restrict market access to categories 3, 4, 5 and 7.

Relevance of groundhandling services

According to the Commission, the worldwide turnover of groundhandling services is approximately €50 bn¹. It is estimated that the sector employs at least 60 000 persons in Europe.²

The 1996 liberalisation and its consequences

Your rapporteur drafted opinions on groundhandling services in 1996 and 2008. In 1996 the EP and the Council adopted Directive 96/67/EC. It has the aim of opening up the groundhandling market and permitting more competition. The Ecorys study, which the Commission cites repeatedly, reaches the conclusion that, as a result of the first opening-up of the market, jobs have become more insecure and the number of short-term contracts has increased.³ Moreover, half the trade unions in the EU have emphasised that wage trends in groundhandling services have lagged behind both inflation and average wage rises.⁴ Staff expenditure accounts for some 75% of groundhandling production costs. According to the Commission, airlines' costs have been significantly reduced.⁵ The cost linked to groundhandling services for them represents 5 to 12% of operating costs.⁶

Liberalisation plans of 2012 to cut delays

On 1 December 2011, the Commission submitted the proposal for a regulation on groundhandling services, intended to replace Directive 96/67/EC. The regulation aims to cut delays and improve the quality of services to passengers. In order to achieve this aim, the Commission wishes to further liberalise the market in groundhandling services by approving entry to the market for at least one additional, third, independent groundhandling undertaking.

Groundhandling is not a prime cause of delays

Your rapporteur strongly disputes the Commission's claim that three out of four delays are caused by groundhandling. He has valid information, at least from German airports, which

¹ Proposal for a regulation COM (2011) 824, Explanatory Memorandum, p. 2.

² Proposal for a regulation COM (2011) 824, Explanatory Memorandum, p. 2.

³ Ecorys study, 21 December 2007: Social developments in the EU air transport: A study of developments in employment, wages and working conditions in the period of 1997 - 2007, p. 56.

⁴ Ecorys study, 21 December 2007: Social developments in the EU air transport: A study of developments in employment, wages and working conditions in the period of 1997 - 2007, p. 56.

⁵ EU Commission report of 24 January 2007 on groundhandling.

⁶ Proposal for a regulation COM (2011) 824, Explanatory Memorandum, p. 2.

indicates that groundhandling is responsible only for an extremely small proportion of delays, and indeed in some cases that proportion is negligible. The range is 0.6% to 4%.

In a reply to a written question tabled by your rapporteur, Transport Commissioner Kallas made it clear that the Commission did not have any data on delays specifically attributable to groundhandling, either for the EU or for Member States. Your rapporteur therefore disagrees with the Commission's choice of a regulation as the legal form for its proposals. He believes that this will deprive the Member States of the necessary freedom of action.

Rejection of liberalisation

Your rapporteur decidedly opposes further liberalisation. The groundhandling market has already achieved a high level of productivity. Optimisation of processes has largely been completed. Many suppliers already make only small profits.

Under these circumstances, approving additional suppliers would mean that, because of the additional pressure on prices, staff costs would be reduced, so that this pressure would be passed on directly to staff. The results of the last liberalisation show that this must be prevented. It is unacceptable that wages in the groundhandling sector should fall further and that yet more permanent staff should be replaced with staff on temporary contracts. Groundhandling staff are responsible for the security of aviation, maintaining technical air safety and averting the threat of terrorism.

It is contrary to the security interests of the public to increase pressure on the terms of employment of staff and force them into a precarious position. The aim of improving quality will not be achieved by wage dumping. The standards which are in place, smooth functioning and high staff motivation would be jeopardised.

Guarantees of staff transfer

Article 12 of the Commission proposal lays down that groundhandling staff may be given guarantees of transfer and protective rights. This is intended to attenuate the impact of further liberalisation. Your rapporteur welcomes this approach. However, if, despite strong opposition, liberalisation comes about, this vague option must become obligatory. It should be a requirement affording far-reaching protection and guaranteeing maximum levels of quality and safety/security. These demands are the basis for the amendments tabled by your rapporteur.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 17

Text proposed by the Commission

(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.

Amendment

(17) ***The legislature should establish without ambiguity and ensure that*** Member States 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 ***urgently necessary*** to clarify ***and, if necessary, amend*** 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.

Or. de

Justification

The legal situation with regard to Directive 2001/23/EC is unclear, as the Court of Justice of the EU has for example ruled that provisions of German and Italian law to protect groundhandling staff when a service provider changes are incompatible with the EU Treaties¹. The Commission should do everything possible to ensure that protective rights are genuinely granted. If liberalisation occurs, it would be perfidious for the EU to promise staff compensatory protection which ultimately cannot be provided.

¹ Footnote: cf. CoJ, judgment of 14. 7. 2005 - C-386/03, Commission v Germany, paragraphs 26-28 and CoJ, judgment of 9.12.2004 - C460-02, Commission v Italy, paragraphs 31 and 32.

Amendment 2

Proposal for a regulation Recital 28

Text proposed by the Commission

(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.

Amendment

(28) In a labour-intensive sector such as groundhandling, continuous staff development and training have a strong impact on service quality. **The current highest standards in the Union** should therefore be set **as minimum standards for the training and further training of all employees in the groundhandling sector** to ensure the quality of operations in terms of reliability, resilience, safety and security, and to create a level playing field among operators. **If competent authorities in the Member State find that minimum standards are not being complied with, no further service providers should be approved until the required standard has been attained again. This procedure should help to maintain safety in European aviation.**

Or. de

Justification

The rapporteur supports the proposal to define minimum standards. They should be based on the highest standards of training and further training in the EU in order to ensure maximum quality in groundhandling services throughout Europe. This should be monitored by the supervisory authorities in the Member States. If standards are not met, protection of workers should be assigned priority over further waves of liberalisation in order to maintain the existing level of safety in European aviation.

Amendment 3

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) Member States should **retain the**

Amendment

(31) Member States should ensure **that** the

power to ensure an adequate level of social protection for the staff of undertaking providing groundhandling services.

staff of *undertakings* providing groundhandling services **enjoy an adequate level of social protection. If competent authorities in the Member State find that gaps in protection exist or that rules are being breached, no further service providers should be approved until the appropriate standard has been attained again. This procedure should help to maintain safety in European aviation.**

Or. de

Justification

The rapporteur wishes to impart greater precision to the positive but vague approach adopted by the Commission. The Committee on Employment should specifically indicate who is to monitor respect for rights and what is to be done if gaps in protection exist. In this case, protection of workers should be assigned priority over further waves of liberalisation in order to maintain the existing level of safety in European aviation. Greater weight should be attached to this desideratum than to considerations of competition.

Amendment 4

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

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** 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.

Amendment

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 **or where a service provider ceases to provide groundhandling services to an airport user or where a self-handling airport user decides to cease self-handling**, Member States **must** require supplier(s) of groundhandling services **or self-handling airport users** 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.

Article 4(1)(1), second sentence, of Directive 2001/23/EC shall not apply to the cases referred to in the first sentence of this paragraph. Dismissal on economic, technical or organisational grounds shall not be permitted.

Or. de

Justification

The guarantees of transfer which the Commission suggests may apply to staff in return for liberalisation must be mandatory and far-reaching. Otherwise, a quid pro quo will be nothing more than a sham. Article 12 should also be simplified by dealing with all three cases (loss of the licence by the service provider, cessation by a service provider to provide groundhandling services, cessation by a self-handler to provide self-handling services) jointly in this second paragraph. This will make it possible to delete Article 12(6) and hence also (7) and (8).

Amendment 5

Proposal for a regulation Article 12 – paragraph 3

Text proposed by the Commission

Amendment

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, and who voluntarily accept to be taken on by the new supplier(s).

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, and who voluntarily accept to be taken on by the new supplier(s). ***The costs of a redundancy plan for departing staff shall be borne by airport users in proportion to their traffic shares.***

Or. de

Justification

The social protection which the Commission suggests may apply to staff in return for liberalisation must also apply to staff leaving their employment. They should be covered by redundancy plans. Sharing the costs among airport users would create an incentive to accept the transfer of all staff if at all possible. High staff turnover in the groundhandling sector should be avoided, as it endangers safety in European aviation.

Amendment 6

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

Amendment

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).

deleted

Or. de

Justification

By means of Article 12(4), the Commission seeks to dilute the application of the Directive on transfers of undertakings (2001/23/EC) by introducing a proportionality reservation. The guarantees of transfer which the Commission suggests may apply to staff in return for liberalisation must be mandatory and far-reaching. Otherwise, a quid pro quo will be nothing more than a sham. The rapporteur therefore proposes deleting the reference to the application of this reservation.

Amendment 7

Proposal for a regulation Article 12 – paragraph 5

Text proposed by the Commission

Amendment

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.

5. 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.

Or. de

Justification

By means of Article 12(5), the Commission seeks to provide undertakings which are interested in a takeover with information about staff's contract structure, but only if staff are granted the

rights provided for in the Directive on transfers of undertakings. The rapporteur advocates far-reaching social protection and an obligation to take on staff. The requirement of transparency should therefore apply to all invitations to tender for groundhandling services where approvals are restricted.

Amendment 8

Proposal for a regulation Article 12 – paragraph 6

Text proposed by the Commission

Amendment

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. *deleted*

Or. de

Justification

Article 12 should be simplified by dealing with all three cases (loss of the licence by the service provider, cessation by a service provider to provide groundhandling services, cessation by a self-handler to provide self-handling services) jointly in the second paragraph of Article 12. As a result, Article 12(6) can be deleted.

Amendment 9

Proposal for a regulation Article 12 – paragraph 7

Text proposed by the Commission

Amendment

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, and who voluntarily accept to be taken on by the new supplier(s) or self-handling airport user. *deleted*

Or. de

Justification

Article 12 should be simplified by dealing with all three cases (loss of the licence by the service provider, cessation by a service provider to provide groundhandling services, cessation by a self-handler to provide self-handling services) jointly in the second paragraph of Article 12. As a result, Article 12(6) can be deleted, as can Article 12(7), as it is automatically covered by Article 12(3).

Amendment 10

Proposal for a regulation Article 12 – paragraph 8

Text proposed by the Commission

Amendment

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, and who voluntarily accept to be taken on by the new supplier(s) or self-handling airport user. *deleted*

Or. de

Justification

Article 12 should be simplified by dealing with all three cases (loss of the licence by the service provider, cessation by a service provider to provide groundhandling services, cessation by a self-handler to provide self-handling services) jointly in the second paragraph of Article 12. As a result, Article 12(6) can be deleted, as can Article 12(7) and (8), as these paragraphs are automatically covered by Article 12(3).

Amendment 11

Proposal for a regulation Article 12 – paragraph 9

Text proposed by the Commission

Amendment

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.

deleted

Or. de

Justification

By means of Article 12(9), the Commission seeks to dilute the application of the Directive on transfers of undertakings (2001/23/EC) by introducing a proportionality reservation. The guarantees of transfer which the Commission suggests may apply to staff in return for liberalisation must be mandatory and far-reaching. Otherwise, a quid pro quo will be nothing more than a sham. The rapporteur therefore proposes deleting the reference to the application of this reservation.

Amendment 12

Proposal for a regulation Article 20

Text proposed by the Commission

Amendment

An undertaking applying for an approval shall demonstrate that its employees have the qualification, professional experience and length of service necessary for the performance of the activity it applies for.

An undertaking applying for an approval shall demonstrate that its employees have the qualification, professional experience and length of service necessary for the performance of the activity it applies for.
Qualifications, professional experience and length of service shall be worked out by the airport operators concerned for the

locations in question and shall be laid down and monitored by the competent authorities in the Member States.

Or. de

Justification

In order to safeguard the level of qualification, undertakings which apply for approval of groundhandling from the Member States' licensing authorities must show that their staff meet stringent requirements. The rapporteur welcomes this quality assurance initiative. However, he considers the criteria too vague: they must be defined more precisely.

Amendment 13

**Proposal for a regulation
Article 34 – paragraph 1**

Text proposed by the Commission

1. Suppliers of groundhandling services and self-handling airport users shall ensure that all their employees involved in the provision of groundhandling services, including managing staff and supervisors, regularly attend specific and recurrent training to enable them to perform the tasks assigned to them.

Amendment

1. Suppliers of groundhandling services and self-handling airport users shall ensure that all their employees involved in the provision of groundhandling services, including managing staff and supervisors, regularly attend specific and recurrent training to enable them to perform the tasks assigned to them. ***The supervisory authorities of the Member States shall monitor compliance with training and further training standards, using appropriate means. If competent authorities in the Member State find that training and further training standards are not being complied with, no further service providers should be approved until the required standard has been attained again. Refresher training at the expense of the groundhandling service provider concerned and self-handling airport users may be ordered.***

Or. de

Justification

By means of Article 34(1) the Commission seeks to compel groundhandling service providers and self-handling airport users to train their staff regularly. The rapporteur welcomes this

idea but would like to make it more specific and therefore formulates it unambiguously as a requirement which is subject to monitoring.

Amendment 14

Proposal for a regulation Article 34 – paragraph 2

Text proposed by the Commission	<i>Amendment</i>
<p>2. Every employee involved in the provision of groundhandling services shall attend <i>at least two days of</i> training relevant for the tasks assigned to the employee. Every employee shall attend the relevant training when taking up a new job or when a new task is assigned to the employee.</p>	<p>2. Every employee involved in the provision of groundhandling services shall attend <i>theoretical and practical basic training and</i> training relevant for the tasks assigned to the employee, <i>in relation to which the competent authorities in the Member States, together with the airport operators concerned, shall determine details for the location and the minimum duration. The existence of a practical and a theoretical test shall serve to demonstrate that the relevant skills and knowledge have been acquired from the courses. The training costs shall be borne in full by the employers.</i> Every employee shall attend the relevant training when taking up a new job or when a new task is assigned to the employee.</p>

Or. de

Justification

The Commission is using Article 34(2) to compel staff to undergo training. The rapporteur wishes to impart greater precision to this requirement. He considers it important that the number of days' training to be received should be specified not at EU level but regionally. Tests should be used to show that the course material has been successfully communicated. It should also be clearly stipulated that employers are to pay for the training.

Amendment 15

Proposal for a regulation Article 34 – paragraph 3 – introductory part

Text proposed by the Commission	<i>Amendment</i>
<p>3. Where relevant for the activity of</p>	<p>3. <i>The specific content of the tests and</i></p>

groundhandling services in question, training shall cover at least:

courses and their proper conduct shall be regulated by national provisions in the Member States. Where relevant for the activity of *the* groundhandling services in question, training ***and tests*** shall cover at least:

Or. de

Justification

In Article 34(3), the Commission lays down the subjects to be covered by training. This is to be welcomed, as it will make it possible to establish uniform standards throughout Europe. In addition, it is important to the rapporteur that the proper conduct of the courses and tests should be ensured by adopting national provisions in the Member States.

Amendment 16

**Proposal for a regulation
Article 34 – paragraph 3 – point n**

Text proposed by the Commission

Amendment

(n) emergency measures and contingency management;

(n) emergency measures, ***first aid training*** and contingency management;

Or. de

Amendment 17

**Proposal for a regulation
Article 34 – paragraph 3 – point p a (new)**

Text proposed by the Commission

Amendment

(pa) measures to protect groundhandling staff against health hazards typically associated with their work.

Or. de

Amendment 18

Proposal for a regulation Article 39 – paragraph 1

Text proposed by the Commission

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**:

Amendment

1. The Commission shall submit a report to the European Parliament and the Council on the implementation of this Regulation not later than **3 years** after the date of application of this Regulation. The report shall in particular assess **the** impact on the quality of groundhandling services, employment and working conditions. The report shall **examine** the following indicators and criteria:

Or. de

Amendment 19

Proposal for a regulation Article 39 – paragraph 1 – point 1

Text proposed by the Commission

(1) minimum quality standards for groundhandling undertakings;

Amendment

(1) minimum quality standards for groundhandling undertakings **at each airport in the European Union for the 11 categories of services; examination of the connection between delays caused by groundhandling services and minimum quality standards;**

Or. de

Amendment 20

Proposal for a regulation

Article 39 – paragraph 1 – point m

Text proposed by the Commission

(m) training *features*;

Amendment

(m) *the state of training and further training with reference to the fields listed in Article 34(3)(a) to (q); examination of the connection between delays caused by groundhandling services and the state of training and further training;*

Or. de

Amendment 21

Proposal for a regulation

Article 39 – paragraph 1 – point n

Text proposed by the Commission

(n) transfer of staff and its impact on the protection of employees;

Amendment

(n) transfer of staff and its impact on the protection of employees, *particularly the number of staff transferred where a transfer of undertakings occurs, the number of staff who have accepted voluntary redundancy where a transfer of undertakings occurs, the extent of reductions or increases in the wages of transferred workers; the number of cases brought before employment tribunals in connection with transfers; the number of staff who have accepted voluntary redundancy and are dependent on payments from national social security systems;*

Or. de

Amendment 22

Proposal for a regulation

Article 39 – paragraph 1 – point o

Text proposed by the Commission

(o) employment and working conditions in the groundhandling sector.

Amendment

(o) employment and working conditions in the groundhandling sector, ***particularly trends in wages and salaries in comparison with trends in the prices charged for handling and in comparison with changes in the productivity of groundhandling services at the airport as a whole and those supplied by individual groundhandling service providers.***

Or. de

Justification

The report should already be submitted after three years, so that adverse effects of the regulation can be identified at an early stage. The restriction to 'significant impact' allows too much scope for interpretation. The indicators must be defined more clearly in order to obtain valid data on the connections between groundhandling services and delays.

Amendment 23

Proposal for a regulation

Article 39 – paragraph 3

Text proposed by the Commission

3. On the basis of this report the Commission may decide if a revision of this Regulation is necessary.

Amendment

3. On the basis of this report the Commission, ***in close cooperation with the European Parliament,*** may decide if a revision of this Regulation is necessary.

Or. de

Justification

By means of Article 39(3), the Commission seeks to make itself the sole arbiter of whether a new version of the regulation is needed. The European Parliament must be closely involved in deciding this.

Amendment 24

Proposal for a regulation Article 40

Text proposed by the Commission

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.

Amendment

Member States shall ensure that the staff of undertakings providing groundhandling services enjoy an adequate level of social security. If competent authorities in the Member State find that gaps in protection exist or that rules are being breached, no further service providers should be approved until the appropriate standard has been attained again.

Or. de

Justification

The rapporteur wishes to impart greater precision to the positive but vague approach adopted by the Commission. The Committee on Employment should specifically indicate who is to monitor respect for rights and what is to be done if gaps in protection exist. In this case, protection of workers should be assigned priority over further waves of liberalisation in order to maintain the existing level of safety in European aviation. Greater weight should be attached to this desideratum than to considerations of competition.