



ASSEMBLY OF THE PORTUGUESE REPUBLIC
EUROPEAN AFFAIRS COMMITTEE

Opinion

Com(2011)824 final

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on groundhandling services at Union airports and repealing
Council Directive 96/67/EC**



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PART 1 - INTRODUCTION

In accordance with Articles 6 and 7 of Law No 43/2006 of 25 August 2006, regulating the monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic in the context of the process of EU integration, as well as the Methodology for providing scrutiny of EU initiatives approved on 20 January 2010, the European Affairs Committee received the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on groundhandling services at Union airports and repealing Council Directive 96/67/EC [COM(2011)824].

In view of its subject-matter, the above-mentioned initiative was forwarded to the **Committee for Economic Affairs and Public Works**, which examined it and has approved the Report attached to this Opinion, which forms an integral part thereof.



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PART II - BACKGROUND

1. The European Commission considers that capacity in airports in the EU is reaching saturation point.¹ If the current situation continues, it is predicted that 19 major airports in the EU will reach breaking point by 2030. The resulting congestion would lead to 'delays for half of all flights across the network'. At present 70% of flight delays are due to problems on the ground and not in the air, caused by turnaround times.
2. In spite of this situation, in 2009, 800 million passengers left airports across the EU. Demand is exceeding capacity in EU airports, leading to inevitable restrictions on citizens' mobility and simultaneously reducing the EU's ability to compete precisely at a time when it is facing intense worldwide competition.
3. The solution that seems to be required is to 'build new runways and airport infrastructure'. However the current economic crisis 'confirms, on the other hand, the importance of the viability of long-term investments'. Therefore, and in order to remedy the problem of saturation, solutions must be found which are more efficient and economic than increasing physical infrastructure, making it imperative to use existing airport capacity with the greatest possible efficiency.
4. In this context the Commission approved a series of legislative initiatives including this proposal being analysed, which aim to increase EU airport capacity, reduce delays and improve the quality of services offered to passengers.

¹ Currently five European airports have reached their capacity: Dusseldorf, Frankfurt, London Gatwick, London Heathrow and Milan Linate



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In accordance with the provisions of this proposal, the following questions should be addressed:

a) Legal basis

This proposal is based on Article 100 of the Treaty on the Functioning of the European Union.

a) The Subsidiarity Principle

The subsidiarity principle is applicable given that the field of action proposed by the EU does not come under the exclusive competency of the Union.

As groundhandling services are vital for the smooth running of air transport in the EU, the objectives of the proposal will not be able to be achieved sufficiently by the Member States because, as was recognised in 1996, access to the groundhandling market, as part of the joint air transport policy, must be obtained within a European framework.

The regulatory framework for groundhandling services cannot therefore be established at a lower level. Any isolated action by one particular Member State has the potential to hinder the internal market.

It is for this reason that it is considered preferable to achieve the proposed objectives through action taken at EU level.

It is therefore concluded that the proposal in question complies with the principle of subsidiarity.

c) Contents of the initiative



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Groundhandling services are vital for the smooth functioning of air transport and constitute an essential function of the aviation network. They include all groundhandling activities² linked to aviation carried out by air carriers at airports.

Thus the efficient provision of groundhandling services is important for airport operators, air carriers and for passengers, and is essential to the efficient use of air transport infrastructures. It also contributes to the development of the aviation system in general.

Access to the groundhandling services market at European airports has been regulated since 1996³ by Council Directive 96/67/EC, the objective of which is to regulate the gradual opening up of the groundhandling services market in order to help reduce the prices paid by air carriers and the improvement of the quality of such services. The Directive is considered to 'constitute one of the main initiatives accompanying the single aviation market in the mid-90s'.

However, the Commission has been monitoring its application, which has raised several questions regarding the implementation of and compliance with the Directive. In addition to these aspects there is also another dimension linked to the context in which groundhandling services are provided and which completely changed during the last decade – an increase of 36% in air traffic, crisis and economic recession, terrorist attacks, volcanic eruptions, etc.

In these changing times, the consultations and assessments carried out concerning the Directive identified the existence of two problems:

² There are 11 categories of groundhandling services: 1) Administrative and supervisory assistance on the ground; 2) Assistance to passengers; 3) Baggage handling services; 4) Cargo and postal services; 5) Runway services; 6) Aircraft service assistance; 7) Fuel and oil services; 8) ** 9) Assistance with air operations and crew management; 10) Ground transport services; 11) Catering services.

³ Historically groundhandling activities were performed by airport operators or air carriers. Currently in Europe these activities are increasingly carried out by specialist companies.



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- i) **Currently, the provision of groundhandling services is not efficient enough due to the existence of obstacles to entering and expanding the market**, such as those due to the fact that 'firstly, the possibility of restricting competition for some services means that, in some airports, the air carriers have a limited choice between two providers for each of the 'reserved services' and do not always have authorisation to perform self-handling. Secondly, the EU is characterised by a large diversity of administrative conditions governing access to national markets. Each Member State may require its own 'licence', which leads to a diversity of local requirements, obliges groundhandling companies to adapt to each national market and helps to increase costs. Thirdly, new operators have difficulties in entering and expanding the operator market at airports. At some airports, specific local conditions prevent new operators from competing in a sustainable manner with the providers receiving benefits.
- ii) **the overall quality of groundhandling services has not kept up with changing needs as regards reliability, resilience, security and environmental protection, the main causes of this situation being:** i) inadequate co-ordination of groundhandling services at the airport linked to sub-contracting practices and the absence of daily supervision of operations; ii) unsatisfactory legal framework for training and transferring staff.

This situation highlights the shortcomings of the current legal framework and consequently requires the necessary changes to be introduced.

With this measure the initiative aims to replace and revoke the existing Directive 96/67/EC, its overall objective being to improve the efficiency and quality of groundhandling services for users (air carriers) and end



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users (passengers/forwarding agents). In terms of specific objectives it aims to: i) guarantee air carriers a greater choice of groundhandling solutions at EU airports; ii) harmonise and clarify national administrative conditions for entry into the market (licences); iii) ensure fair conditions at airports between groundhandling companies which operate under different regulatory regimes; iv) improve co-ordination between groundhandling service providers at the airport; v) clarify the legal framework for training and transferring staff'.

In conclusion, the proposals included in this Regulation are designed to improve the quality and efficiency of the groundhandling services at the airports.

PART III – COMMENTS BY THE RAPPORTEUR

With regard to this matter, attention is drawn to the recent case in Portugal where an air carrier had to transfer the groundhandling service company Groundforce to private individuals in order to guarantee the existence of two independent operators. This situation shows that requiring at least two operators, even where the conditions do not exist for the market to deal with whoever wins this contract, can lead to inflexibility which is not envisaged by the EU and which should be taken into account.

PART IV - OPINION

In view of the foregoing and the report and opinion of the relevant Committee, the European Affairs Committee is of the opinion that:

1. This opinion **does not breach the principle of subsidiarity, in so far as the objective to be reached will be more efficiently reached through Community action;**



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2. With regard to the issue at hand, the scrutiny process has now been completed, although it may continue to be monitored by the relevant committees of the Assembly of the Portuguese Republic.

Palácio de S. Bento, 31 January 2012

Rapporteur

Chairman of the Committee

(Vitalino Canas)

(Paulo Mota Pinto)



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PART V - ANNEX

Report issued by the Committee for Economic Affairs and Public Works



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Regulation of the European Parliament and
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ASSEMBLY OF THE PORTUGUESE REPUBLIC
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PART I - INTRODUCTION

In accordance with Article 7 of Law No 43/2006 of 25 August 2006 on the monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic in the context of the process of EU integration, the proposal for a Regulation of the European Parliament and of the Council on the groundhandling services at Union airports and repealing Council Directive 96/67/EC [COM(2011)824 final] was sent to the Committee for Economic and Public Works, in view of its subject-matter, to be examined and for an opinion to be drawn up.



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PART II — BACKGROUND

1. General

The proposal for a Regulation of the European Parliament and of the Council on the groundhandling services at Union airports and repealing Council Directive 96/67/EC [COM(2011)824 final] aims to improve the efficiency and overall quality of groundhandling services for users (air carriers) and end users (passengers/freight forwarders) at EU airports.

According to its preamble, the proposal aims to: i) ensure airlines have an increased choice of solutions for groundhandling at EU airports; ii) harmonise and clarify national administrative conditions for market entry (approvals); iii) ensure a level playing field at airport level between groundhandling companies operating under different regulatory regimes; increase coordination between groundhandling providers at the airport; and clarify the legal framework for training of staff and transfer of staff.

2. Relevant issues

The preamble to the initiative states that:

'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 identified as a strategic initiative in the 2011 Commission Work Programme, to tap the potential of the Single Market for growth'.



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In the process of drawing up the initiative the Commission developed a procedure for stakeholder consultation. In accordance with the preamble to the initiative, consultations have indicated conflicts of interests between the stakeholders and the complexity of ensuring a general consensus to an initiative with these characteristics and objectives:

'Airlines stressed the need for a more competitive market. The airlines expressed their satisfaction with the generally greater choice of groundhandling providers following the introduction of the Directive but stressed that this trend is not observed everywhere in Europe.

In a sector where employment stability has suffered, groundhandling workers argued for the need to address employment-specific concerns (notably the transfer of staff) and expressed concerns about the introduction of excessive 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 to any further opening up of the market, mainly as they believe this would negatively impact quality at their airports and increase costs.

Independent groundhandlers pointed to the need for fairer competition between the different groundhandling providers. In particular, they advocated more stringent requirements for groundhandling activities performed by airport operators and airlines.

Nearly all stakeholders call for improved quality of services'.



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3. Subsidiarity

Where the proposal refers to areas which are not under the exclusive competence of the EU, the subsidiarity principle is applicable.

The preamble to the initiative states that 'The framework for groundhandling services cannot be addressed at a lower level of regulation [than at EU level]. Any individual action at Member State level would potentially prejudice the functioning of the internal market'.

Consequently 'EU action is better able to achieve the objectives of the proposal. European rules on groundhandling services are an essential accompaniment to the European legislation underpinning the internal market in aviation, since a fair, transparent and non-discriminatory system for the supply of groundhandling services is essential for achieving efficient, high-quality groundhandling services, which have a key function in the aviation chain'.

It can therefore be concluded that 'the proposal therefore complies with the subsidiarity principle'.



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PART III – COMMENTS BY THE RAPPORTEUR

The liberalisation of groundhandling services at airports (handling), with the aforementioned opening up of the groundhandling market, resulted in a significant worsening of working conditions and a substantial reduction in the wages of workers in the sector.

Although the report made by this Committee on the implementation of Council Directive 96/67/EC of 15 October 1996 attempted, in its conclusions, to minimise the impact of this trend, it could not prevent the fact that 'the increase in competition caused by the Directive led carriers or service providers established in the market to lay off a portion of their staff, whilst new operators took on new workers, but with generally lower salaries.

There has thus been, in some Member States, a degree of pressure on labour relations, salary levels and working conditions, and consequently on workforce stability. On the other hand, 'the entry of new staff, and thus, indirectly, the introduction of competition, may have resulted in a drop in qualification levels of and staff training and their working conditions, with a resulting reduction in service quality.'

These factors have been confirmed by academic studies which indicate that a reduction in salary costs and the 'flexibilisation' of the work force, i.e. an increase in the exploitation of workers, which have enabled operators' costs to be reduced (e.g. Muller et al, Restructuring of the European Ground Handling Market after the EU Market Liberalization, GAP).

The PCP (Portuguese Communist Party) has been a staunch critic of the situation at SpdH/Groundforce, where management has decimated posts and systematically resorted to sub-contracting. This is a sector adopting illegal means in order to increase employment precariousness, which has a profoundly negative impact on the life of workers, operations, and the company itself.



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In 2006/7 when revising pay scales, management excluded the two initial levels for all job posts, i.e. freezing pay (only) for the workers with the lowest pay.

In 2010 this company had approximately 180 contracted workers (half the number for the previous year), and in spite of this there were no less than 464 subcontracted workers (nearly double the figure for the previous year). In turn, the number of actual workers has been falling continuously. In the last few years the company management has followed a continuous practice of making workers unemployed and replacing them with sub-contracted staff.

As you are aware, this policy of weakening labour relations at the company did not have any operational advantage, on the contrary, since the negative effect on motivation, training and qualification is evident.

After the Government took the decision to block SPdH/Groundforce from providing groundhandling services at Faro, 336 workers were replaced with workers who were employed by agencies supplying temporary workers. The seasonal nature of the work was given as a reason, but the increase in work for Portway as a result of Faro being blocked was not and could not be seasonal.

Where the European Commission refers to 'inadequate co-ordination of groundhandling services', in reality there is a high-level of 'co-ordination in increasing the level of precariousness and exploiting the workers; as regards its comment about 'sub-contracting practices affecting the airport area and the absence of daily supervision for operations and monitoring', experience shows that this very sub-contracting is the result of constant demands to reduce labour costs – in the case of Portugal, this also serves the objective of a privatisation process which presupposes making labour relations precarious and reducing salaries.

As in many other areas of activity (in particular in the transport sector itself), the 'unsatisfactory legal framework for training and the transfer of staff' has in no way been exceeded in a linear fashion by more restrictive requirements or demands regarding training, certification or access to the profession –



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unfortunately when training is not recognised as a worker's right and as a factor for improving their working conditions, the result is the systematic use of training by management bodies as an additional means of exploitation and an area for negotiation.

In this respect, I would refer you to the example of the 'Groundforce Academy' which, after a period of workplace training and a work placement (paid for in increasingly large amounts by those being trained), provides 'candidates/trainees/work placement candidates/temporary workers' with a recruitment budget used by agencies arranging temporary work...agencies which also provide a service to Groundforce!

On 10 March 2009 the SpdH/Groundforce Worker's Association sent the Portuguese Competition Authority (the AdC) a complaint regarding 'dumping' practices on the part of Portway, who were submitting prices to airlines which corresponded to values lower than operating costs, thereby imposing absolutely false 'competition' conditions.

AdC replied on 4 June 2009 to the effect that 'there are no signs of anything illegal in terms of competition law, since the party which is the subject of the complaint [Portway] does not have a dominant position in the relevant market(s)'.

However, this situation was and is a particular indicator of 'competition' concessions which are subject to this legislation and Community regulation. SpdH/Groundforce and Portway, both owned by the same shareholder, are dropping prices in a totally artificial way and are trying to offload this effect almost exclusively onto their workers. But nothing changes because the 'dumping' which was practiced is not recognised as such.

It is therefore clear that the problem is not one of a 'lack of competition', nor of a 'lack of conditions for entry into the market: it is one of lack of professional stability, lack of respect for the rights of workers, and lack of fair pay at work.



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And this tendency has been increasing as the process of privatising companies in the air transport sector has speeded up.

What the European Commission and the Council are trying to do with this proposal is deliberate confusion exercise which confuses the reasons for the problem with the solution: 'opening up [...] the markets' in this sector has caused this situation as it frees up labour in big companies, weakening workers in terms of labour relations and working conditions, exposing Member States to potentially serious threats to the economy and even national security.

However, the 'solution' of political power at Community level to the current situation constitutes going one step further with the policies referred to above. The guidelines laid out in the Lisbon Treaty or the 'Transport White Paper' published by the European Commission on 28 March 2011 are therefore being applied.

The issue (regarded by some at first sight to be a dry and uncontroversial one) of the legislative option referred to in the Community Regulation, can only be criticised due to its federalist nature with all the consequences that this has in terms of sovereignty and the recognition of specificity and importance of the impact of this initiative, one which is subordinate to the strategy of the Single Sky, the single market and the absorption and 'normalisation' of the market following large companies at the heart of Europe, and not recognising the specific nature of regional markets.

Naturally, it will as usual be concluded that this objective will be achieved more effectively by action at EU level. The problem lies specifically with the objectives, whether these be declared or concealed.

Naturally and predictably, as regards the current 'parliamentary scrutiny' process for this initiative, which is conveniently neutralised as regards the scope for taking action and which in practice is a mere messenger, the Portuguese



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Parliament has very little to say on this subject other than it has noted the Proposal for a Regulation and the related legislative procedure and that 'subsidiarity' and other Community principles are not compromised. Nothing else can be expected when such Community legislation and the entire process of EU integration are an instrument for making the most of Europe and its people to accumulate wealth through economic power.

On this occasion, like so many, life has shown that the (for many determined and unchangeable) process of 'European integration' and a supposedly single direction Europe of exploitation and inequalities, there is one variable which changes facts and results and which is reflected in the resistance and response by workers and the people. In Portugal, the struggle by air transport workers (and in this case, handling workers in particular) is a concrete example of this reality.

PART IV - CONCLUSIONS

In view of the foregoing, the Committee for Economic Affairs and Public Works would conclude as follows:

1. Although this initiative **does not violate the principle of subsidiarity, as the objective to be achieved will be achieved more efficiently by means of an action on the part of the Union, the importance of the impact of its application, it should be monitored by the Committee for Economic Affairs and Public Works;**



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2. The Committee for Economic Affairs and Public Works hereby submits this opinion, in accordance with Law No 43/2006 of 25 August, to the European Affairs Committee.

Palácio de S. Bento, 25 January 2012

Rapporteur

President of the Commission

(Bruno Dias)

(Luís Campos Ferreira)