COMMISSION IMPLEMENTING DECISION (EU) 2017/976

of 7 June 2017

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 Tallinn Airport (AS Tallinna Lennujaam)

(notified under document C(2017) 3798)

(Only the Estonian 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 BY THE GOVERNMENT OF THE REPUBLIC OF ESTONIA

(1) By email dated 14 February 2017, and letter received by the Commission on 7 March 2017, the Estonian authorities notified, pursuant to Article 9(3) of Directive 96/67/EC, (hereinafter 'the Directive') an exemption decision of the government of the Republic of Estonia, taken on the basis of Article 9(1)(b) of the Directive relating to Tallinn airport.

(2) The exemption consists in reserving for the airport managing body (Tallinn Airport Ltd), via its 100 % owned subsidiary Tallinn Airport GH Ltd, as the sole entity, the right to provide to third parties at Tallinn Airport the following services referred to in points 3 and 5 of the Annex to the Directive: baggage handling and ramp handling. The exemption is granted, on the basis of Article 9(1)(b) of the Directive, for an initial period of two years, starting on 15 May 2017 and ending on 14 May 2019. Furthermore, the Estonian authorities have decided, in light of the time foreseen to overcome the space constraints to allow further market opening, to extend this period for an additional period of two years from 15 May 2019 until 14 May 2021 based on Article 9(6) of the Directive.

(3) In accordance with Article 9(5) of the Directive, the Commission consulted the Estonian Government on its draft evaluation.

2. THE CURRENT SITUATION AT TALLINN AIRPORT

(4) Following a recent increase of the annual traffic beyond the 2 million passenger movements' threshold provided in Article 1(2) of the Directive, Tallinn Airport falls within the scope of the Directive and the obligations thereof related to groundhandling market opening.

(5) As regards baggage handling, Tallinn airport has currently one passenger terminal and one sorting facility for locally checked baggage and all transfer baggage situated in the basement level of the central part of the terminal.

(6) Currently, while overall access to groundhandling market is fully liberalised, the airport is the only provider of baggage and ramp handling services through its subsidiary due to space constraints.

(7) Tallinn airport is currently in the process of developing the airport. This process was planned in 2010 and was not initially envisaged for opening the groundhandling market. However, since the threshold of 2 million passengers was reached by the airport the applicability of the Directive was triggered and the construction plans were reviewed accordingly so as to reserve investments specifically for groundhandling market opening. The airport has investment plans in place for both initial construction plans which will continue to being carried out

[1] OJ L 272, 25.10.1996, p. 36.

as planned and those designed specifically for groundhandling market opening for the upcoming years while minimizing the inconveniences on passengers during the construction works by ensuring the continuity of the operations, which will be necessary in view of foreseen increase of passenger volume, notably during the upcoming Estonian Presidency of the EU from 1st of July until 31 December 2017.

(8) The following major investment projects into infrastructure development are ongoing or will be initiated at Tallinn airport:

— Airside Area Development Project in 2016-2020;

— Passenger Terminal's Southern Pier Extension in 2016-2019;

— Construction of the Parking Station (part of passenger terminal project) in 2017;

— Investments for opening the ground handling market in 2019-2021.

3. CONSULTATION OF THE INTERESTED PARTIES

(9) Pursuant to Article 9(3) of the Directive, the Commission published a summary of the exemption decision notified by the Estonian authorities in the *Official Journal of the European Union* of 29 March 2017 ([1]), and invited interested parties to submit their comments.

(10) The Commission received comments from an association of airlines arguing — against the arguments of the Estonian government — that there is no space limitation in the current infrastructure which would obstruct Tallinn Airport Ltd from finding a solution to accommodate at least one additional service provider. The association of airlines claims that it has been the case in the past that several companies were providing ground-handling services at Tallinn airport for an extensive period.

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

(11) The Estonian authorities based their exemption decision on Article 9(1)(b) of the Directive, which expressly allows the Member States, in case of specific constraints of available space or capacity, to reserve to a single supplier one or more of the categories of groundhandling services referred to in Article 6(2) ([2]). In the present case, pursuant to Article 9(2) the Estonian authorities have specified the categories concerned by the exemption decision. The categories concerned are baggage handling and ramp handling referred to in points 3 and 5 of the Annex to the Directive, while market access to all other categories of groundhandling services at Tallinn airport is not limited.

(12) The exemption is granted by the Republic of Estonia mainly for the following reason: the current constraints regarding available space and capacity at Tallinn airport make it impossible to introduce an additional ground-handling service provider for the service categories referred to above (excluding the transport, loading on to and unloading from the aircraft of food and beverages) during the construction activities that will fully enable to open the market for ramp handling and baggage handling. In particular:

— The location and size of the current baggage sorting facility does not make it possible to allocate space to additional baggage handling providers. In particular, the operational space is limited and narrow and baggage cart manoeuvring is difficult for the current services provider, especially during peak load periods. The location of the current facility cannot be extended to other areas meaning that the opening of the market to a second baggage handling company requires significant works for the construction of news facilities in an external area.

([1]) OJ C 98, 29.3.2017, p. 3.

([2]) Article 6(2) of the Directive reads as follows: '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.
They may not, however, limit this number to fewer than two for each category of groundhandling service'.

— There is a lack of space available in the vicinity of the aircraft parking position making it impossible to accommodate parking for additional equipment by a second ramp handling company. The current parking positions intended for ground handling machinery and baggage trolleys at the apron parking stands and under the passenger terminal gallery are already used in full capacity. The management of the current space limitations are challenging for the current services provider, notably e.g. during the winter season when snow removal and disposal service vehicles are also parked within the limited parking space. Furthermore, there are no special hangars or garages for parking the equipment. Since there is no physical space to increase the parking capacity in the vicinity of the passenger terminal, accommodating a second groundhandling operator is currently not possible and requires significant works for the building of new facilities.

(13) Firstly, the Commission considers that the baggage area is limited as it is 72 meters long, 13 meters wide and 1,9 meters high, which is insufficient for allowing a second baggage handling provider. Secondly, in light of the first paragraph of Article 9 of the Directive which refers to space constraints or capacity arising in particular from congestion and area utilization, the Commission notes that these aspects at Tallinn airport are characterized by three short-duration peaks during which numerous equipment units have to be put in operation in limited time within the current space constraints. Thirdly, the space constraints cannot be resolved quickly and simply by expanding the current facility area due to the unavailability of the area around it which is built up. Lastly, there is currently insufficient space available to store equipment or locate personnel of an additional baggage handler.

(14) As regards ramp handling, the Commission also notes that firstly there is a lack of space available in the vicinity of the aircraft parking position making it impossible to accommodate parking for additional equipment by a second ramp handling company. Secondly, the current parking positions intended for ground handling machinery and baggage trolleys at the apron parking stands and under the passenger terminal gallery are already used in full capacity. Thirdly, Tallinn airport management of the current space limitations are challenging for the current services provider, notably during the winter season when snow removal and disposal service vehicles are also parked within the limited parking space. Fourthly, there are no special hangars or garages for parking the equipment. Finally, since there is no physical space to increase the parking capacity in the vicinity of the passenger terminal, accommodating a second groundhandling operator is currently not possible and requires significant works for the building of new facilities.

(15) As regards the claims of the association of airlines that several companies were providing groundhandling services at Tallinn airport in the past, the Commission notes that according to information submitted by Estonia since 1998 the number of flight operations in Tallinn airport has increased by more than 50 % and the number of passengers has increased by 300 %, while the size of ramp and baggage handling area has stayed the same. The availability of space has therefore changed because of this increase in traffic. The association of airlines does not specify how ramp handling and baggage handling could be operated by another ground handling company under current circumstances.

(16) In order to overcome the abovementioned space constraints, the Estonian authorities submitted a detailed plan in order to extend the infrastructure so as to allow the entry of a second baggage handling provider and ramp handling provider and comply with the degree of market opening required by the Directive. The expiry of the exemption in 2021 would coincide with the planned completion of the construction period allowing for market opening.

(17) In this regards, the Commission notes that the three projects to be carried out by Tallinn airport would contribute to opening the ground handling market as follows:

— Airside Development Project (2016-2020): Tallinn airport will construct an additional de-icing area to the east of the runway and would extend the A ramp northwards. At the end of this project, this would enable a second ground handling company to enter the ground handling market and carry out de-icing and ramp handling.

— Passenger Terminal's Southern Pier Extension (2016-2019): the capacity of the x-ray machines of the outgoing baggage will be increased and additional changing rooms will be built for ground handling personnel, which would also enable a second ground handling company to enter the market.

— Construction of the Parking Station (2017-2018): the parking area for employees of a second ground handling company would be increased.

(18) Based on the considerations above and on the information at its disposal, the Commission considers that the Estonian authorities have demonstrated that it is not possible to accommodate a second third-party baggage handler in addition to the airport's groundhandling services department until completion of the construction projects as described above.

(19) Account has also been taken of the facts that at Tallinn airport the market is open regarding all groundhandling categories other than baggage and ramp handling, 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, that to date no groundhandling service provider or airport user has made a request to be entitled to carry out baggage handling or ramp handling activities at Tallinn airport.

(20) Article 9(1)(b), which reserve the provision of services to a single supplier, may not exceed two years and may be extended by a single period of not more than two years. This is the framework within which this exemption has been granted by the Estonian authorities. The renewal was notified at the same time as the notification of the exemption decision and has been analysed by the Commission within the scope of the current procedure and present decision.

(21) Finally, particularly due to the current situation at Tallinn Airport, the limitations of those exemptions in terms of material and temporal scope and the measures taken to overcome the existing constraints, the Commission considers that the exemptions do not unduly prejudice the aims of the 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.

(22) 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**

(23) Therefore, in light of the outcome of the examination carried out by the Commission and after having consulted the Republic of Estonia, the exemption decision taken by that Member State pursuant to Article 9(1)(b) of the Directive relating to Tallinn Airport, notified to the Commission by email on 14 February 2017, and letter received on 7 March 2017, should be approved.

(24) 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 Estonia pursuant to Article 9(1)(b) of Directive 96/67/EC relating to Tallinn Airport, as notified to the Commission by email on 14 February 2017 and letter received on 7 March 2017 is hereby approved.

Article 2

This Decision is addressed to the Republic of Estonia.

Done at Brussels, 7 June 2017.

For the Commission
Violeta BULC
Member of the Commission