

Brussels, April 7, 2011

STATEMENT ON THE REVISION OF THE GROUND HANDLING DIRECTIVE

ACI, IAHA and ETF, three of the four stakeholder groups, as European Social Partners of the Ground-Handling sector, hereafter ESP, have adopted the following statement.

I. Tender process

1. Introduction

In its Work Programme 2011 (Annex 1) the Commission services clearly announced the preparation of an airport package which includes the revision of the Ground Handling Directive (96/67/EC) as a strategic initiative scheduled for adoption in 2011. Although this initiative is listed under title "Restoring growth of jobs", the signatories are deeply concerned that the aim of such revision could lead to more deregulation and liberalisation thus further affecting market stability and sustainable competition which are the prerequisite for both the quality of service delivered to passengers and to workers' rights and job stability in the whole European civil aviation business. The purpose of Directive 96/67/EC (the directive) was to introduce genuine choice, on the one hand, and, on the other, to ensure the efficient functioning of airports with due regard to social and environmental protection. Member States have since then the power to limit the number of third party suppliers for a limited range of services in accordance with article 6 (2) of the directive. In this case, Member States shall take the necessary measures for the organization of a selection procedure in accordance with recital 16, which stipulates that "if effective and fair competition is to be maintained where the number of suppliers of ground handling is limited, the latter need to be chosen according to a transparent and impartial procedure" and with article 11, which stipulates that "the selection criteria laid down in the standard

conditions or technical specifications must be relevant, objective, transparent and non-discriminatory”.

The directive leaves it to the individual Member States to institute an ad hoc procedure, which ensures, on the one hand, that an impartial, objective, and transparent tender procedure takes place and, on the other hand, ensures that any party with a legitimate interest has the right to appeal against the decisions taken pursuant to Article 11. Experience shows that reference to “ad hoc” procedures proves insufficient for a minimum harmonized level playing field in the European Union. Similarly, the present system does not always allow effective appeal procedures.

It is the view of the ESP that those who wish to be awarded a handling license must apply on equal terms and with objective criteria. Therefore, the ESP suggest introducing a two-stage process with different criteria, which guarantees these goals. The selection procedure shall distinguish between the examination of the applicants’ suitability (pre-qualification procedure) and the award of the licence.

2. The pre-qualification of the procedure

The suitability of applicants is to be checked objectively with regard to the economic and financial standing as well as the technical capability of the companies concerned. The pre-qualification procedure shall be relevant, objective, transparent and non-discriminatory and examine compliance with the following:

- the sound financial status of the company ;
- the EU rules and the national labour laws, social protection regulations and collective agreements;
- other relevant laws and regulations;
- minimum insurance coverage as requested by the directive;
- minimum qualifications of ground handling staff including managers and supervisors, the necessary training to perform their duties and the guarantee that they continue to receive specific and regular training for the tasks assigned to them;
- the capacity to meet minimum quality standards applicable at the airport concerned which are in line with harmonised provisions of the directive;
- the capacity to initiate the provision of the services in a prompt and efficient manner including the availability and quality of the necessary equipment.

3. The award of the licence

The award of the licence shall be based on “the most economically advantageous offer” including in particular the commitment of the applicants to take over the staff providing the services at the moment of the licence award.

The competent decision-making body shall use the following economic and quality criteria which, taken as a whole, must make it possible to determine the best offer.

In order to guarantee equal treatment, the criteria shall be such as to enable tenders to be compared and assessed objectively with due reference to the specific needs of the airport and users concerned as well as to the given social context.

The relative weighting given to each of the criteria must appear in the tender notice and relevant documents by using a range of points with an appropriate maximum spread. It shall not be allowed to eliminate any of them, add others or subdivide those initially laid down in the call for tender.

The economic criteria shall refer to:

Model and total cost calculations including transferred and newly hired staff as well as equipment. Its purpose is to validate tenderers' business plans as being realistic and plausible.

The quality criteria shall refer to:

- Operations assessed on the basis of a representative flight schedule including efficient use of staff (number, certifications,...) and equipment (number, speed,...), last acceptance of baggage and cargo, delivery times for baggage and cargo and maximum turnaround times;
- Social and labour policy including staff transfers and a commitment to apply a representative collective labour agreement when it exists
- Training and qualifications programmes for the various staff;
- Equipment policy including environmental responsiveness;
- Quality of information and communication technology (ICT);
- Organisational planning;
- Evidence of relevant handling experience depending on the specific airport needs.

4. Role of the Airport User Committee, Airport Management Body and Workers' Council

4.1. Pre-qualification procedure

- The criteria established by the directive shall be applied in concreto by the competent authority of the Member State following consultation of the Airport User Committee (AUC), the Airport Management Body and the Workers' Council – WC (where it is set up).
- The pre-selection decision based solely on an objective compliance assessment of all the candidates, shall be taken by the Airport Management Body unless it supplies itself handling services or has vested interests in any of the applicant handlers. In such case, the competent authority of the Member State which is independent of the managing body of the airport concerned, shall take the decision. The managing body of the airport will not have access to the candidates' submissions in such a case.

4.2. Award procedure

- The award decision shall be taken by the Airport Managing Body provided it does not provide similar ground handling services and has no direct or indirect control over any undertaking which provides such services at that airport and has no involvement in any such undertaking. Otherwise, the decision shall be taken by the competent authority of the Member State which is independent of the managing body of the airport concerned.
- The decision shall be taken following consultation of AUC [and the WC where it is set up];
- The opinions expressed during the consultation shall be motivated and reflect dissenting views;
- The weighting of votes in the AUC shall be such that irrespective of the annual traffic volume carried by a single airport user and its alliance partners at an airport, their voting power shall not exceed 49% of the totality of the votes;
- Airport users which provide third party handling or operate their own self handling operations at that airport shall not take part in the consultation process;
- The authority in charge of taking the award decision shall duly motivate its decision.

4.3. Observation of rules

The competent authority of the member state has to ensure, that the competitors follow the rules, that are the basis of the award of the license and that they will use their license. If a service provider is repeatedly not in accordance with the accepted regulations, he will lose his licence.

5. Proper motivation of award decisions

Effective judicial protection of the rights that individuals derive from the Union legal order is one of the general principles of law. To allow for an effective exercise of the right to such a review, contracting entities shall state the grounds for decisions which are open to review either in the decision itself or upon request after communication of the decision.

As only formal and / or substantive grounds for non-selection may be challenged under judicial review, each unsuccessful applicant shall have the right to access expert opinions or other documents concerning its offer.

6. Rights of appeal

The procedures should be improved as the national practice (essentially via normal court procedures) has shown to be unsatisfactory and time-consuming. In the interest of all, a smoother settlement process should be promoted. Conciliation bodies should be considered.

7. Duration of the selection

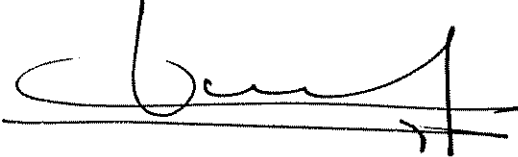
The selected handlers shall be granted a licence for 7 up to 10 years.

II. **Social clause**

The ESP recognise that the current Article 18 is insufficiently clear and needs more guidance, especially on transfer of staff. The judgements of the Court of Justice of the European Union on this issue have not provided positive guidance to Member States for the protection of the workers' rights. Given the specificity of the activity of the sector and the importance of labour, the ESP recognise that the transfer of staff is a crucial issue. They have initiated a joint fact-finding of the different national models to solve this pending problem.

The ESP agree that the social clause inside of a new directive must include a provision on the transfer of staff between any ground handling service providers, including self-handling, guaranteeing job stability and similar working conditions and rights. The transfer of staff must take place at any given time that one handler replaces another totally, or when a significant partial loss of activity takes place.

ACI



Gérard Borel
General Counsel

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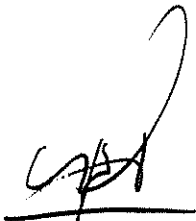


Brendan Gold
President of the Civil Aviation Section

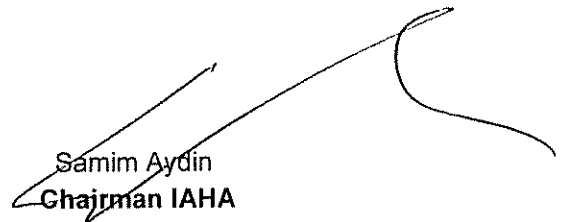


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