



EUROPEAN COMMISSION

Brussels, XXX
[...] (2011) XXX draft

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on groundhandling services at EU airports

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. General context – Council Directive of 1996

Groundhandling services are ground-based aviation-related activities carried out for airlines at airports and are a key function in the aviation chain. Even though groundhandling services are not necessarily visible, the passenger experience at airports and in the air relies on quality groundhandling services, whether it concerns the proper reception of passengers at the airport, the material comfort in the plane, or the pre-conditions for safe and secure flights.

An efficient provision of groundhandling services is important for airports, airlines and passengers, and is crucial for the efficient use of air transport infrastructure. It contributes significantly to the performance of the aviation system in general.

Some estimates on the groundhandling market¹ : In 2009, 111 European airports benefited from third-party handling and all European commercial airports were open to self-handling. According to Commission and stakeholders' estimations, the revenues of groundhandling (all categories included) would amount globally to 50 billion euro.² It is estimated that the sector employs at the minimum 60,000 persons in Europe.³ The market structure is still very fragmented with over 400 operators worldwide and a combined market share of 20% for the top four handlers (source: Swissport, 2008). The cost linked to groundhandling services for airlines represents 5 to 12%⁴ of operating costs.

In 1996 the European Community adopted Council Directive 96/67/EC on access to the groundhandling market at Community airports. The Directive was a first step towards the gradual opening-up and harmonisation of access to the groundhandling market. The objective was to help reduce the operating costs of airlines and improve the quality of service provided to airlines and end-customers.

Historically groundhandling activities were in the remit of airport operators or airlines, but they are today in Europe more and more carried out by specialised companies. Access to the groundhandling market, organised by the Directive, is based on the following principles:

¹ The groundhandling market opening framework in force at the 60 biggest airports in Europe (i.e. those airports accommodating more than 5 millions passengers per year) is provided in Annex IX of this IA report. See also Annexes II and VI for an overview of the airports impacted by the Directive and for further information on the groundhandling market.

² According *Global Industry Analysts Inc*: "*Over the years, ground-handling companies have been increasingly expanding both in size and network to meet ever-changing requirements of the highly dynamic global airlines. (...) A global network is the need of the time, and ground handlers have been rapidly expanding network via strategic partnerships, alliances and acquisitions. The economic importance of this behind-the-screen industry is obvious, with annual turnover crossing about US\$70 billion globally*" (consulted at http://www.prweb.com/releases/airport_airside_services/ground_ramp_handling/prweb8561200.htm on 6.09.2011)

³ This figure, the best available, is an estimation of IAHA (the independent handlers' associations) for their members. Taking into account that not all groundhandling providers are members of IAHA (e.g. airports' and airlines' providers), there could actually be more than 110,000 groundhandling employees.

⁴ Source: Stakeholders' consultations and "Air market observatory - Annual reports", available at http://ec.europa.eu/transport/air/observatory_market/annual_reports_en.htm (see report 2008 p.85-88).

- Freedom of "self-handling", i.e. the possibility for airlines to self-handle at each commercial airport regardless of its volume of traffic. However, for four categories of services, i.e. baggage handling, ramp handling, fuel and oil handling as well as freight and mail handling as regards the physical handling of freight and mail between the air terminal and the aircraft, Member States may reserve the right to self-handle to no fewer than two airport users at airports with more than 2 million passenger movements or 50 000 tonnes of freight per annum. In case of restrictions to access, the selection of the airlines allowed to self-handle shall be made applying relevant, objective, transparent and non-discriminatory criteria. No tender process is organised for this selection.
- Freedom of "third party handling", i.e. the possibility for groundhandling providers to provide services to third parties at airports with more than 2 million passengers or 50 000 tons of freight per year. However, for the four categories of services that can be restricted mentioned above, Member States may limit the number of suppliers to no fewer than two for each category. At least one of the authorised suppliers must be independent from the managing body of the airport and the dominant carrier. The selection takes place through a tender procedure.

Given the specificities of the groundhandling market, namely environmental and space/capacity constraints at airports, the Directive foresees the possibility to ask for further restrictions (exemptions) for defined locations and periods. In these cases, the Member State has to request the approval of the exemption to the European Commission, which may approve or not the exemption.

1.2. Grounds for the proposal

According to the various evaluations of the Directive that the Commission undertook, the Directive has achieved the main desired objectives of liberalisation of the groundhandling market at EU airports: the number of service providers has increased and groundhandling prices have generally decreased, in particular at former monopoly airports where competition has been introduced. Moreover, according to airlines, quality of service has increased with an enlarged choice of competitors.

In addition, a number of implementation and enforcement issues arose with the Directive. The flexibility left by the Directive actually gave the Member States a wide margin of manoeuvre for implementing the Directive. This wide margin of manoeuvre was not always very convenient for national authorities. The number of infringements in the Member States shows for instance that, more than 10 years after the Directive is in force, the provisions of the Directive were not always easy to interpret and implement, which has led in a number of cases to infringements. Besides, it has to be acknowledged that in a number of cases, the blur around the requirements of the Directive was used by the Member States to privilege some local interests. Actually, the legal framework as such is a source of difficulty for implementation.

Since the adoption of the Directive in 1996, framework conditions for groundhandling services have changed dramatically. In a context of rapidly growing air traffic and capacity constraints, the question of the efficiency and quality of services delivered at airports, including groundhandling services, is of renewed and increased interest.

The Single European Sky initiative of the European Union, which aims at reforming the architecture of European air traffic control to meet future capacity and safety needs recognises the importance of integrating key infrastructure such as airports into a "full system, gate-to-gate" approach. For example, the delays observed in air transport that are expected to worsen in future years if nothing is done (due to air traffic growth), have major repercussions for users facing such delays, including passengers, and places a substantial financial burden on airlines. Recent statistics show that 70 per cent of these delays affecting aviation are generated by turnarounds at airports. Even if we are successful in tackling air traffic control delays, in other words, the overall risk of delay may remain, or indeed get worse, because of problems in airports.

The gate-to-gate approach therefore aims at optimising and integrating all phases of a flight, from airport to airport, including groundhandling services, with a view to enhance performance in terms of delays, costs, environmental impact and safety.

Moreover, the successive crises that have badly affected air transport over the last decade show that action is needed. The economic crisis drives both Member States and the industry to try to minimize costs. Terrorist attacks require enhanced levels of security and safety. And last but not least, severe weather conditions illustrate the need for increased coordination of ground operations at airports.

In this changing environment, our consultation process and evaluation (for details see below) of the current Directive have shown that the current legal framework is no longer fit for purpose. The problem identified is double: *(i) the provision of groundhandling services is not efficient enough due to barriers to entry and expansion*, and *(ii) the overall quality of groundhandling services at airport level does not keep up pace with evolving needs in terms of reliability, resilience, safety and security and environment*.

As a consequence, the benefits of the liberalisation are not sufficiently exploited and passed on fully to businesses and citizens making use of groundhandling services.

The Commission's *White Paper: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system*⁵ has recognised the need for an improvement of the Directive. While acknowledging the progress made, the White Paper identified that negative aspects continue to persist. It for example remains difficult for new providers to enter the market where the airport manager or the dominant carriers offer their services. In addition, certain provisions of the Directive are sometimes subject to different interpretations. The Directive is also questioned by some stakeholders as regards its social, safety and security aspects. Finally, the recent experiences with difficult winter weather conditions have also demonstrated that airports are part of a system where certain quality standards and emergency plans need to be developed including all actors.

1.3. Objective of the proposal

The impact assessment and its summary, which accompany this proposal, establish the general and specific objectives for the adoption of the regulation. The general objective is to enhance the efficiency and overall quality of groundhandling services for users (airlines) and end-users (passengers and freight forwarders) at EU airports.

⁵ COM(2011)0144.

Specific objectives are the following:

- (1) Ensure airlines have increased choice of groundhandling solutions at EU airports;
- (2) Harmonise and clarify national administrative conditions on market entry (approvals);
- (3) Ensure level playing field at airport level between groundhandling companies operating under different regulatory regimes;
- (4) Increase coordination between groundhandling providers at the airport (airport operators as ground coordinators in the framework of the EU aviation network and the gate-to-gate approach);
- (5) Clarify the legal framework in relation to personnel training and transfer.

1.4. Existing provisions in the area of the proposal

The proposal concerns the adoption of a regulation on groundhandling services at EU airports. This proposal shall replace and repeal the existing Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports. Groundhandling services are not dealt with directly by any other provisions.

1.5. Consistency with the other policies and objectives of the Union

This initiative is one of the actions necessary for the Single European Transport Area as described in the Commission's *White Paper: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system*. It is also part of the airport package of measures identified as a strategic initiative in the 2011 Commission Work Programme⁶, contributing to tapping the potential of the Single Market for growth.

A better quality of groundhandling at airports contributes to the overall objective of the Sustainable Development Strategy regarding sustainable transport: ensure that the EU transport system meets society's economic, social and environmental needs whilst minimising their undesirable impacts on the economy, society and the environment. Measures clarifying the legal framework in relation to personnel training and transfer are in line with the EU's social market economy for the 21st century set out in the Europe 2020 strategy.

The measures designed to meet the objectives of the proposal are also in compliance with fundamental rights and principles as embodied in the Charter of Fundamental Rights of the EU.

⁶ COM(2010)623.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation of interested parties

2.1.1. Consultation methods, main sectors targeted and general profile of respondents

At a hearing held on 6 April 2006, following a written consultation, the Commission consulted all stakeholders on the various possibilities for the revision of the Directive.

On 24 January 2007, the Commission adopted a report on the application of the Directive⁷ which confirmed that the main objectives of the Directive had been achieved, but that negative trends existed. A number of potential problems associated with the Directive were identified. In this report, the Commission announced that it would continue to closely monitor the groundhandling market.

The Commission carried out a stakeholders' consultation from November 2009 to September 2010⁸. The objective of the consultation was to collect the opinions of Member States, the general public and of aviation stakeholders on the functioning of the groundhandling services at EU airports and possible options for revising the Directive on groundhandling services.

A dedicated meeting of the Groundhandling working group of the Sectoral Social Dialogue Committee (on civil aviation) was held on 16 November 2009. Following this meeting, three of the four key representatives adopted a common statement⁹ calling for improvements to the current tenders system and for a social clause on transfer of staff in case of partial or total loss activity.

2.1.2. Summary of responses

A summary of the consultation as well as the individual contributions are available at:

http://ec.europa.eu/transport/air/consultations/2010_02_12_directive_96_67_ec_en.htm.

The consultations highlight the divergent interests of the various types of stakeholders.

Airlines stressed the need for a more competitive market. As they operate in a very competitive air transport market, ensuring the competitiveness of the entire aviation chain is of foremost importance to them. The airlines expressed their satisfaction with the generally increased choice of groundhandling providers subsequent to the introduction of the Directive but outlined that this trend is not observed everywhere in Europe.

⁷ COM(2006)821 final.

⁸ The consultation was performed notably through an Internet-based consultation supported by a questionnaire posted on the Commission's website "your voice" between 4 December 2009 and 17 February 2010. 103 replies were collected. Of the respondents, 31% were airports or airport associations. 23% were from airlines and airline associations and 16% handling companies and handling companies' associations. The public consultation met the Commission minimum standards for consultation.

⁹ Statement dated 7 April 2011 of the EU trade associations representing the airports (ACI-Europe), the independent handlers (IAHA) and the trade unions (European Transport Federation ETF). The statement was not co-signed by airlines associations. The statement is available at: <https://www.itfglobal.org/files/seealsodocs/28646/Statement%20GH%20ACI%20IAHA%20ETF%20070411.pdf>.

In a sector where stability of employment has suffered, groundhandling workers argued for the importance of addressing social concerns (notably the transfer of staff) and expressed concerns with the introduction of too much competition which could impact on working conditions.

Airport operators called for better coordination at airports and expressed the wish to be clearly recognised as ground coordinators. Some airport operators objected any further market opening mainly as they believe this would negatively impact the quality at their airports and increase their costs.

Independent groundhandlers stressed the need for fairer competition conditions between the different groundhandling providers. In particular, they advocated a stronger requirement framework for groundhandling activities performed by airport operators and airlines operators.

Nearly all stakeholders call for improved quality of services.

2.2. Collection and use of expertise

Continuous monitoring by the Commission on the application of the Directive on groundhandling services has been accompanied by several external studies, the results of which are available on the Commission website. In particular, following the request of the European Parliament in its resolution of 11 October 2007,¹⁰ the Commission carried out a comprehensive study in 2008-2009¹¹ on the implementation and the impacts of the Directive 96/67/EC on the groundhandling markets at EU airports focusing on employment, safety and security issues. The Commission carried out a further study on the possible revision of Directive 96/67/EC in 2010.¹²

2.3. Impact assessment

The impact assessment provides an overview of the different options considered. Four policy packages (in addition to the option to keep the existing framework) were considered to assess how Directive 96/67/EC could be revised. Only the policy package 2 fully satisfies the identified objectives as demonstrated in the impact assessment and therefore this policy package constitutes the basis of this proposal. This policy package comprises the following measures:

1. Full opening of self-handling market;
2. Increase of minimum number of service providers to three at large airports;
3. Mutual recognition of approvals with harmonised requirements;

¹⁰ European Parliament resolution of 11 October 2007 on airport capacity and ground handling: towards a more efficient policy. (2007/2092(INI)) available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2007-0433>

¹¹ "Study on the impact of Directive 96/67/EC on groundhandling services 1996-2007", Airport Research Center, February 2009. The study is available at: http://ec.europa.eu/transport/air/studies/doc/airports/2009_02_ground_handling.pdf.

¹² "Possible revision of Directive 96/67/EC on access to the groundhandling market at Community airports", Steer Davies Gleave, June 2010. The study will be available at: http://ec.europa.eu/transport/air/studies/airports_en.htm

4. Better management of centralised infrastructures;
5. Legal separation of airports from their groundhandling activities;
6. Improved tender procedure;
7. Clarified rules for subcontracting;
8. Recognized role of airport managing body for the coordination of ground services;
9. Responsibility for airport operator for minimum quality requirements for groundhandlers' operations (to be defined in delegated act);
10. Reporting obligations on performance of groundhandling services (to be defined in delegated act);
11. Compulsory minimum training of staff;
12. Allowing Member States to impose a requirement to take over staff with similar conditions where there is a tender.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposal

Full opening of self-handling market and increase of minimal number of service providers to three at large airports

Directive 96/67/EC allows Member States to restrict self-handling or third-party handling to two suppliers for four categories of services. As a consequence, at some airports airlines are faced with a limited choice between two suppliers for each of these services, and are not always authorised to self-handle. According to airlines, this limited choice does not allow them to reap the full benefits of competition.

It is therefore proposed that every airport user should be allowed to self-handle. Moreover, the number of authorized third-party suppliers of groundhandling services should not be less than three (instead of the current two) suppliers. However, as the market volume for third party groundhandling may not be sufficiently large at all airports for three third-party suppliers to operate economically, this obligation to have at least three authorized suppliers for the restricted categories of groundhandling services shall only apply to airports with not less than 5 million passengers annually or 100 000 tons of freight for at least three consecutive years.

Mutual recognition of approvals with harmonised requirements

Directive 96/67/EC allows Member States to make the activity of a supplier of groundhandling services or of a self-handling airline conditional upon obtaining an approval from an entity independent of the airport. Such an approval has been put in place in 75% of the Member States. This results in a diversity of numerous administrative conditions that have to be met in the EU, which oblige companies to adapt to each national market. The mutual recognition of approvals with harmonised requirements will reduce administrative costs for suppliers of groundhandling services and self-handling airport users and reduce barriers to entry.

Better management of centralised infrastructures¹³

The current Directive leaves a wide margin to Member States about what centralised infrastructures cover and how they are managed. Centralised infrastructures are essential for the execution of groundhandling services. In the absence of a clear legal framework, distortions of competition on the groundhandling market may arise in two ways. First, the management of centralised infrastructures can be reserved for the airport or another entity that can benefit from its role as infrastructure provider to influence competition. Second, since the airport is not restricted in proposing a list of centralised infrastructure to its host Member State, it is possible for the airport to restrict the scope of services subject to competition by keeping some of these services under monopoly.

The proposal therefore includes establishing a clear legal framework for the definition of centralized infrastructure and on the fees charged to suppliers of groundhandling services and self-handling airlines for the centralized infrastructure. In order to avoid distortions of competition, any such fee has to be non-discriminatory, its calculation has to be transparent and the fee must not exceed what is necessary to cover the costs of the provision of the centralized infrastructure including a reasonable return on assets.

Legal separation of airports and their groundhandling activities

Airports may also provide groundhandling services. At the same time, airports are a powerful interlocutor of the airlines and of the suppliers of groundhandling services as they are responsible for allocating airport spaces to groundhandlers and airlines, for defining the rules of conduct at the airport and for levying charges or fees for the use of the infrastructure and airport services. Through its decision, the airport can exercise considerable influence on competition between groundhandling services providers. If an airport is itself a provider of groundhandling services, in order to establish a level playing field, it should therefore be ensured that the groundhandling services provided by the airport do not unduly benefit from the airport management activities of the airport.

The current system of separation of accounts for airports that provide groundhandling services and the prohibition of cross-subsidisation between airport management activities and groundhandling activities is very difficult to monitor and is felt to be insufficient to ensure fair competition between the different groundhandling services providers. The proposal therefore foresees that airports should keep their groundhandling activities in a legal entity separate from their airport management activities in order to avoid that the groundhandling services of the airport unduly benefit from the monopolistic position of the airport in the airport management activities.

Improved tender procedure

At the airports where the access to some of the services is restricted, suppliers of these services have to undergo a selection process in the form of a tender procedure. The successful suppliers will be authorized to provide the restricted services for a period of maximum seven years. This duration is perceived to be insufficient to write off the cost of ground equipments and staff which in turn would generate a competitive disadvantage vis-à-vis airports and self-handling airlines that do not have to undergo the tender process. The proposal therefore

¹³ Centralized infrastructures are infrastructures "used for the supply of groundhandling services whose complexity, cost or environmental impact does not allow of division or duplication" (Article 8 of the Directive 96/67). They can be for instance baggage sorting, de-icing, water purification or fuel distribution systems.

provides for an increase of the maximum duration of a contract for an independent supplier to ten years.

Moreover, the tender process includes a consultation of the Airport Users' Committee¹⁴. The rules of procedure of this committee can in some instances confer an advantage on airlines also providing groundhandling services to the detriment of independent handling companies. The proposal therefore contains provisions for rules of procedure to avoid this conflict of interest.

Finally, if the effective and fair competition is to be maintained where the number of suppliers of groundhandling services is limited, the latter need to be chosen according to an open, transparent and non-discriminatory tender procedure. However, as criteria for selection are not specified in the Directive, a variety of practices exist in this regard. The proposal further specifies the details of the selection procedure to ensure that selected companies are indeed those best suited to operate groundhandling services.

Clarified rules for subcontracting

The current Directive does not explicitly cover the issue of subcontracting practices. While subcontracting increases the sometimes necessary flexibility for suppliers of groundhandling services, subcontracting and cascade subcontracting may also cause capacity constraints and have negative effects on safety. In case of subcontracting through airports and self-handling airlines, subcontracting may also bypass the selection procedure for third-party suppliers foreseen in the Directive.

The proposal therefore contains clear rules on subcontracting allowing suppliers of groundhandling services to subcontract but limiting subcontracting of airports and self-handling airlines to situations of *force majeure* and prohibiting cascade subcontracting. Moreover, the subcontracting supplier of groundhandling services must be made responsible for ensuring that the subcontractor complies with the obligations imposed on any supplier of groundhandling services.

Role of airport managing body for the coordination of ground services

The crisis of air transport in the last year due to severe weather condition put the need for increased coordination of ground operations at airports even more at the forefront. Indeed, a low level of resilience in this crisis situation was observed at some airports, including concerning the provision of groundhandling services. Post-crisis analyses indicate that airports are suffering from a lack of coordination between the actors, in particular groundhandling companies, airport operators and airlines. Two reports on the December 2010 snow crisis at Heathrow and at Paris Charles De Gaulle airports highlighted for instance the key role of coordination and collaborative decision-making for de-icing management and operations. The malfunctioning of one airport also has powerful "knock on" repercussions on the overall network, in relation to the air transport operations but also to the proper information and assistance to passengers, which increases the financial losses for the air carriers and the number of passengers affected by the disruptions. This increases the importance of improving the level of resilience in crisis situations.

While the current Directive allows airport operators to put in place rules of conduct that can be imposed upon all airport actors to ensure the proper functioning of the airport, whose scope, purpose and legal nature are however not defined, and while some airports have voluntarily developed systems to improve the sharing of information such as Collaborative

¹⁴ The Airport Users' Committee is a committee of representatives of airport users (i.e. airlines) set at each airport.

Decision Making (CDM)¹⁵, the Directive does not provide for a clear coordination function of the airports.

The proposal stipulates that 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 take place in the framework of the airport rules of conduct. Moreover, at large airports, which are particularly important for the European air transport network, the airport managing body needs to ensure that the operations of suppliers of groundhandling services and self-handling airport users are coordinated through an airport CDM and through a proper contingency plan.

The proposed measures should increase the ability of the managing body of the airport to ensure the proper functioning of the airport, to guarantee safety and security on the airport premises and to ensure resilience of groundhandling services also in crisis situations. A proper functioning of the airports network is essential in the context of the gate-to-gate approach of the Single European Sky initiative.

Responsibility for airport operator for minimum quality requirements for groundhandlers' operations to be defined in delegated act

The absence of common minimum quality standards for all groundhandling providers at an airport was reported by stakeholders as a shortcoming of the current Directive.

Service levels agreed by suppliers of groundhandling services with individual airlines are not necessarily going to lead to an increase in the overall airport efficiency, nor to improved quality of groundhandling services expected by final users and citizens generally. Sub-standard quality of one supplier of groundhandling services can disturb the airport system to the detriment of all stakeholders in the air transport industry.

The proposal therefore provides that the airport managing body or a public authority or any other body which controls the airport shall set minimum quality standards for the performance of groundhandling services to be respected by all suppliers of groundhandling service and self-handling airport users thereby also creating a level playing field among the suppliers. In order to ensure a harmonious and fair implementation of this provision, the minimum quality standards need to be compliant with specifications set by the Commission in a delegated act.

Reporting obligations on performance of groundhandling services to be defined in delegated act

The studies performed in the context of the preparation of this proposal highlight the lack of sufficient, independent and centralised data on the performance of groundhandling services. Availability of sufficient, independent and centralised data on the performance of groundhandling services will improve the identification of appropriate future policy measures. Suppliers of groundhandling services and self-handling airport users should therefore be required to report on the performance of their groundhandling services according to obligations to be defined in a delegated act.

Compulsory minimum training of staff

In a labour-intensive sector such as groundhandling, continuous staff development and training have a strong impact on service quality. Poorly trained staff in turn increases the risk

¹⁵ Airport CDM consists in implementing at airports information sharing devices (not business-sensitive information) so as to improve operational efficiency at airports by reducing delays, improving the predictability of events during the progress of a flight and optimising the utilisation of resources.

of low quality services and notably can affect safety and security of groundhandling services. Stakeholders raised a number of concerns in this respect. The pressure exercised by the current difficult economic situation on airlines and suppliers of groundhandling services results in cost-saving practices which may translate into a reduction in investment in staff leading to poorly trained staff.

The proposal therefore introduces minimum training requirements for all suppliers of groundhandling services and self-handling companies to ensure the safety and security of operations and to create a level playing field among operators.

Possibility for Member States to impose a requirement to take over staff with similar conditions where there is a tender

The current Directive recognises the importance of working conditions for the proper provision of groundhandling services in stipulating that Member States retained the power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services. However, pursuant to case law of the Court of Justice of the European Union¹⁶, there is today ambiguity as regards the measures that Member States are authorised to take in case of change of the authorized supplier for services to which access is restricted.

Turnover of staff in the groundhandling industry is high. Most problematically, part of this turnover appears to be actually driven by the Directive. At airports where a limitation of groundhandling services is in place, the selected suppliers are authorised to operate through tenders only for a limited period of maximum seven years at the airport. The prospect for groundhandling agents to work longer than this limited period requires them to be hired by the new authorized supplier, which is of course by no means a foregone conclusion. The system of tenders therefore appears to encourage turnover of staff. At present, the legal situation does not allow mitigating measures to be taken other than the safeguards already provided in Directive 2001/23¹⁷.

The proposal therefore clarifies the rules on the takeover of staff and gives Member States the explicit possibility in the case of tenders to require the new authorized supplier to take on staff from the previous supplier. Any such requirement has to be proportionate to the business effectively taken over by the new supplier.

3.2. Legal basis

The proposal is based on Article 100 TFEU.

3.3. Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the EU.

The objectives of the proposal cannot be sufficiently achieved by the Member States because airlines operate in a Single Aviation market and groundhandling providers also operate on a

¹⁶ Case C-460/02, Commission vs. Italy, judgement of 9 December 2004. Case C-386/03, Commission vs. Germany, 14 July 2005.

¹⁷ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

European or international market. A level-playing field is necessary at European level. The framework for groundhandling services cannot therefore be addressed at a lower level of regulation. Any individual action at the Member State level would potentially prejudice the functioning of the internal market, by limiting prospects for groundhandling providers and the whole air transport chain, to the detriment of EU citizens.

EU action will better achieve the objectives of the proposal; already in the context of the adoption of Directive 96/67/EC it was acknowledged as essential that access to the groundhandling market should take place within an EU framework, while allowing Member States the possibility to take into consideration the specific nature of the sector, since groundhandling services are essential to the proper functioning of air transport.

European rules on groundhandling services are an essential accompaniment to the European legislation which underpins the internal market in aviation, since a fair, transparent and non-discriminatory system for the supply of groundhandling services is essential for achieving efficient and high quality groundhandling services which have a key function in the aviation chain.

The proposal therefore complies with the subsidiarity principle.

3.4. Proportionality principle

The proposal complies with the proportionality principle. The additional burdens for economic operators and national authorities are limited to those necessary to enhance efficiency and overall quality of groundhandling services. While the proposal implies substantial costs mainly related to the introduction of better management of centralised infrastructures, legal separation of airports, reporting obligations, these are expected to be offset by the important economic and quality benefits obtained.

The proposal is restricted to what is necessary to improve groundhandling services.

3.5. Choice of instrument

The proposed instrument is a Regulation. Other means would not be adequate. Considering the gradual opening of the groundhandling market that has already taken place at all EU airports as well as considering the new need for minimum and harmonised quality standards at airports to respect the gate-to-gate approach and for further harmonisation of market access conditions to ensure a fairer competition on the groundhandling market, the flexibility offered in 1996 by choosing a Directive is no longer suitable.

The legal instrument has to be of general application.

A Regulation suits the needs for harmonisation of groundhandling markets at EU level that was identified as a problem. Most of the difficulties and problem areas identified with the current legal framework are linked to divergent implementation among Member States.

The flexibility for Member States to accommodate specific situations in the respective Member State and at individual airports will presumably be more limited. However, the proposed Regulation still leaves a certain flexibility for Member States where needed by addressing the measures to Member States, for example for the number of suppliers of groundhandling services at an airport.

Therefore the most appropriate legal instrument is a Regulation, since alternative options would not have been sufficient to achieve the proposed objectives.

4. BUDGETARY IMPLICATION

The proposal has no implication for the EU budget.

5. OPTIONAL ELEMENTS

5.1. Repeal of existing legislation

Adoption of the proposal will lead to the repeal of the existing Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports.

5.2. European Economic Area

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on groundhandling services at EU airports

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union ("TFEU"), and in particular Article 100, paragraph 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 Committee¹⁸,

Having regard to the opinion of the Committee of the Regions¹⁹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Union has gradually introduced a common air transport policy with the aim of completing the internal market in accordance with Article 26 of the TFEU as a lasting contribution to promoting economic and social progress.
- (2) The objective of Article 56 of the TFEU is to eliminate the restrictions on freedom to provide services in the Union; in accordance with Article 58 of the TFEU, that objective must be achieved within the framework of the transport policy of the Union.
- (3) Through Regulation (EC) 1008/2008 of the European Parliament and of the Council²⁰ that objective has been attained with regard to air transport services as such.
- (4) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports²¹ provides for a gradual opening of the groundhandling market.
- (5) 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.

¹⁸ OJ C , , p. .

¹⁹ OJ C , , p. .

²⁰ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 1.10.2008, p. 3.

²¹ OJ L 272, 25.10.1996, p. 36.

- (6) The Declaration adopted at the Bruges Aviation Summit in October 2010 recognised the need to reform EU rules to foster the competitiveness of each link in the aviation transport chain (e.g. airports, carriers, other service providers).
- (7) The White Paper: Roadmap to a Single European Transport Area²² 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.
- (8) Further gradual opening of the groundhandling market and the introduction of harmonised requirements for the provision of groundhandling services are likely to enhance efficiency and overall quality of groundhandling services for airlines as well as for passengers and freights forwarders. This will lead to a better quality of overall airport operations.
- (9) Considering the new need for minimum and harmonised quality standards at airports to respect 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, Council Directive 96/67/EC should be replaced by a Regulation.
- (10) Free access to the groundhandling market is consistent with efficient operation of EU airports provided relevant safeguards are put in place. Free access to the groundhandling market must be introduced gradually and be adapted to the requirements of the sector.
- (11) Gradual opening as implemented by Council Directive 96/67 has already produced positive results in terms of improved efficiency and quality. It is therefore appropriate to proceed with further gradual opening.
- (12) Every airport user should be allowed to self-handle. At the same time it is necessary to avoid abuse to maintain a clear and restrictive definition of self-handling.
- (13) For certain categories of groundhandling services access to the market may come-up against safety, security, capacity and available-space constraints; it is therefore necessary to be able to limit the number of authorized suppliers of such categories of groundhandling services; in that case, the criteria for limitation must be relevant, objective transparent and non-discriminatory.
- (14) In order to allow airport users a choice among suppliers the number of authorized suppliers should not be less than two suppliers at airports with not less than 2 million passengers annually or 50 000 tons of freight and should not be less than three suppliers at airports with not less than 5 million passengers annually or 100 000 tons of freight.
- (15) If the number of suppliers of groundhandling services is limited the effective competition will require that at least one of the suppliers should ultimately be independent of both the managing body of the airport and the dominant carrier.

²² COM(2011) 144final.

- (16) In certain cases the safety, security, capacity and available-space constraints can be such that they may justify further restrictions on market access or on self-handling to the extent that these restrictions are relevant, objective, transparent and non-discriminatory. In this case, exemptions can be requested by Member States.
- (17) The purpose of these exemptions must be to enable airport authorities to overcome or at least reduce these constraints; these exemptions must be approved by the Commission.
- (18) If the effective and fair competition is to be maintained where the number of suppliers of groundhandling services is limited, the latter need to be chosen according to an open, transparent and non-discriminatory tender procedure; to ensure such an open, transparent and non-discriminatory tender procedure it is appropriate to further specify the details of such a procedure.
- (19) Airport users shall be consulted when it comes to selecting suppliers of groundhandling services since they have a major interest in the quality and price of the ground-handling services.
- (20) It is therefore necessary to arrange for the representation of airport users and their consultation when authorized suppliers of ground-handling services are selected, by setting up a committee composed of their representatives; in order to ensure fair representation of all airport users in this committee it is necessary to limit the voting power for a single airport users within the committee.
- (21) It is possible in certain circumstances and under specific conditions, in the context of selecting suppliers of groundhandling services at an airport, to extend the public service obligation to other airports in the same geographical region of the Member State concerned.
- (22) Ambiguity exists as to whether the Member State may require the takeover of staff in case of change of the authorized supplier 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 and to give Member States in case of change of the authorized supplier the possibility to require the new authorized supplier to take over staff from the previous supplier.
- (23) Any such requirement shall be proportionate to the business effectively taken over by the new supplier.
- (24) Considering the sensitivity and specificity of the airport environment, in order to ensure a proper and smooth functioning of the air transport operations at airports, to guarantee safety and security on the airport premises as well as to protect the environment and the social regulations in force, it is suitable to make the provision of groundhandling services subject to an appropriate approval.
- (25) Given that approval systems for providing groundhandling services currently exist in the majority of Member States but are very different among the Member States, it is appropriate to introduce a harmonised approval system harmonised: the harmonisation of approval procedures and the mutual recognition of approvals delivered by Member

States will reduce administrative costs for suppliers of groundhandling services and self-handling airport users and will reduce barriers to entry.

- (26) To make sure that all services suppliers and self-handling airport users will eventually have sufficient economic solidity, good repute, sufficient insurance coverage, and proper knowledge of groundhandling operations and of the airport environment, as well as to establish a level playing field, minimum requirements shall be an indispensable condition for the granting of an approval.
- (27) Open access to the centralized infrastructure of the airport is essential for the efficient execution of groundhandling services. It must be possible, however, to collect a fee for the centralized infrastructure.
- (28) To avoid distortions of competition, a clear legal framework for the definition of centralized infrastructure and on the fees charged to suppliers of groundhandling services and self-handling airport users for the centralized infrastructure is necessary.
- (29) The fees shall be non-discriminatory and the calculation of the fees shall be transparent. The fees shall not exceed what is necessary to cover the costs of the provision of the centralized infrastructure including a reasonable return on assets.
- (30) The managing body of the airport and/or any other managing body of the centralized infrastructure shall regularly consult the airport users on the definition of the infrastructure and the level of fees.
- (31) In case of disagreement with the definition of the centralized infrastructure and with the fees, airport users shall be allowed to ask the independent supervisory authority of the Member State referred to in the Directive 2009/12/EC of the European Parliament and of the Council of 11 March on airport charges to decide.
- (32) The managing body of the airport may also supply groundhandling services; at the same time, through its decision, the managing body of the airport may exercise considerable influence on competition between suppliers of groundhandling services; in order to maintain fair competition, it is therefore essential that airports be required to keep their groundhandling services in a legal entity which is separate from the legal entity for infrastructure and regulatory activities and be required not to subsidize their groundhandling services activities from the revenue they derive from their aeronautical activities as airport managers.
- (33) In order to enable airports to fulfil their infrastructure management functions, to guarantee safety and security on the airport premises and to ensure resilience of groundhandling services also in crisis situations the managing body of the airport shall be in charge of the proper coordination of the groundhandling activities at the respective airport.
- (34) In this role, the managing body of the airport, a public authority or any other body controlling the airport shall also have the power to lay down the necessary rules for the proper functioning of the airport infrastructure; those rules must relate to the intended objective and must not in practice reduce market access or the freedom to self-handle to a level below that provided for in this Regulation; the rules must comply with the principle of objectivity, transparency and non-discrimination.

- (35) Service levels agreed by suppliers of groundhandling services with individual airlines are not necessarily compatible with the overall airport efficiency and more generally with the quality of groundhandling services expected by the final users and citizens; sub-standard quality of one supplier of groundhandling services can disturb the airport system to the detriment of all stakeholders in the air transport industry; it is therefore necessary to define obligatory minimum quality standards to be respected by suppliers of groundhandling services and self-handling airport users to enhance the overall quality of service and establish a level playing field among suppliers.
- (36) The existing lack of sufficient, independent and centralized data on the performance of groundhandling services makes the accurate measurement and monitoring of progresses made in the groundhandling sector difficult; this hampers the identification of appropriate future policy measures; suppliers of groundhandling services and self-handling airport users shall therefore report on their operational performance to the Commission.
- (37) In a labour-intensive sector such as groundhandling, continuous staff development and training strongly impact service quality; poorly trained staff in turn increases the risk of low quality services for freight and passengers, including those with reduced mobility and disabled people, and notably affects safety and security of groundhandling services; it is therefore appropriate to set minimum training requirements to ensure the proper quality of operations in terms of reliability, resilience, safety and security, and a level playing field among operators.
- (38) Subcontracting increases the flexibility for suppliers of groundhandling services. Nevertheless, subcontracting and cascade subcontracting may also cause capacity constraints and negative effects on safety and security, and in case of subcontracting through airports and self-handling airlines, subcontracting may also bypass the selection procedure for third-party suppliers foreseen in the Directive; subcontracting should therefore be limited and rules that govern subcontracting should be clarified.
- (39) It is justified that the rights recognized by this Regulation should only apply to third-country suppliers of groundhandling service and third-country self-handling airport users subject to strict reciprocity; where there is not such reciprocity the Commission shall be enabled to decide that a Member State or Member States should suspend these rights with regard to those suppliers and users.
- (40) 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 powers²³.
- (41) The advisory procedure should be used for the implementing decisions with respect to exemptions to the degree of opening of the market for groundhandling services for third parties and of self-handling given that those acts are only of limited scope.

²³ OJ L 55, 28.2.2011, p. 13.

- (42) The advisory procedure should be used for the implementing decisions with respect to a Member States' extension of a public service obligation to an island airport given that those acts are only of limited scope.
- (43) The examination procedure should be used for implementing decisions with respect to the whole or partial suspension of the right to have access to the groundhandling market within a Member States' territory in respect of suppliers of groundhandling services and airport users from a third country.
- (44) In order to ensure that the minimum insurance requirements for suppliers of groundhandling services and self-handling airport users are properly updated if justified by changes in the economic environment, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of minimum insurance requirements for suppliers of groundhandling services and self-handling airport users; it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (45) 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 on the Functioning of the European Union should be delegated to the Commission in respect of specifications for minimum quality standards for groundhandling services and of specifications for the content and diffusion of reporting obligations for suppliers of groundhandling services and self-handling airport users; it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (46) 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.
- (47) Since the objective of this Regulation, namely more homogenous application of EU legislation with regard to groundhandling services cannot be sufficiently achieved by the Member States because of the international character of air transport, and can therefore be better achieved at Union level, the EU may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. 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 this objective.
- (48) 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 the Airport made in London on 2 December 1987, and the full compliance with it will be deemed to constitute compliance with the 1987 declaration.
- (49) It is therefore necessary to repeal Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports.

HAVE ADOPTED THIS REGULATION:

Chapter I – Scope and definitions

Article 1 Scope

This regulation applies to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic.

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

Article 2 Definitions

For the purpose of this regulation:

- (a) "airport" means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;
- (b) "managing body of the airport" means a body which, in conjunction with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport concerned;
- (c) "airport user" means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from, or to the airport in question;
- (d) "groundhandling" means the services provided to airport users at airports as described in the Annex;
- (e) "self-handling" means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall 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 at an airport which cannot, for technical, environmental or capacity reasons, be divided or duplicated and whose availability is essential and necessary for the performance of subsequent groundhandling services.
- (h) "subcontracting" means the conclusion of a contract by a supplier of groundhandling services, in its capacity as the main contractor, with a third-party called "subcontractor", by the terms of which the subcontractor is required to perform one or more categories (or subcategories) of groundhandling services.
- (i) "approval": means an authorisation granted by the competent authority delivering this authorisation to an undertaking, permitting it to provide groundhandling services as stated in the approval.
- (j) "independent supervisory authority" means the authority referred to in Article 11 of Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges.²⁴

Chapter II – General preliminary requirements

Article 3

Managing body of the airport

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 managing body of the airport for the purposes of this Regulation.
2. Similarly, where only a single managing body is set up for several airports, each of those airports shall be considered separately for the purposes of this Regulation.
3. If the managing bodies of airports are subject to the supervision or control of a national public authority, that authority shall be obliged, in the context of the legal obligations devolving upon it, to ensure that this Regulation is applied.

Article 4

Airport Users' Committee

1. Each of the airports concerned shall have in place a committee of representatives of airport users or of organizations representing airport users ("Airport Users' Committee").
2. All airport users shall have the right to be on the Airport Users' Committee, or, if they so wish, to be represented on it by an organisation appointed to that effect. However, if they are represented by such an organisation, this organisation shall not provide groundhandling services at the concerned airport.

²⁴ OJ L 70, 14.3.2009, p.11.

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, in the case of consultations of the Airport Users' Committee in the context of the selection procedure according to article 7, airport users applying for an authorisation to provide one or several groundhandling services to third-parties shall not be entitled to vote.
4. The weighting of votes within the Airport Users' Committee shall be such that:
 - (a) irrespective of the annual traffic volume carried by a single airport user at an airport, its voting power shall not exceed 49 % of the totality of the votes;
 - (b) the voting power of self-handling airport users shall not exceed one third of the totality of the votes.
5. The airport managing body shall provide the secretariat of the Airport Users' Committee, unless the airport managing body or the Airport Users' Committee refuses and designates another entity which has to be accepted by the Airport Users' Committee. The secretariat of the Airport Users' Committee shall keep and maintain the list of airport users or their representatives that are part of the Airport Users' Committee.
6. For each meeting of the Airport Users' Committee, the secretariat of the Airport Users' Committee shall prepare and keep minutes of the meeting. These minutes shall faithfully reflect the views and votes results during the meeting.

Chapter III – Opening of the groundhandling market

SECTION 1 SELF-HANDLING

Article 5 Self-handling

All airport users shall be free to self-handle.

SECTION 2 GROUNDHANDLING FOR THIRD PARTIES

Article 6

Groundhandling for third parties

1. Suppliers of groundhandling services shall have free access to the market for the provision of groundhandling services to third parties on any airport whose annual traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years.
2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services :
 - baggage handling,
 - ramp handling,
 - fuel and oil handling,
 - freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.
 - (a) Member States shall however not limit this number to fewer than two for each category of groundhandling services.
 - (b) Member States shall not limit this number to fewer than three for each category of groundhandling services for airport whose annual traffic has been not less than 5 million passengers annually or 100 000 tons of freight for at least three consecutive years.
3. At airports where the number of suppliers is limited to not less than one, two or three suppliers in line with Article 6, paragraph 2 (a) and (b), and Article 11, paragraph 1 (a) and (c), at least one of the authorized suppliers shall not be directly or indirectly controlled by:
 - the managing body of the airport,
 - 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,
 - a body controlling or controlled directly or indirectly by that managing body or any such user.

Control shall be constituted by rights, contracts or any other means, which either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on the supplier as interpreted by the Court of Justice of the European Union.

4. Where pursuant to paragraph 2 the number of authorized suppliers is restricted, 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 restriction, an effective choice between at least two suppliers of groundhandling services, under the conditions laid down in paragraphs 2 and 3.
5. Where an airport reaches one of the freight traffic thresholds referred to in this Article without reaching the corresponding passenger movement threshold, the provisions of this Regulation shall not apply to categories of groundhandling services reserved exclusively for passengers.
6. Any airport whose annual traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years and whose annual traffic passes under the threshold of 2 million passenger movements or 50 000 tonnes of freight shall maintain its market open to third-party handling suppliers during at least three consecutive years.
7. Any airport whose annual traffic has been for three consecutive years not less than 5 million passenger movements or 100 000 tonnes of freight and whose annual traffic passes under the threshold of 5 million passenger movements or 100 000 tonnes of freight shall maintain its market open to third-party handling suppliers during at least three consecutive years.

Article 7
Selection of suppliers

1. Suppliers authorized to provide groundhandling services at an airport where their number is limited in the cases provided for in Article 6 or Article 11 shall be selected according to a transparent, open and non-discriminatory tender procedure.
2. The tendering authority shall be
 - (a) the managing body of the airport, provided the latter:
 - does not provide similar groundhandling services; and
 - has no direct or indirect control over any undertaking which provides such services; and
 - has no involvement in any such undertaking;
 - (b) in all other cases, a competent authority independent of the managing body of the airport concerned.
3. If the managing body of the airport is not the tendering authority, it shall not have access to the candidates' submissions at any stage of the selection procedure. The Airport Users' Committee shall not have access to the candidates' submissions at any stage of the selection procedure.
4. After having notified the Commission, the Member State concerned may include among the tender specifications a public service obligation in respect of airports

serving peripheral or developing regions which are part of its territory, which have no commercial interest but which are of vital importance for the Member State concerned with which the successful supplier of groundhandling services must comply.

5. An invitation to tender must be launched and published in the *Official Journal of the European Union*, to which any interested supplier of groundhandling services may reply.
6. The selection of the suppliers by the tendering authority shall contain two stages:
 - (c) a qualification procedure aiming at examining the suitability of the applicants; and
 - (d) an award procedure selecting the final supplier.
7. 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 following consultation with the Airport Users' Committee and with the airport managing body of the airport, if the latter is different from the tendering authority.

The minimum criteria shall include the following:

- (a) The applicant has a valid approval delivered in compliance with chapter IV on Approval Procedures;
- (b) The applicant demonstrates its ability and commits in writing to apply the relevant regulations and rules including national labour laws, collective agreements, rules of conduct at the airport and quality requirements at the airport.

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

8. In the award procedure the tendering authority shall select a supplier among the short listed applicants and award the authorisation to this supplier following consultation with the Airport Users' Committee and with the airport managing body of the airport, if the latter is different from the tendering authority.
9. The selection of the supplier for the award of the authorisation shall be based on a comparison of the performance of the offers against a list of selection criteria. The selection criteria must be relevant, objective, transparent and non-discriminatory. The tendering authority shall establish the selection criteria following consultation with the Airport Users' Committee and the managing body of the airport, if the latter is different from the airport.
10. The selection criteria shall include the following:
 - (a) Consistency and plausibility of business plan assessed on the basis of model costs calculations;

- (b) Level of quality of operations to be assessed on the basis of a representative flight schedule 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 of material resources: availability of equipment and environmental friendliness of equipment;
 - (d) Adequateness of human resources: workers' experience and adequateness of training/qualification programme;
 - (e) Quality of information and communication technology;
 - (f) Quality of organisational planning;
 - (g) Environmental performance.
11. The relative weighting of the selection criteria shall appear in the tender notice and the relevant documents. A range of points with an appropriate maximum spread shall be applied to each selection criteria. The tendering authority may set a minimum number of points that the successful candidate has to reach for certain specific selection criteria. The setting of a requirement of a minimum number of points shall be non-discriminatory and shall be clearly stated in the tender notice and the relevant documents. The tendering authority shall not be allowed to eliminate any of the selection criteria, add others or subdivide those initially laid down in the call for tender.
 12. The authorization to provide groundhandling services at the respective airport will be awarded to the supplier that reaches the highest number of points and respects possible requirements of a minimum number of points.
 13. Airport users which are applicants to provide third-party handling or which operate their own self-handling shall not be consulted in the award procedure.
 14. The tendering authority shall ensure that the award decision and its motivations are made public.
 15. Suppliers of groundhandling services shall be selected for a minimum period of seven years and a maximum period of ten years except in case of exemptions for the opening of self-handling and third-party groundhandling as provided for in Article 11 (1). The exact period for which the suppliers are selected and the date to start operations shall be clearly indicated in the call for tender.
 16. A supplier of groundhandling services shall start providing services within one month from the start date indicated in the call for tender. The tendering authority may, in duly justified cases, at the request of the supplier of groundhandling services and after consultation of the Airport User Committee, prolong this period for a limited duration of maximum six months. After expiry of this period, the authorisation will lose its validity.
 17. The tendering authority shall anticipate the end of the tendered authorisation period and shall ensure that the supplier selected after a new tender is authorised to start its

operations the day following the last day of the authorisation period of the previous selected supplier(s).

18. Where a supplier of groundhandling services ceases his 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 this Article. The supplier ceasing his activity shall inform the relevant tendering authority of its intention to leave sufficiently in advance and at the minimum six months in advance before it leaves the airport. Financial penalties may be imposed on the supplier if it does not inform the tendering authority sufficiently in advance unless the supplier can demonstrate force majeure.
19. In case a supplier ceases his activity before the end of the period for which he was authorised and does not leave sufficient time to the tendering authority to select a new supplier before the authorised supplier leaves the airport and in case this leads to a temporary monopoly for certain groundhandling services at this airport, the Member State shall authorise for a limited period of time not exceeding ten months a supplier of groundhandling services to provide groundhandling services at the respective airports without having recourse to the selection procedure established in Article 7.

If the Member State does not succeed in finding a supplier of groundhandling services for this limited period of time, the Member State shall regulate the prices of the groundhandling services for which a temporary monopoly exists until a further supplier starts providing these groundhandling services at the airport.

20. The tendering authority shall inform the Airport Users' Committee and, if applicable, the managing body of the airport of decisions taken under this Article.

Article 8

Managing body of the airport as supplier of groundhandling services

1. Where the number of suppliers of groundhandling services is limited in accordance with Article 6, the managing body of the airport may itself provide groundhandling services without being subject to the selection procedure laid down in Article 7. Similarly, it may, without submitting it to the said procedure, authorize an undertaking to provide groundhandling services at the airport in question:
 - if it controls that undertaking directly or indirectly; or
 - if the undertaking controls it directly or indirectly.
2. Where a supplier of groundhandling services previously authorised to provide groundhandling services as laid down in paragraph 1 without being subject to the selection procedure does not anymore fulfil the conditions of paragraph 1, this supplier may continue to provide groundhandling services during a five year period without being subject to the selection procedure. At the end of this five year period, the supplier shall inform the relevant tendering authority sufficiently in advance and at the minimum six months in advance of the expiry of the five year period. Financial penalties may be imposed on the supplier if it does not inform sufficiently in advance

the tendering authority unless the supplier can demonstrate force majeure. In case the supplier ceases its activity before the end of the five year period, the provisions of Article 7(18) and (19) shall apply.

Article 9

Safeguarding of employees' rights regarding transfer of staff in the case of tenders

1. In the event that a supplier of groundhandling services for which the respective Member State has limited the number of suppliers in accordance with Article 6 or 11 loses the authorization to supply these services which had been awarded to it in accordance with the selection procedure established in Article 7 and that a new supplier which has been selected in accordance with the selection procedure established in Article 7 subsequently takes up the provision of these services, Member States may require the new supplier to grant staff previously taken on 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/EC²⁵.
2. Member States shall limit the requirement to the employees of the previous supplier that are involved in the provision of the services for which the previous supplier lost the authorization and for which the new supplier obtained the authorization and who voluntarily accept.
3. Member States shall limit the requirement of the new supplier to grant staff the rights to which they would have been entitled if there had been a transfer within the meaning of Council Directive 2001/23/EC to be proportionate to the volume of activity effectively transferred to the new supplier.
4. Where a Member State requires the new supplier to grant staff previously taken on 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 tender documents for the selection procedure established in Article 7 shall list the staff concerned and give transparent details of the employees' contractual rights and the conditions under which employees are deemed to be linked to the services.
5. The Member State shall inform the Commission on any measures taken on the basis of this Article.

Article 10

Island airports

In the context of the selection of suppliers of groundhandling services at an airport as provided for in Article 7, a Member State may extend the obligation of public service to other airports in that Member State provided:

- those airports are located on islands in the same geographical region; and

²⁵ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16.

- such airports each have a traffic volume of no less than 100 000 passenger movements per year;
- and such an extension is approved by the Commission.

The decision on the approval shall be adopted in accordance with the procedure referred to in Article 36 (2).

SECTION 3 EXEMPTIONS FOR SELF-HANDLING AND THIRD-PARTY GROUNDHANDLING

Article 11 Exemptions

1. Where at an airport, specific constraints of available space or capacity, arising in particular from congestion and area utilization 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 in question may decide:
 - (a) to limit to not less 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; in this case the provisions of 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 not less than 2 million passengers annually or 50 000 tons 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 not less than 5 million passengers annually or 100 000 tons of freight; in the case of a limitation to two suppliers Article 6 (3) applies;
 - (d) to reserve self-handling 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 pursuant to paragraph 1 must:
 - (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.
3. Moreover, exemptions must not:
 - (a) unduly prejudice the aims of this Regulation;

- (b) give rise to distortions of competition between suppliers of groundhandling services and/or self-handling airport users;
 - (c) 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 on the basis of paragraph 1 and of the grounds which justify them.
 5. The Commission shall publish a summary of the exemption decisions of which it is notified in the Official Journal of the European Union and shall invite interested parties to submit comments.
 6. The Commission shall examine closely exemption decisions submitted by Member States. To that end the Commission shall make a detailed analysis of the situation and a study of the appropriate measures submitted 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 proved to exist or that they are not so severe as 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 Commission's decision 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 decision referred to in paragraph 7 and 8 of this Article shall be adopted in accordance with the procedure referred to in Article 36 (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 three months before the end of that period the Member State must take a new decision on any request for exemption, which will also be subject to the procedure laid down in this Article.
 11. Exemptions under paragraph 1 (b) and (c) may not exceed a duration of two years. However, a Member State may on the basis of the provisions of paragraph 1 request that this period be extended by a single period of two years. The Commission shall decide on such request. The decision of the Commission shall be adopted in accordance with the procedure referred to in Article 36 (2).

Article 12

Consultations of the suppliers of groundhandling services and of airport users

The managing body of the airport shall organize a consultation procedure relating to the application of this Regulation between itself, the Airport Users' Committee and the

undertakings providing groundhandling services. This consultation shall cover, inter alia, the price of those groundhandling services for which an exemption has been granted pursuant to Article 11 (1) (b) and (c) and the organization of the provision of those services. Such consultation shall be organized at least once a year. The managing body of the airport shall make a record of this meeting which shall be transmitted at the Commission at its request.

Chapter IV – Approval procedures

Article 13

Requirement to obtain appropriate approval recognised in all EU Member States

1. At airports whose annual traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years, no undertaking shall be permitted to provide groundhandling services whether as a supplier of groundhandling services or as a self-handling user unless it has been granted the appropriate approval. An undertaking meeting the requirements of this Chapter shall be entitled to receive an approval.
2. Each Member State shall designate a public authority independent of the managing body of the airport in charge of delivering approvals to provide groundhandling services.
3. The competent approving authority shall not grant approvals or maintain them in force where any of the requirements of this Chapter are not complied with.
4. Without prejudice to any other applicable provisions of EU, national, or international law, groundhandling undertakings operating at an airport whose annual traffic has been for three consecutive years less than 2 million passenger movements or 50 000 tonnes of freight shall not be subject to the requirement to hold an appropriate approval.

Article 14

Conditions for granting an approval

1. An undertaking shall be granted an approval by the competent approving authority of a Member State provided that:
 - (a) it is established and registered in a Member State;
 - (b) its company structure allows the competent approving authority to implement the provisions of this Chapter;
 - (c) it complies with the financial conditions specified in Article 15;
 - (d) it complies with the proof of good repute specified in Article 16;
 - (e) it complies with the qualification of staff specified in Article 17;

- (f) it complies with the requirements as regards an operations manual specified in Article 18;
 - (g) it complies with the insurance requirements specified in Article 19.
2. The conditions of paragraph 1 (a), (c), and (d) shall not apply to self-handling airport users which do not provide groundhandling services to third parties. Airport users that have been delivered an approval for the provision of self-handling shall not be authorised to provide third-party handling on the basis of this approval.

Article 15
Financial conditions for granting an approval

1. The undertaking applying for an approval must not be in insolvency nor in similar proceedings or bankruptcy.
2. The competent approving authority shall closely assess whether an undertaking applying for an approval can demonstrate that:
- (h) it can meet at any time its actual and potential obligations established under realistic assumptions, for a period of 24 months from the start of operations; and
 - (i) it can meet its fixed and operational costs incurred by operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.
3. For the purposes of the assessment referred to in paragraph 1, each applicant shall submit the audited accounts for the two previous financial years.
4. For the purposes of the assessment referred to in paragraph 1, each applicant shall submit a business plan for, at least, the first three years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. The applicant shall also provide all relevant information, in particular the data listed below:
- (a) A projected balance sheet, including profit-and-loss account, for the following three years;
 - (b) Projected cash-flow statements and liquidity plans for the first three years of operation;
 - (c) Details of the financing of equipment purchase/leasing including, in the case of leasing, the terms and conditions of each contract, if relevant.

Article 16
Proof of good repute

1. The undertaking applying for an approval shall provide a proof of having paid its taxes and social security contributions in the most recent year, for the EU Member States where it provides an activity or, in the case of full absence of activity in the EU, for its country of origin.
2. Proof is required that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt. The competent approving authority shall accept as sufficient evidence in respect of nationals of Member States the production of documents issued by the competent authorities in the Member State where the undertaking is established and registered or the Member State where the person has his/her permanent residence showing that those requirements are met.
3. Where the Member State where the undertaking is established and registered or the Member State where the person has his/her permanent residence does not issue the documents referred to in paragraph 2, such documents shall be replaced by a declaration on oath or — in Member States where there is no provision for declaration on oath — by a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State where the undertaking is established and registered or the Member State where the person has his/her permanent residence. Such authority, notary or qualified professional body shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

Article 17
Qualification of staff

The 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.

Article 18
Manual of operations

The undertaking applying for an approval shall provide a manual of operations for the relevant activities which shall contain the following information:

- (a) Organization chart, management personnel, description of responsibilities and duties, accountability;
- (b) Capacity to operate safely in an airport context;
- (c) Equipment policy;
- (d) Qualification requirements for personnel as well as corresponding training requirements and training plan;

- (e) Safety and quality management procedures;
- (f) Standard handling procedures, including coordination with airport users and airport managing bodies, coordination of activities and specific handling procedures related to specific customers;
- (g) Emergency response policy;
- (h) Security management procedures.

Article 19
Insurance requirements

1. Suppliers of groundhandling services and self-handling airport users in the Union shall be 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.
The insurance policy shall be concluded with an undertaking authorised to do so under applicable law. This paragraph shall not affect the rights of Member States to define prudential conditions under which an insurer non-authorised according to Directive 2009/138/EC²⁶ may conduct business in its territory.
2. Liability of suppliers of groundhandling services and self-handling airport users vis-à-vis third parties shall be insured to cover any damage caused by and incurred during the performance of groundhandling activities. Such insurance shall also cover damage which was due to an act of war, hijacking, sabotage, terrorism, civil commotion or social disturbance intended to affect the groundhandling activities.
3. The minimum insurance requirements shall cover the following categories of groundhandling services as follows:
 - (a) for each of the categories of activities enumerated as points 2, 10 and 11 of the Annex, 60 million SDR's;
 - (b) for each of the categories of activities enumerated as points 3, 4, 5, 6, 8 of the Annex, 120 million SDR's;
 - (c) for the category of activities enumerated as point 7 of the Annex, 280 million SDR's.
4. The Commission shall, when appropriate, update the amount of the minimum insurance requirements for the different categories of groundhandling in a delegated act, to be adopted in accordance with Article 37.

²⁶ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p.1.

Article 20
Validity of an approval

5. An approval shall be valid for a period of five years.
6. An approval shall be valid for the categories and/or subcategories specified in the approval.
7. The approval may be withheld or revoked only if the supplier of groundhandling services or self-handling airport user does not meet, for reasons of his own doing, the criteria referred to in this chapter. The supplier of groundhandling services shall at all times be able upon request to demonstrate to the competent approving authority that it meets all the requirements of this Chapter.
8. The competent approving authority shall monitor compliance with the requirements of this Chapter. It shall in any case review compliance with these requirements in the following cases:
 - (d) when a potential problem has been suspected; or
 - (e) at the request of an approving authority of another Member State; or
 - (f) at the request of the Commission.
9. The approval shall be resubmitted for approval when a groundhandling undertaking:
 - (g) has not started operations within twelve months of the granting of an approval; or
 - (h) has ceased its operations for more than twelve months.
10. A groundhandling services operator shall notify the competent licensing authority:
 - (i) in advance of any substantial change in the scale of its activities;
 - (j) In case an insolvency procedure is initiated for the undertaking.

Article 21
Revocation of approval

1. The competent approval authority may at any time revoke the approval if the supplier of groundhandling services or self-handling airport user does not respect the criteria referred to in this chapter.
2. The competent approval authority shall revoke the approval if the supplier of groundhandling services knowingly or recklessly furnishes the competent approval authority with false information on an important point.

Article 22
Decisions on approvals

1. The competent approval 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 shall be communicated to the applicant and to the authorities delivering approvals in the other Member States. A refusal shall indicate the reasons therefore.
2. The approval may be withheld or revoked only if the supplier of groundhandling services or self-handling airport user does not meet, for reasons of his own doing, the criteria referred to in this Chapter. The grounds for revocation must be communicated to the supplier or user concerned and to the authorities in charge of delivering approvals in the other Member States.
3. Procedures for granting and revoking approvals shall be made public by the competent approval authorities, which shall inform the Commission thereof.

Article 23
Mutual recognition of approvals and respect of national legislation

An approval delivered in one Member State according to the provisions of this chapter shall permit an operator to provide groundhandling services whether as a supplier of groundhandling services or as a self-handling airport user in all Member States subject to the conditions set in the approval and without prejudice to limitations to market access in line with Articles 6 and 11.

The undertaking applying for an approval or having obtained an approval shall respect the national provisions concerning social protection, environmental protection and airport security of all Member States in which it operates.

Chapter V – Obligation for airport managing bodies and centralised infrastructure managers

Article 24
Access to centralised infrastructures and installations

1. The provisions of this Article only apply to airports whose annual traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years.
2. The airport managing body shall publish the list of the centralised infrastructures at the airport.
3. The management of the centralised infrastructures may be reserved for the managing body of the airport or to another body, which may make it compulsory for suppliers of groundhandling services and self-handling airport users to use those infrastructures. The management of such infrastructure shall be carried out in a transparent, objective and non-discriminatory manner.

4. The managing body of an airport, or where appropriate the public authority or any other body which controls it shall decide on an objective basis and after consultation with the Airport Users' Committee and with the undertakings providing groundhandling services at the airport, those infrastructures which shall be centralised. The airport managing body, or where appropriate the public authority or any other body which controls it shall ensure that any infrastructure or installation falling under the definition of "centralised infrastructure" shall be designated as such and that the requirements set in this chapter are complied with as to this infrastructure or installation.
5. Where the Airport Users' Committee disagrees with the decision of the managing body of the airport to centralise or not centralise an infrastructure or with the scope of centralisation, it can ask the independent supervisory authority of the Member State concerned to decide whether the infrastructure in question shall be centralised or not and to what extent.
6. Suppliers of groundhandling services and self-handling airport users shall have open access to airport infrastructures, centralised infrastructures and airport installations to the extent necessary to enable them to carry out their activities. The managing body of the airport or, where relevant, the managing body of the centralised infrastructure or, where appropriate, the public authority or any other body which controls them may make this access subject to conditions which must be relevant, objective, transparent and non-discriminatory.
7. The space available for groundhandling at an airport must 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.
8. Where the use of the centralised infrastructures or airport installations gives rise to the collection of a fee, the managing body of the airport or, where relevant, the managing body of the centralised infrastructure shall ensure that the level of fee collected for this use is set according to relevant, objective, transparent and non-discriminatory criteria.
9. The managing body of the airport or, where relevant, the managing body of the centralised infrastructure shall be entitled to recover its costs and to make a reasonable return on assets from the fees charged. The fee shall constitute consideration for a service.
10. Any fees collected according to paragraph 8 shall be set at the level of the individual airport after consultation with the Airport Users' Committee and with the undertakings providing groundhandling services at the airport. The managing body of the airport or, where relevant, the managing body of the centralised infrastructure, shall provide once a year the Airport Users' Committee and the undertakings providing groundhandling services at the airport with information on the components serving as a basis for determining the fees levied according to paragraph 8. The information shall include at least:

- (a) a list of the various services and infrastructure provided in return for the fee levied;
 - (b) the methodology used for setting the fee;
 - (c) the overall cost structure with regard to the facilities and services to which the fee relates;
 - (d) the revenue from the different fees, the total cost of the services covered by them and the return on assets;
 - (e) any financing from public authorities of the facilities and services to which the fee relates;
 - (f) the predicted outcome of any major proposed investments in terms of their effects on airport capacity.
11. The managing body of the airport shall publish the level of fees including a clear exposition of the services provided as to ensure that any fees collected for the provision of centralised infrastructures, space for groundhandling and essential services related to the provision of groundhandling services are exclusively used to recover all or part of the related costs. Where relevant, the managing body of the centralised infrastructure shall communicate the level of fees including a clear exposition of the services provided to the managing body of the airport.
12. Where the Airport Users' Committee disagrees with a fee set by the managing body of the airport or, where relevant, the managing body of the centralised infrastructure, it can ask the independent supervisory authority of the Member State concerned to decide on the level of the fee.
13. In case the decision on the scope of the centralised infrastructure or on the level of fees is brought before the independent supervisory authority in line with paragraph 5 or 12 respectively, the procedure established on the basis of Article 6 of Directive 2009/12/EC shall apply.

Article 25
Legal separation

1. At airports whose annual traffic volume has been not less than 2 million passenger movements or 50 000 tons of freight for at least three consecutive years, the managing body of the airport or the manager of the centralized infrastructure shall, if it provides groundhandling services for third parties, establish a separate legal entity for the performance of these groundhandling activities.

This entity shall be independent in terms of its legal form, its organisation and its decision making from any entity related to the management of airport infrastructure, in case the managing body of the airport provides groundhandling services to third parties, or from any entity related to centralised infrastructure, in case the manager of centralized infrastructure provides groundhandling services to third parties.

2. At airports whose annual traffic volume has been not less than 2 million passenger movements or 50 000 tons of freight for at least three consecutive years, those persons responsible for the management of the airport infrastructure or the management of the centralised infrastructure must not participate directly or indirectly in company structures of the independent entity providing groundhandling services.
3. At airports whose annual traffic volume has not been not less than 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years there shall be no financial cross-subsidisation from the aeronautical activities related to the management of airport infrastructure, in case the managing body of the airport provides groundhandling services, or from the aeronautical activities related to the management of centralised infrastructure, in case the manager of centralized infrastructure provides groundhandling services, to the legal entity providing groundhandling services as referred to in paragraph 1 which would allow the entity providing groundhandling services to reduce the prices this entity charges for its groundhandling services to third parties.
4. At the close of each financial year an independent auditor shall verify the position and officially declare that such financial cross-subsidisation has not occurred. In case of cross-subsidization from non-aeronautical activities to the legal entity providing groundhandling services, it is for the entity managing the airport infrastructure or the entity managing the centralised infrastructure to demonstrate that the flows are compliant with paragraph 3.

Chapter VI – Coordination of activities and quality

Article 26

Role of 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 take place in the framework of the airport rules of conduct, as defined in Article 27.
2. In addition, at airports whose annual traffic has been not less than 5 million passengers annually or 100 000 tons of freight for at least three consecutive years:
 - (g) operations of suppliers of groundhandling services and self-handling airport users shall comply with minimum quality standards, as specified in Article 28;
 - (h) the airport managing body shall ensure that the operations of suppliers of groundhandling services and self-handling airport users are coordinated through an airport Collaborative-Decision Making (CDM) and through a proper contingency plan.
3. The managing body of the airport shall provide an annual report on the application of paragraph 2 to the Performance Review Body of Eurocontrol.

4. The managing body of the airport shall report to the national approving authority any problem with the suppliers of groundhandling services or self-handling airport users at its airport.

Article 27
Rules of conduct

1. Rules of conduct shall mean any rules defined by the managing body of the airport, a public authority or any other body which controls the airport for the proper functioning of the airport.
2. The managing body of the airport, a public authority or any other body which controls the airport may lay down rules of conduct.
3. Those rules must comply with the following principles:
 - (a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;
 - (b) they must relate to the intended objective;
 - (c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Regulation.
4. A Member State may, where appropriate on a proposal from the managing body of the airport:
 - (a) prohibit a supplier of groundhandling services or a self-handling airport user from supplying groundhandling services or self-handling if that supplier or user fails to comply with the rules imposed upon him to ensure the proper functioning of the airport;
 - (b) in particular 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 28
Minimum quality standards

1. Minimum quality standards mean in this Article minimum quality level requirements for groundhandling services.
2. At airports whose annual traffic has been not less than 5 million passenger movements or 100 000 tonnes of freight for at least three consecutive years, the airport managing body or, where appropriate, the public authority or any other body which controls the airport, shall set minimum quality standards for the performance of groundhandling services.
3. Suppliers of groundhandling services and self-handling airport users shall respect these minimum quality standards. In addition, airport users and suppliers of

groundhandling services shall respect the minimum quality standards in their contractual relations.

4. The minimum quality standards shall cover in particular the following fields: operational performance, training, information and assistance to passengers notably in the framework of EU Regulations 261/2004 and 1107/2006, CDM, safety, security, contingency measures, and environment.
5. The minimum quality standards shall be fair, transparent, non-discriminatory and without prejudice to applicable EU legislation, including Regulations 261/2004 and 1107/2006. They shall be consistent, proportionate and relevant in relation to the quality of airport operations. Due account should be taken in this regard to the quality of customs, airport security and immigrations processes.
6. The minimum quality standards shall be compliant with specifications set by the Commission in a delegated act, to be adopted in accordance with Article 37.
7. Prior to establishing these standards the airport managing body shall consult the Airport Users' Committee and the suppliers of groundhandling services.
8. The Member States shall verify the respect of paragraph 5 of this Article.
9. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Regulation and the specifications referred to in paragraph 2. They shall forthwith communicate to the Commission the text of those provisions.

Article 29

Reporting obligations on groundhandling services

1. At airports whose annual traffic has been not less than 5 million passenger movements or 100 000 tonnes of freight for at least three consecutive years, suppliers of groundhandling services and self-handling airport users shall report on their operational performance to the European Commission.
2. Detailed specifications regarding the content and diffusion of reporting obligations shall be set by the Commission in a delegated act, to be adopted in accordance with Article 37.

Article 30

Training

1. Every supplier of groundhandling services and self-handling airport user shall ensure that all its employees involved in the provision of groundhandling services, including managing staff and supervisors, regularly attend specific and recurrent training to perform their duties and for the tasks assigned to them.
2. Every employee involved in the provision of groundhandling services shall attend at least two days of training relevant for the tasks assigned to the respective employee.

3. If and where relevant for the concerned activity of groundhandling services, training shall cover at least:
 - (a) security, including security control, security of operations, security equipment, security threat management;
 - (b) dangerous goods;
 - (c) airside safety, including safety philosophy, safety regulations, hazards, human factors, airside markings and signage, emergency situations, FOD prevention, personal protection, accidents-incidents-near misses, airside safety supervision;
 - (d) airside driver training, including general responsibilities and procedures (reduced visibility procedures), vehicle equipment, airports rules and layout on the traffic and manoeuvring areas;
 - (e) ground support equipment (GSE) operations and management, including GSE maintenance, GSE operations;
 - (f) load control, including general weight and balance proficiency and awareness, aircraft structural load limitations, Unit Load Devices, Bulk hold loading, Load sheet, balances tables/charts, Loading Instructions Report (LIR), Loading messages, load control of dangerous goods;
 - (g) passenger handling functional training, including training on passenger boarding bridge training and on passenger information and assistance in the framework of Regulations 261/2004 and 1107/2006;
 - (h) baggage handling functional training;
 - (i) aircraft handling and loading training;
 - (j) aircraft ground movement, including aircraft ground movement operations, operation of equipment, equipment-aircraft connect and disconnect procedures, aircraft ground movement hand signals, aircraft marshalling, aircraft ground movement assistance;
 - (k) cargo and mail handling;
 - (l) aircraft turnaround coordination training;
 - (m) environment;
 - (n) emergency measures and contingency management;
 - (o) reporting systems;
 - (p) outsourcing quality control.
4. The supplier of groundhandling services and self-handling airport users shall report annually on the respect of this training obligation to the managing body of the airport.

Article 31
Subcontracting

1. Without prejudice to paragraphs 2, 3 and 4 of this Article, suppliers of groundhandling services are allowed to engage in subcontracting.
2. Self-handling airport users are only allowed to subcontract groundhandling services in case they are temporarily unable to perform self-handling due to force majeure.
3. Subcontractors are not allowed to subcontract groundhandling services.
4. In case where it benefits from the special conditions defined in article 8 (1), a supplier of groundhandling services established in conformity with Article 3 is not allowed to subcontract groundhandling services except in case it is temporarily unable to perform self-handling due to force majeure.
5. Any supplier of groundhandling services and self-handling airport user in case of force majeure using subcontractors shall ensure that the subcontractors comply with the obligations imposed on the supplier of groundhandling services under this Regulation.
6. A supplier of groundhandling services and a self-handling user in case of force majeure that uses one or several subcontractors shall inform the airport managing body of the name and activities of the subcontractors operating at the airport concerned.
7. Where a supplier of groundhandling services applies for an authorisation to provide groundhandling services under the selection procedure described in Article 7, it shall indicate the number, activities and names of the subcontractors it intends to use.

Chapter VII – International aspects

Article 32
Relations with third countries

8. Without prejudice to the international commitments of the European Union, whenever it appears that a third country, with respect to access to the groundhandling or self-handling market:
 - (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 respective Member State to suppliers of groundhandling services and self-handling airport users from that third country at its airports; or
 - (b) does, de jure or de facto, grant 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;

the Commission may, in accordance with the procedure referred to in Article 36 (3), decide that a Member State or Member States shall take measures, including the whole or partial suspension of the right to have 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 of remedying the discriminatory behaviour of the third country concerned.

- 9. A supplier of groundhandling services and self-handling airport user from that third country shall mean a legal or natural person set up in accordance with the laws of that third country and having its registered office, central administration or principal place of business in the territory of that third country.
- 10. The EU and/or the Member States shall ensure that, regarding market access rights in third countries, there shall be no discrimination between EU airport users providing third-party groundhandling services and other EU suppliers of groundhandling services.

Chapter VIII – Reporting and monitoring obligations

Article 33

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 for access to the groundhandling market referred to in Article 6 (2) or Article 11.
- 2. 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 by the Member State according to the provisions of chapter IV on Approval Procedures.

Article 34

Publication of list of airports

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

- (a) List of EU airports whose annual traffic has been not less than 5 million passenger movements or 100 000 tonnes of freight for at least three consecutive years ;
- (b) List of EU airports whose annual traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight for at least three consecutive years ;
- (c) List of EU airports open to commercial traffic ;

- (d) List of airports for which restrictions in accordance with Articles 6 (2) or 11 are in place;
- (e) List of suppliers of groundhandling services and self-handling airport users approved according to the provisions of chapter IV on Approval Procedures.

Article 35
Information report

3. The Commission shall submit a report to the European Parliament and the Council on the application of this Regulation at the latest 5 years after entry into force. The report shall include, in particular, the following set of core indicators for a sample of airports:
- number of suppliers of groundhandling services at EU airports in average, for the 11 categories of services;
 - number of airport users self-handling at each EU airport, for the 11 categories of services;
 - number of airports with limited number of services providers, and value of the limitation(s);
 - number of companies having an approval from a Member State and operating in another Member State;
 - stakeholders' opinion on the approval system (approval criteria, implementation issues, price etc.);
 - number of suppliers of groundhandling services and self-handling airport users operating in the EU (all included);
 - price and management system of centralised infrastructures at each airport;
 - market share of the managing body of the airport in the groundhandling business at each airport for the 11 categories of services;
 - market share of airport users providing third-party handling at each airport for all categories of services;
 - safety accidents involving groundhandling services;
 - opinion of stakeholders on quality of groundhandling services at airports in terms of staff competence, environment, security, coordination of activities (CDM, contingency measures, training in the airport context, subcontracting);
 - minimum quality standards for groundhandling companies;
 - training features;
 - transfer of staff.

4. The Commission and the Member States shall cooperate in the application of this Regulation, particularly as regards the collection of information for the report mentioned in the previous paragraph.

Chapter IX – Provisions conferring implementing powers

Article 36 Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.²⁷
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. 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.

Article 37 Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 28, 29 and 32 shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of powers referred to in Articles 28, 29 and 32 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 28, 29 and 32 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the

²⁷ Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Chapter X – Implementing measures

Article 38 Right of appeal

1. Member States or, where appropriate, managing bodies of airports shall ensure that any party with a legitimate interest has the right to appeal against the decisions or individual measures taken pursuant to Articles 6 (2) (groundhandling for third parties), 7 (selection procedure), 10 (PSO for island airports), 21 and 22 (approval decisions), 24 (access to installations), 27 (rules of conduct) and 28 (minimum quality standards).
2. It must be possible to bring the appeal before a national court or a public authority other than the managing body of the airport concerned and, where appropriate, independent of the public authority controlling it. Where specified in the present Regulation, the appeal shall be brought before the 'independent supervisory authority'.

Chapter XI – Transitional and final provisions

Article 39 Repeal

3. Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports is hereby repealed, with effect from the date of entry into force of this Regulation.
4. References to the repealed Directive shall be construed as being made to this Regulation.

Article 40 Transitional provisions

1. Until the date of entry into force of this Regulation, Council Directive 96/67/EC shall remain in force.
2. Suppliers selected according to the Article 11 of Council Directive 96/67/EC before the entry into force of this Regulation shall continue to be authorized under the conditions defined in Council Directive 96/67/EC until the selection period initially planned is over.
3. At airports where only 2 suppliers were selected per category of services in application of Council Directive 96/67/EC and where Article 6, paragraph (2) (b) of

this Regulation will apply, the selection procedure according to Articles 7 and 9 of this Regulation shall be organized so as the new supplier is selected and able to start operations at the latest one year after the entry into force of this Regulation.

4. Approvals delivered in application of Article 14 of Council Directive 96/67/EC shall continue to be valid until their expiration, and at any event at the latest two years after the entry into force of this Regulation. Any approval delivered after the entry into force of this Regulation shall comply with this Regulation.
5. As soon as a company obtains an approval delivered in application of this Regulation, it shall request within a two months period the cancellation of any of its approval(s) delivered in application of article 14 of Council Directive 96/67/EC. However, if an approval delivered in application of article 14 of Council Directive 96/67/EC is due to expire within two months, the company shall be exempted from requesting the cancellation.
6. Article 23 of the present regulation on mutual recognition does not apply to approvals delivered in application of Article 14 of Council Directive 96/67/EC.

Article 41
Entry into force

This Regulation shall enter into force on the 365th day following that of its publication in the *Official Journal of the European Union*.

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

ANNEX

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 information and 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 export, transfer and import freight, 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, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal;
 - 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. the cooling and heating of the cabin, the removal of snow and ice, 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 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;
 - 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:
 - 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.