

COMMISSION IMPLEMENTING DECISION (EU) 2015/424**of 11 March 2015****on the approval of the exemption decision pursuant to Article 9 of Council Directive 96/67/EC relating to the provision of certain groundhandling services at Zagreb International Airport***(notified under document C(2015) 473)***(Only the Croatian text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports ⁽¹⁾, and in particular Article 9(5) thereof,

Whereas:

1. THE EXEMPTION DECISION NOTIFIED

- (1) By letter of 13 August 2014, received by the Commission on 1 September 2014, the Croatian authorities notified, pursuant to Article 9(3) of Directive 96/67/EC (hereinafter: 'the Directive'), the exemption decision of the government of the Republic of Croatia, taken on the basis of Article 9(1)(b) and (d) of the Directive, relating to Zagreb International Airport. The Croatian authorities submitted additional information by letter dated 1 December 2014, received by the Commission on 17 December 2014, completing the notification.
- (2) The notified decision provides for two exemptions. In the first place, it reserves to a single supplier the ground-handling services categories listed under points 3, 4 and 5, with the exception of point 5.1, of the Annex to the Directive, namely baggage handling, freight and mail handling as regards physical handling of freight and mail, whether incoming, outgoing or being transferred between the air terminal and the aircraft, and ramp handling, except for marshalling of the aircraft on the ground. In the second place, it bans self-handling for those three categories of groundhandling services, except for marshalling of the aircraft on the ground. Both exemptions apply for a period of two years, from 1 January 2015 until 31 December 2016.

2. THE CURRENT SITUATION AT ZAGREB INTERNATIONAL AIRPORT

- (3) Zagreb International Airport is operated by Zagreb International Airport Jsc. The airport handled 2,3 million passengers in 2013.
- (4) Zagreb International Airport currently has one passenger terminal and is in the process of building a new passenger terminal with associated infrastructure (apron, access roads and parking lots). The new terminal will be completed and operational by the end of 2016 at the latest. It will have a capacity of 5 million passengers. The existing terminal will be closed except for use by general aviation and other miscellaneous activities (office rental etc.).
- (5) According to the Croatian authorities, the limitations of the current terminal, both in infrastructure and operational aspects, would not allow for the economic and effective introduction of additional groundhandling services suppliers in the period of construction of the new terminal. Once the building of the new passenger terminal and the new apron will be achieved and its operations started, the space and capacity problems associated with the existing infrastructure would be solved.
- (6) According to the Croatian authorities, access to the market for the provision of baggage handling, ramp handling and freight and mail handling is currently open. However, up to now no third-party suppliers of groundhandling services have submitted an application to be issued an approval and a license for the provision of these ground-handling services at Zagreb International Airport. Those services are currently provided to airport users by the Zagreb International Airport Jsc. through a fully owned subsidiary.
- (7) The freedom to self-handle also applies at Zagreb International Airport. However, only one airline currently self-handles one sub-category of ramp handling services (loading and unloading of food and beverages). No other air carrier has expressed an interest in self-handling.

⁽¹⁾ OJ L 272, 25.10.1996, p. 36.

- (8) Zagreb International Airport has one sorting facility for locally checked baggage and all transfer baggage. The surface area of the sorting facilities is 515 m². The sorting area is situated at the basement level of the central part of the terminal.
- (9) Zagreb International Airport has one cargo terminal with a total surface area of 2 160 m² and the entire freight handling process takes place in this warehouse. Due to significant space limitations, this entire process is carried out manually using hand tools and fork lifts. An operational cargo delivery and collection platform with a single entry-exit ramp is located on the bonded warehouse landside.
- (10) The cargo terminal of Zagreb International Airport handles between 8 000 and 8 500 tons of freight and mail annually whereof mail amounts to between 1 000 and 1 500 tons per year.
- (11) Zagreb International Airport has one commercial aviation apron with a total surface area of 140 000 m² and 22 positions, and a general aviation apron with a total surface area of 28 000 m² and capacity of 20 aircraft.

3. CONSULTATION OF INTERESTED PARTIES

- (12) Pursuant to Article 9(3) of the Directive, the Commission published a summary of the exemption decision notified by the Croatian authorities in the *Official Journal of the European Union* and invited interested parties to submit comments.
- (13) The Commission received one comment from a groundhandling services provider, requesting information if a tender procedure would be organised during the exemption period so that the selected groundhandler could start operations once the exemption period has expired. No other comments were received from interested parties.

4. EVALUATION OF THE EXEMPTION DECISION IN THE LIGHT OF THE DIRECTIVE

- (14) The Croatian authorities based their exemption decision on Article 9(1)(b) and (d) of the Directive, which allow in case of specific constraints of available space or capacity to reserve to a single supplier one or more of the categories referred to in Article 6(2) and to ban self-handling for the categories referred to in Article 7(2) of the Directive.
- (15) In accordance with Article 9(2)(a) of the Directive, the Croatian authorities have specified that the two exemptions apply to the groundhandling services categories listed under points 3, 4 and 5, with the exception of point 5.1, of the Annex to the Directive, namely baggage handling, freight and mail handling and ramp handling except for marshalling the aircraft on the ground.
- (16) As regards baggage handling, the Commission considers that, through the information submitted, the Croatian authorities have demonstrated that it is not possible to accommodate a second third-party handler in addition to the airport's groundhandling services department or any self-handling airport user.
- (17) Operational space is limited and narrow and baggage cart manoeuvring is difficult. Baggage sorting during peak load periods when both check-in sections are in operation is particularly problematic. There is therefore not enough space to allow for more than one operator to operate effectively.
- (18) It is not possible to solve this space problem at the current location, as the location of the baggage sorting facility makes it impossible to expand the facility to other areas. The use of an underground level would not be a feasible solution due to the groundwater level and associated risk of flooding. An external location for the construction of an extension of the sorting facility would also require significant reconstructions which would greatly affect the existing traffic processes and would generate great expenses while the efficiency of such installation would be questionable.
- (19) As regards freight and mail handling, the Commission considers that, through the information submitted, the Croatian authorities have demonstrated that it is not possible to accommodate a second third-party handler in addition to the airport's groundhandling services department or any self-handling airport user.
- (20) The cargo terminal is of limited size. The cargo delivery and collection platform only has one single entry-exit ramp which significantly reduces the operational functions of the platform when several tow trucks are parked within the enclosed space while waiting or performing loading and unloading tasks. There is therefore no space to accommodate an additional operator.

- (21) The Commission also notes in this context that the volume of freight and mail is around 8 000 and 8 500 tonnes of freight and mail annually, which is well below the threshold of 50 000 tonnes of freight in the Directive for the obligation to open groundhandling for third parties and to allow self-handling.
- (22) As regards ramp handling, with the exception of marshalling the aircraft on the ground at arrival and departure, the Commission considers that, through the information submitted, the Croatian authorities have demonstrated that it is not possible to accommodate a second third-party handler in addition to the airport's groundhandling subsidiary or any self-handling airport user.
- (23) The flight schedule of Zagreb International Airport is characterized by three short-duration peak loads, namely a morning peak load, an afternoon peak load and an evening peak load. During this peak loads numerous different equipment units have to be put in operation during relatively short periods of time to meet all requirements related to timely aircraft handling.
- (24) Parking space for such large number of equipment units presents a problem. Taking into account the area occupied by buildings and other developments, there is no available space in the vicinity of the aircraft parking position to accommodate parking for additional new equipment units. Parking space required for the existing equipment presents already a problem for the airport management. The problem is even greater during the winter season, when snow removal and disposal service vehicles are also parked within the limited parking space. Due to this lack of parking space it is therefore not possible to accommodate a second operator.
- (25) The above constraints due to the lack of parking space do not apply to the marshalling of the aircraft on the ground, however, as not bulky equipment is needed for those services. Those services are not covered by the exemption decision notified by the Croatian authorities and there will therefore be no limitations in the number of suppliers for the marshalling of the aircraft at Zagreb International Airport.
- (26) It further appears from the information available to the Commission that the construction of a new terminal at Zagreb International Airport started in December 2013. The first phase of the construction of a new terminal is expected to be finalised in 2016 and the terminal is expected to be operational by the end of 2016. The new terminal will have a capacity of 5 million passengers annually and will feature a new fully integrated baggage system, a new apron as well as new taxiways and service roads. The Croatian authorities explained that the construction and operation of the new terminal will solve the existing space and capacity constraints. The construction and operation of the new terminal can therefore be considered as an appropriate measure to overcome the constraints in accordance with Article 9(2)(b).
- (27) The exemptions laid down in the exemption decision notified by the Croatian authorities are limited in time, namely for the period of two years. They therefore respect the requirements set out in Article 9(6) of the Directive.
- (28) Finally, in light of the foregoing, and in particular of the current situation at Zagreb International Airport, of the limitations of those exemptions in terms of material and temporal scope and of the measures taken to overcome the existing constraints, the Commission considers that the exemptions do not unduly prejudice the aims of this Directive, do not give rise to distortions of competition between suppliers of groundhandling services and/or self-handling airport users, and do not extend further than necessary, in accordance with the second subparagraph of Article 9(2) of the Directive.
- (29) In this connection account has also been taken of the facts that the limitations provided for by the exemptions apply in a non-discriminatory manner to all (potential) suppliers of groundhandling services, apart from the airport's groundhandling services department, and to all self-handling airport users, that to date no groundhandling service provider or airport user has made a request to be entitled to carry out groundhandling activities at Zagreb International Airport although there are currently no access limitations for third-party providers or limitations of the right to self-handle, and that no interested parties submitted objections to the exemption decision. With respect to the comment received regarding a possible tender procedure, the Commission recalls the obligation for the Croatian authorities to comply, in a timely manner, with all relevant rules of Union law in this regard, including Article 11 of the Directive.
- (30) This decision is without prejudice to Article 102 of the Treaty on the Functioning of the European Union which prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part as incompatible with the internal market in so far as it may affect trade between Member States.

5. CONCLUSION

- (31) Therefore, in light of the outcome of the examination carried out by the Commission and after having consulted the Republic of Croatia, the exemption decision taken by that Member State pursuant to Article 9(1)(b) and (d) of the Directive relating to Zagreb International Airport, notified to the Commission on 1 September 2014 and 17 December 2014, should be approved.
- (32) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee referred to in Article 10 of the Directive,

HAS ADOPTED THIS DECISION:

Article 1

The exemption decision taken by the Republic of Croatia pursuant to Article 9(1)(b) and (d) of Directive 96/67/EC relating to Zagreb International Airport, notified to the Commission on 1 September and 17 December 2014, is hereby approved.

Article 2

This Decision is addressed to the Republic of Croatia.

Done at Brussels, 11 March 2015.

For the Commission
Violeta BULC
Member of the Commission
