

§ Federal Ministry of Justice

JURIS

**Ordinance concerning Ground Operations at Airports
(Ground Operations at Airports – Ordinance –BADV)**Unofficial Table of Contents

BADV

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“Ground Operations Ordinance of December 10, 1997 (Federal Law Gazette 1 p. 2885), last amended by Article 537 Ordinance of October 31, 2006 (Federal Law Gazette 1 p. 2407)

Footnote

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Official Notice of the Reviewer on Law of the European Community:

Implementation of

European Community Directive 67/96 (CELEX No.: 396L0067)

The ordinance was enacted as Article 1 of the ordinance of 10.12.1997 I 2885 (Ground Operations at Airports Ordinance/Ordinance to Amend Aviation Law Ordinances and Executive Orders for Regulation of the Business of Aerial Sport Equipment) of the Federal Ministry for Traffic, Construction, and Community Development, in consultation with the Federal Ministry of Finance and the Federal Ministry of Economic Affairs. The Bundesrat concurred. The ordinance became effective on 17.12.1997 in accord with Article 3 of this ordinance.

Unofficial Table of Contents**§ 1 Scope of Application**

(1) This ordinance applies to access to the market of Ground Operations at airports in the Federal Republic of Germany according to the following modalities:

1. Provisions for self-service are valid from January 1, 1998 for every airport notwithstanding its volume of traffic, and, in fact, to the extent that Ground Operations named in § 3 paragraph 2 are concerned, the provisions are valid for those airports that have at least one million passengers or 25.000 tons of cargo to record annually.

2. Provisions for service providers apply as from January 1, 1999 and only for those airports that have at least three million passengers or 75.000 tons of cargo to record annually or had at least two million passengers or 50.000 tons of cargo to record in the six-months period ended April 1 or October 1 of the previous year.
3. Irrespective of Number 1, this ordinance applies from January 1, 2001 for every airport that has at least two million passengers or 50.000 tons of cargo to record.
4. If an airport reaches one of the levels of cargo named under numbers 1 through 3 above but does not reach the corresponding passenger level, the provisions of this ordinance do not apply to operations that are applicable only to passengers.
5. The regulation at § 6 paragraph 1, second sentence, takes effect on January 1, 1998.

(2) With respect to a system of airports, this regulation is to be implemented for each airport separately. What controls, is the respective version of Attachment II of Ordinance (EEC) No. 2408/92 of the Council of July 23, 1992 (ABI EC No. L 240, p. 8) concerning access of air travel enterprises in the community to intra-community air traffic routes.

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§ 2 Definitions

For purposes of this ordinance, the following words have the indicated meanings:

1. Airport:
each airport with commercial air traffic approved for public traffic
2. Aeronautical Authority:
the appropriate public authority under applicable regulations
3. User:
each natural or legal person that dispatches passengers, post, or cargo commercially by air to or from the respective airport
4. Ground Operations:
services rendered to an user at an airport under Appendix 1
5. Service Provider:
each natural or legal person, including the airport manager that renders one or more services to third parties
6. Self-service:

the circumstance in which a user directly provides one or more services for himself without concluding a contract for such services with a third party for provision of such services. In the sense of this definition, not to be counted as third parties in their relationship to one another are users, one of which holds a majority shareholder's position in the other or among which one and the same corporation holds a majority shareholder's position in each of them.

7. Third party country:
each country that is neither a member of the European Union nor a contracting state with the European Union in one of the accords affecting air traffic.

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§ 3 Ground Operations

(1) The airport manager has to make it possible for self-service and for service providers to perform ground operations.

(2) The detailed number of self-servers and service providers warranted for baggage handling, apron services, fueling, as well as cargo and post dispatch, arises from Appendix 5 to the extent that this concerns the precise shipment of cargo or post between airport and airplane on arrival, departure, or in transit. If such a numeric or other determination is lacking at an airport because of this ordinance, then at that airport in each case no fewer than two self-servers and no fewer than two service providers are to be enabled to provide the ground operations referred to in the first sentence.

(3) No later than January 1, 2001, the provision of ground operations identified in paragraph 2 is to be made possible for a service provider that is not under the control of the airport manager nor a user who handles more than 25 per hundred of the cargo or passengers registered at the airport and also is not controlled by a position that controls this airport manager or such a user or for its part is under the control of either of them.

(4) In the event that special site or capacity reasons demand it, particularly in connection with traffic volume and the degree of utilization of surfaces at an airport, the logistics with respect to the Ground Operations referred in paragraph 2 can be reserved to a single service provider. Self-service can be denied for reasons stated in the first sentence or reserved to a single user.

(5) For ground operations other than those named in paragraph 2, the number of self-servers and service providers cannot be restricted to less than two where the reasons referred to in sentence 1 of paragraph 4 exist.

(6) Restrictions under sentence 1 of paragraph 4 are to be time-limited to two years; restrictions under sentence 2 of paragraph 4 and under paragraph 5 to three years.

(7) Restrictions under sentence 1 of paragraph 4 can be extended for a further two years once; restrictions under sentence 2 of paragraph 4 and under paragraph 5 can be extended for three years respectively.

(8) The regulations pinpointed in paragraph 3 can be deferred until December 31, 2002.

(9) Restrictions under paragraphs 4 and 5, their extension under paragraph 7, and deferral under paragraph 8 require prior approval of the European Commission. The Federal Ministry for Traffic, Construction, and Community Development requests approval not later than three months before the intended effective date of the restriction, and in cases under paragraph 8 not later than July 1, 2000. The airport manager has the obligation of timely transmission of documents and justifications required for this purpose through the aeronautical authority to the Federal Ministry for Traffic, Construction, and Community Development.

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§ 4 Separation of Areas of Activity

(1) Each service provider must maintain a strict book-entry separation between the area of activity of Ground Operations at the airport and other areas of activity. The separation should correspond to ordinary customs and usages in the travel business. Each airport manager who is active as a service provider has to demonstrate in addition that the area of activity of Ground Operations at the airport is not being subsidized through other areas of activity that are connected to landing and hangar charges.

(2) Each service provider is obligated annually to demonstrate to the aeronautical authority through a certified public accountant that the obligations under paragraph 1 are fulfilled.

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§ 5 Users' Committee

(not relevant for BADV – proof of insurance)

§ 6 Central Infrastructural Facilities

(1) Under the terms of use of the airport, central infrastructural facilities are set to provide Ground Operations that for reasons of cost, complexity or environmental protection, cannot be divided or executed separately. The users' committee must be given an opportunity to take a position. The airport manager or someone he assigns for the purpose controls and operates the central infrastructural facilities.

(2) In the terms of use of the airport it can be ordered that service providers and self-servers have to use the central infrastructural facilities.

(3) Use of the central infrastructural facilities can be combined with imposition of a fee. The amount of the fee is to be determined according to appropriate, objective, transparent, and non-discriminatory criteria.

§ 7 Selection of Service Providers and Self-Service Providers (not relevant for BADV – proof of insurance)

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§ 8 Demand Criteria

(1) Service providers and self-service providers have to fulfill the “Requirements for Provision of Ground Operations” (Appendix 3). In cases under § 3 paragraphs 2 to 5 these requirements are a component part of the call for tenders and the selection process under § 7.

(2) In addition, the aeronautical authority can make provision of Ground Operations dependent upon the fulfillment of the demands of a specification sheet or of technical specifications. The users’ committee must be listened to before a decision.

(3) The demands, criteria, operations obligations, and technical specifications established under paragraphs 1 and 2 must be compiled and implemented in an appropriate, objective, transparent, and non-discriminatory manner. They must be communicated to the airport manager in advance.

(4) Service providers and self-service providers that fulfill the qualifications of paragraph's 1 to 3 will strive to meet their personnel needs with persons who have performed equivalent duties for an airport manager immediately before assuming Ground Operations duties through the service provider or self-service provider.

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§ 9 Access

(1) The airport manager and the service provider or self-service provider are obligated to conclude a contract concerning the utilization of the essential and available part of the airport and its facilities respectively as well as the fees to be paid to the airport manager under this ordinance and the requirements to be fulfilled by the service provider or the self-service provider according to § 8.

(2) The airport manager will see to it that access to airport facilities is not unjustifiably impeded for service providers and users authorized under this ordinance, insofar as access is required for carrying out their activities. If the airport manager ties access to conditions, they must be appropriate, objective, transparent, and non-discriminatory.

(3) The airport manager is entitled to impose a fee on the service providers and self-service providers for access, material, and use of the facilities. After a hearing of the users' committee, the amount of this fee is to be set according to appropriate, objective, transparent, and non-discriminatory criteria and, in the sense of a reasonable business expense charge, it may contribute in a particular way to self-financing of the airport.

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§ 10 Supervision, Operating Schedule, and Occupational Health and Safety

(1) Users, service providers, and self-service providers must construct and organize their operation so as not to interfere with the ordinary course of business at the airport.

(2) In the terms of use of the airport it can be established that the airport manager is authorized to take necessary measures in cases in which the operating schedule at the airport will be endangered or disturbed or the requirements under § 8 will not be fulfilled on account of behavior attributable to a service provider or self-service provider. The respective service provider or self-service provider is to be given an opportunity to be heard beforehand. This in no way affects the airport manager's right to cancel without notice an existing contractual relationship with the service provider or self-service provider.

(3) Measures within the framework of aerial supervision under § 29 paragraph 1 of the air traffic law remain intact.

(4) Obligations to guarantee safety and health protection that the airport manager, service providers, and self-service provider have under other statutory provisions remain unaffected.

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§ 11 Consultation

(not relevant for BADV- proof of insurance))

§ 12 Reciprocity

(not relevant for BADV- proof of insurance))

§ 13 Information

(not relevant for BADV- proof of insurance))

Appendix 1 (to § 2 No. 4) List of Ground Operations

1. The administrative handling of terrain/supervision includes:
 - 1.1 representation before and connections with local officials and other posts, transactions executed at user's behest, allocation of premises for representatives,
 - 1.2 control of shipping, information, and telecommunications,
 - 1.3 logistics, warehousing, dispatching, and managing cargoes,
 - 1.4 other supervisory duties before, during, and after a flight as well as all other administrative services required by the user.
2. Passenger operations include customer care at departure, on arrival, during transit or with connecting flights, particularly monitoring airline tickets, and travel documents, as well as checking baggage and seeing to its conveyance to the sorting facilities.
3. Baggage handling includes dealing with baggage in the sorting room, sorting baggage, preparing it for departure, loading and unloading vehicles or facilities by means of which baggage is conveyed between the airplane and the sorting facility, as well as conveying baggage from the sorting facility to the distribution site.
4. Cargo and post operations include:
 - 4.1 with respect to cargo: handling cargo during import and export as well as during transit, processing appropriate documents, customs formalities, and all insurance measures agreed to by the parties or as may be necessary owing to circumstances,
 - 4.2 with respect to post: handling incoming and outgoing post, processing appropriate documents, and all insurance measures agreed to by the parties or as may be necessary owing to circumstances.
5. Apron services include:
 - 5.1 piloting the airplane on arrival and departure *1),
 - 5.2 assistance in parking airplane and furnishing adequate means*1),
 - 5.3 communication between the airplane and the service provider that is providing services in the apron area*1),
 - 5.4 loading and unloading airplane, including processing and providing the necessary means as well as transporting passengers and crew between the airplane and the dispatch facility and moving baggage between the airplane and the dispatch facility,

- 5.5 start-up of the engine and furnishing adequate means,
- 5.6 maneuvering the airplane at take-off and on arrival, processing and providing necessary means,
- 5.7 conveying, on-and offloading foodstuffs and beverages into or out of the airplane.
- 6. Cleaning services and airplane servicing include:
 - 6.1 cleaning the interior and exterior of the airplane, toilets and water service,
 - 6.2 outfitting cabins with appropriate on-board stores and warehousing.
- 7. Fuel services include:
 - 7.1 organization and execution of fueling and defueling including storage, quality- and quantity control of delivery,
 - 7.2 replenishing of oil and other fluids
- 8. Station maintenance services include:
 - 8.1 routine workflow of the flight,
 - 8.2 special activities requested by a user,
 - 8.3 provision and management of maintenance materials and replacement parts,
 - 8.4 provision of a parking position and/or hangar for carrying out maintenance.
- 9. Flight operations and crew services include:
 - 9.1 preparation of the flight at the departure airport or at another site,
 - 9.2 assistance during the flight, among other things in case of a necessary change in flight plan while in the air, as the case may be,
 - 9.3 after-flight services,
 - 9.4 overall emergency services for crew.
- 10. Transport services on the terrain include:
 - 10.1 organization and development of conveyance for passengers, crew, baggage, cargo, and post between various dispatch buildings of an airport, but not

conveyances between the airplane and another place on the terrain of the same airport,

- 10.2 all special conveyance services requested by a user.
- 11. Catering services include:
 - 11.1 linkages with the provider and management,
 - 11.2 storage of foodstuffs, beverages and accessories necessary for preparation,
 - 11.3 cleaning the accessories,
 - 11.4 preparation and delivery of foodstuffs and beverages and the respective accessories.

*) Insofar as these services are not rendered by the air traffic control service or by a central apron control.

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Appendix 2: (to §7)
**Selection Guidelines of the Ministry of Traffic, Construction
 and Community Development**
 (not relevant for BADV – proof of insurance)

Appendix 3: (to § 8)
Requirements for Rendering Ground Operations Services

Sources of the Original Text: EC Guidelines . I 1997, 2890-2892:

with regard to individual amendments, compare footnote

1. Scope of Application

“Requirements for Performing Ground Operations” apply to the contractor who performs or wishes to perform Ground Operations at an airport as a service provider or self-service provider.

2. Requirements of a Provider of Ground Operations

A. Accessibility, financial capability, professional qualification, and acceptance by personnel

(1)The contractor and the persons appointed to lead the business must be accessible.

Accessibility is taken for granted if the contractor and the persons appointed to lead the business guarantee that the business is conducted in consistency with lawful regulations, and staff in its employ and the public at large at the business of the contractor are protected from damages and risks.

Accessibility is negated

(a) where there is a valid judgment because of serious violations of penal regulations including commercial law crimes;

(b) where there are serious and repeated offenses against labor obligations, occupational health and safety regulations or socially legitimate, against provisions enacted in the interest of traffic and business security or against regulations to protect the environment.

(2)The financial capability of the contractor must be assured.

Financial capability is assured if the means necessary for commencing and conducting the business properly are available.

Financial capability is not assured, especially if

(a) substantial arrearages exist in payment of taxes or contributions to social insurance that are owed as a result of entrepreneurial activity;

(b) substantial arrearages exist in assessments of fees, rents, leases, or from other payment obligations that are owed to the airport manager from utilization of the airport and its facilities, including take-off and landing systems or from the contractual licensing agreement for delivery of operations services.

(3)The entrepreneur or persons appointed to lead the business must be professionally qualified.

One who is professionally qualified has at his disposal the knowledge necessary for proper conduct of operations.

Professional qualification can be demonstrated either

(a) through the "certified airplane dispatcher" test of the Chamber of Commerce and Industry and at least two years of leadership activity in a business that delivers operations services ; or

(b) through a qualification comparable in content to the Chamber of Commerce and Industry certification and at least two years of leadership activity in a business that delivers operations services; or

(c) through at least five years of leadership activity in a business that delivers operations services.

(4)The preconditions set forth in paragraphs 1 through 3 are deemed to be met by airport managers on issue of the operating license.

(5)The proofs of paragraphs 1 through 3 are to be presented in proper form by other ground operations providers and self-service providers on their selection in accord with § 7 paragraphs 1 and 3. They are to be attached to the contracts as component parts thereof under § 9 paragraph 1. The airport manager is authorized to demand further appropriate proof during the course of the contract at the time of personnel changes or in case of doubts based on information relating to accessibility or information about professional qualification.. In the case of established doubts about financial capacity, an appropriate update of proofs may be demanded.

(6)In the event of lapse or discontinuance with respect to the preconditions in keeping with paragraphs 1 through 3, it can be assumed that the orderly course of business is threatened. Paragraph 10 is to be applied.

(7)(deleted)

B. Business Demands and Assignment of Personnel

(1) The providers of operations services and self-service providers have to participate, as apportioned by the airport manager, in fulfilling the "Requirements for Providing Ground Operations" to meet the public contract obligation anticipated in the legislative provisions and regulations, in particular business obligations. The specification sheet sets out the framework for participation. The airport manager must carry out the allocation in a manner that is non-discriminatory, objective, and transparent.

(2) Ground operations providers and self-service providers have an obligation to observe valid regulations governing protection of the environment as well as official regulations, in particular licenses and planning decisions. The airport manager is obligated to point out to the other service providers and self-service providers relevant ordinances and regulations known to him as well as changes to them, or to make this information known to them for a charge

(3)Ground operations providers and self-service providers must assure that their employees know and observe the security provisions and official security regulations at the airport to the extent that this is necessary for them to carry out their activities. They must also assure that an adequate mastery of German for that purpose is made possible as to the employees concerned. They train their employees at least within the statutory framework and beyond, as respective airport managers consider appropriate for their employees.

(4)Manipulation and handling of dispatch implements and technical equipment in the dispatch area may be performed only by certified airplane dispatchers or employees with equivalent knowledge and capabilities.

(5)Compliance with air traffic laws and ordinances enacted in respect of them as well as trade regulations must be assured. The same is true for the strict regulations of labor law and provisions for the protection of workers, such as the labor protection law and statutory provisions enacted on the basis of it, the Working Time Act, the Youth Working Time Act, the

Health and Safety at Work Act, the Ordinance on Hazardous Substances, and the Accident Prevention and Insurance Association Prevention Regulations, in particular No. 78 and Profit and Loss Statement No. 5.8.

(6) Before assumption of the duties of ground operations provider under Appendix 1, evidence of acquisition of third-party liability insurance must be given to the airport manager. The insurance must cover the liability of the ground operations services provider or the self-service provider to pay compensation for such harms as they inflict on another while carrying out their service roles. Should the service provider or the self-service provider avail himself of another service provider to complete his tasks, he must show that this other service provider has the required insurance at his disposal. If the liability of the service provider or the self-service provider is already covered by insurance that the user maintains, the service provider or the self-service provider can also fulfill his obligation under paragraph 1 with evidence of this insurance. If liability of the service provider or the self-service provider already is covered by insurance that the airport manager holds, proof under paragraph 1 is not necessary.

(7) The insurance to be proven under paragraph 6 must cover adequately the risk associated with the respective activity. The minimum sum insured amounts to:

1. 5 million euros for services performed under numbers 1.1 and 1.3 in Appendix 1 and, to the extent that they are not carried out in a not generally accessible area of the airport or in a sensitive area with regard to security, for services provided under numbers 1.2, 1.4, 2.4.1 and 4.2, 8.1 to 8.3, 9.1 to 9.4, 10.1 and 10.2, and 11.1 to 11.4 of Appendix 1.
2. 50 million euros for services performed under numbers 1.2, 1.4, 2, 9.1 to 9.4, 10.1 and 10.2 and 11.1 to 11.4 of Appendix 1, to the extent that they are carried out in a not generally accessible area or in a sensitive area with regard to security.
3. 100 million euros for services performed under numbers 3, 5.1 to 5.7, 6.1 to 6.3 and 8.4 of Appendix 1 and, to the extent that they are carried out in a not generally accessible area or in a sensitive area with regard to security, for services performed under numbers 4.1 and 4.2 and 8.1 to 8.3 of Appendix 1.
4. 375 million euros for services performed under numbers 7.1 and 7.2 of Appendix 1.

In an airport, not generally accessible areas and areas sensitive with regard to security are designated according to the terms of use of the airport or its air security plan.

(8) The airport manager is to substantiate the existence of insurance in accord with paragraphs 6 and 7 by the 15th of January of each year respectively. The insurers and those liable to insurance deductions have to notify the airport manager without delay of each interruption of insurance protection and each termination of the insurance relationship for the personal liability insurance of the ground logistics service provider or the self-service provider. In the case of termination of an insurance relationship or missing or untimely evidence of insurance, the airport manager is obligated to terminate his contractual relations with the service provider or self-service provider for serious cause.

(9) If the selection of a ground operations service provider takes place through the regulatory authority according to § 7 paragraph 1 sentence 3, paragraph 6 effective correspondingly.

(10) In justified individual cases, deviation from single standards of the specification sheet can be reconciled, insofar as this does not have discrimination as a consequence. The users' committee and the employees' council must be informed about this.

(11) Technical specifications for dispatch equipment, for vehicles and means of communication used in the vicinity of the airfield, or for interfaces during use of central infrastructural facilities can be imposed as additional demands. In justified individual cases, deviation from single standards of these technical specifications, can be reconciled insofar as this does not have discrimination as a consequence. The users' committee and the employees' council must be informed of it.

(12) The airport manager can demand moderate surety or insurance from the ground logistics service provider and the self-service provider and enforce terms of financing or payment practices, without being responsible for market obstruction thereby.

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Appendix 4 (to § 5) Requirement of Rules of Procedure for the Users' Committee (not relevant for BADV –proof of insurance)

We point out that in the event of a legal dispute the German version of this regulation applies!