



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.09.1996

COM(96) 413 final

96/0209 (SYN)

Proposal for a

COUNCIL DIRECTIVE

**amending Directive 92/14/EEC on the limitation of the operation of
aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16
to the Convention on International Civil Aviation,
second edition (1988)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

1. The adoption of Council Directive 92/14/EEC¹ on 2 March 1992 presented a further step in the Community policy of noise abatement for individual aeroplanes.
2. Initial action to reduce the noise from aeroplanes was taken by the Community through the Council Directive on aeroplane noise - 80/51/EEC² - which prevents any further non-noise certificated aeroplanes from being added to the civil air registers of Member States and required the removal of such aeroplanes already on the registers by 31 December 1986. The international Civil Aviation Organization (ICAO), for its part, through its standards, has prevented any further manufacture of non-noise certificated aeroplanes. By an amending Council Directive 83/206/EEC³, the Community has prevented foreign registered non-noise certificated aeroplanes to operate to and from airports in the Community as from 1 January 1988. Since that date non-noise certificated aeroplanes have ceased to be an environmental nuisance in the Community.
3. On 4 December 1989 the Council adopted Council Directive 89/629/EEC⁴ prohibiting the addition to the registers of Member States of civil subsonic jet aeroplanes that do not meet the standards specified in Chapter 3 of Annex 16 to the Convention on International Civil Aviation.

This non-addition rule was then followed by a non-operation rule as contained in the above-mentioned Council Directive 92/14/EEC.

II. Community action

4. In order to take into account the difficult economic situation of air carriers in developing nations, Council Directive 92/14/EEC contained in its Annex a preliminary list of aircraft from developing nations which are to be exempted from the non-operation rule until 1 April 2002. However, a number of aircraft from these nations qualifying for an exemption were not notified to the Commission at the time of the adoption of the Directive and, thus, not included in the Annex.

¹ OJ N° L 76, 23.03.1992, p. 21
² OJ N° L 18, 24.01.1980, p. 26
³ OJ N° L 117, 04.05.1983, p. 15
⁴ OJ N° L 363, 13.12.1989, p. 27

5. In particular the Arab Air Carriers Organisation (AACO) presented to the Commission a request for exemptions under 3 Article of Council Directive 92/14/EEC for Chapter 2 aeroplanes operated by some of its member airlines.

From a technical assessment carried out in cooperation with the relevant working group of the European Civil Aviation Conference (ECAC), it appeared that most of these aeroplanes qualified for an exemption and should, thus, be included in the Annex to Council Directive 92/14/EEC.

6. In the absence of such an updated Annex there might be uncertainty as to the status of the aeroplanes from developing nations qualifying for an exemption. It is therefore essential for the Community to update this Annex urgently. This is the main purpose of the proposed amending Directive.

III. Contents of the Directive

7. Article 1 introduces the necessary amendments to Council Directive 92/14/EEC. It offers Member States which operate an airport system the possibility to limit or exclude the operation of certain noisier types of aircraft at one or more of the airports forming part of the airport system, while giving due consideration both to environmental protection requirements and the interests of the air transport industry. Furthermore, it updates its current Annex by including a number of Chapter 2 aeroplanes from developing nations which qualify for an exemption and by deleting some Chapter 2 aeroplanes which were on the initial Annex and have been sold or destroyed since. Also, it provides for an advisory Committee to assist the Commission in future updating of the amended Annex. This Article contains the necessary definitions as well as a number of drafting amendments which seek to clarify the objective of some of the Articles of Council Directive 92/14/EEC, namely Articles 3(b) and 7. The objective of these amendments is to ensure a uniform interpretation throughout the Community.
8. The objective of Article 2 is to ensure that Member States provide for the appropriate measures with the view to guaranteeing the effective operation of the common rules.
9. Articles 3 (1), 4 and 5 are standard Articles dealing mainly with the incorporation into national law of the Directive. Article 3 (2) takes into account the provisions in the Act of Accession on the status of Austria concerning the date of implementation of Council Directive 92/14/EEC.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84(2) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure referred to in Article 189c of the Treaty in cooperation with the European Parliament⁽³⁾

Whereas the main purpose of the provisions under Council Directive 92/14/EEC⁽⁴⁾ is to restrict the operation of certain types of civil subsonic jet aeroplanes;

Whereas a definition of the key elements of the Directive should prevent any ambiguity as to the objective and the scope of the Directive;

Whereas for airports grouped together as an airport system it is generally sufficient if certain types of noisier aeroplanes can continue to operate to and from at least one airport forming part of the airport system; whereas the concentration of the operation of certain types of noisier aeroplanes in one or more airports forming part of an airport system should not unduly restrict access to the city or conurbation served by the airport system;

Whereas Article 3 of that Directive provided exemptions for aeroplanes on the registers of developing nations and whereas the aeroplanes so exempted were listed in the Annex to that Directive;

Whereas it is necessary to modify the Annex to that Directive to add certain aeroplanes which qualify for an exemption and were not included at the time of adoption; whereas it is also necessary to delete certain aeroplanes that have been withdrawn from service; destroyed or otherwise no longer qualify for the exemption;

⁽¹⁾ OJ N° C ...

⁽²⁾ OJ N° C...

⁽³⁾ Opinion of the European Parliament of ... (OJ n° C...) Council Common Position of (OJ n° C...) and decision of the European Parliament of (OJ n° C...)

⁽⁴⁾ OJ N° L 76, 23.3.1992, p. 21.

Whereas it is essential to prevent irregular usage of registrations; whereas the Annex now contains for each aeroplane reference to the manufacturers' construction number for the individual fuselage;

Whereas it is necessary to respect the initial intention of the exemption for aeroplanes on the registers of developing nations; whereas the relevant provisions of the Directive should therefore be clarified so that the Directive may produce its full benefits in terms of restricting the number of movements by certain types of civil subsonic jet aeroplanes;

Whereas it is necessary to clarify the scope for exemptions granted on economic grounds;

Whereas it should be made clear that a Member State can only establish a time-table for the gradual withdrawal of non-compliant aeroplanes in respect of aeroplanes which are on the register of that Member State;

Whereas it is essential that the Annex be kept up to date and amended in a timely manner; whereas therefore amendments shall be drawn up by the Commission assisted by a committee of an advisory nature;

Whereas it is important to ensure that infringements of Community law are penalized under conditions which make the penalty effective, proportionate and dissuasive;

Whereas under the 1994 Act of Accession Austria shall comply with the provisions of Directive 92/14/EEC as from 1 April 2002;

HAS ADOPTED THIS DIRECTIVE :

ARTICLE 1

Amendments

Directive 92/14/EEC is hereby amended as follows

1. To Article 1 the following new paragraph (3) is added

"3. For the purposes of this Directive :

'Air carrier' means an air transport undertaking with a valid operating licence.

'Operating licence' means an authorization granted to an undertaking permitting it to carry out carriage by air of passengers, mail and/or cargo for remuneration and/or hire.

'Community air carrier' means an 'air carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) n° 2407/92 on licensing of air carriers'.

'Total civil subsonic jet fleet' means the total aircraft fleet of civil subsonic jet aeroplanes at the disposal of the air carrier, through ownership or lease agreement of not less than one year.

2. To Article 2 a new paragraph (3) is added

"3. Before the date referred to in paragraph 2, Member States may limit or exclude the operation of civil subsonic jet aeroplanes which do not comply with the provisions of paragraph 1(a) at one or more of the airports which are grouped together as an airport system, as defined in Article 2(m) and Annex II of Council Regulation (EEC) N° 2408/92, provided that the measures do not unduly restrict access possibilities for such aeroplanes to the airport system as a whole."

3. In Article 2 the previous paragraph (3) becomes paragraph (4)

4. Article 3(b) is replaced by the following :

"(b) these aeroplanes were on the register of the developing nation shown for that aeroplane in the Annex in the reference year and continue to be operated by natural or legal persons established in that nation."

5. In Articles 4, and 5(c) and (d) 'airline' shall be replaced by 'air carrier'.

6. Article 7 is replaced by the following :

"Member States may limit to 10% of the total civil subsonic jet fleet of a Community air carrier the annual rate of deletion from their registers of aeroplanes not complying with the standards of Article 2 paragraph 1(a)."

7. Articles 9(a) and 9(b) which read as follows, are inserted after Article 9.

Article 9(a)

Amendments to the Annex to this Directive which may prove to be necessary in order to ensure full conformity with the criteria set out in Article 3 shall be effected according to the procedure defined in Article 9(b) paragraph 2.

Article 9(b)

1. The Commission shall be assisted by the committee provided for in Council Regulation (EEC) n° 3922/91.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account".

8. The Annex to Council Directive 92/14/EEC shall be replaced by the Annex hereto.

ARTICLE 2

Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the relevant provisions to the Commission not later than the date specified in Article (deadline for transposal of the Directive) and shall notify any subsequent changes as soon as possible.

ARTICLE 3

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... They shall immediately inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. In conformity with Article 168 of the 1994 Act of Accession and Annex XIX (III) thereto, Austria shall put into effect the measures necessary to comply with this Directive by 1 April 2002.

ARTICLE 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

ARTICLE 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

"ANNEX

List of aeroplanes exempted in accordance with Article 3

Note : Exemptions to aeroplanes in this Annex are granted within the general framework of the United Nations policies and decisions (e.g. sanctions, embargo, etc.)

Algeria

Serial Nb.	Type	Registration	Operator
20955	B727-2D6	7T-VEH	Air Algerie
21053	B727-2D6	7T-VEI	Air Algerie
21210	B727-2D6	7T-VEM	Air Algerie
21284	B727-2D6	7T-VEP	Air Algerie
20884	B737-2D6	7T-VEG	Air Algerie
21063	B737-2D6	7T-VEJ	Air Algerie
21064	B737-2D6	7T-VEK	Air Algerie
21065	B737-2D6	7T-VEL	Air Algerie
21211	B737-2D6	7T-VEN	Air Algerie
20650	B737-2D6	7T-VED	Air Algerie
21285	B737-2D6	7T-VEQ	Air Algerie

Dominican Republic

Serial Nb.	Type	Registration	Operator
19767	B707-399C	HI-442CT	Dominicana de Aviacion

Egypt

Serial Nb.	Type	Registration	Operator
19916	B707-328C	SU-DAA	ZAS Airline
19843	B707-336C	SU-PBA	Air Memphis
21194	B737-266	SU-AYK	Egypt Air
21195	B737-266	SU-AYL	Egypt Air
21227	B737-266	SU-AYO	Egypt Air

Iraq

Serial Nb.	Type	Registration	Operator
20889	B707-370C	YI-AGE	Iraqi Airways
20892	B737-270C	YI-AGH	Iraqi Airways
20893	B737-270C	YI-AGI	Iraqi Airways

Lebanon

Serial Nb.	Type	Registration	Operator
20259	B707-3B4C	OD-AFD	MEA
20260	B707-3B4C	OD-AFE	MEA
19966	B707-347C	OD-AGU	MEA
19967	B707-347C	OD-AGV	MEA
19589	B707-323C	OD-AHC	MEA
19515	B707-323C	OD-AHD	MEA
20170	B707-323B	OD-AHF	MEA
19516	B707-323C	OD-AHE	MEA
19104	B707-327C	OD-AGX	TMA
19105	B707-327C	OD-AGY	TMA
18939	B707-323C	OD-AGD	TMA
19214	B707-331C	OD-AGS	TMA
19269	B707-321C	OD-AGO	TMA
19274	B707-321C	OD-AGP	TMA

Liberia

Serial Nb.	Type	Registration	Operator
45683	DC8F-55	EL-AJO	Liberia World Airlines
45686	DC8F-55	EL-AJQ	Liberia World Airlines

Libya

Serial Nb.	Type	Registration	Operator
20245	B727-224	5A-DAI	Libyan Arab Airlines
21051	B727-2L5	5A-DIB	Libyan Arab Airlines
21052	B727-2L5	5A-DIC	Libyan Arab Airlines
21229	B727-2L5	5A-DID	Libyan Arab Airlines
21230	B727-2L5	5A-DIE	Libyan Arab Airlines

Mauritania

Serial Nb.	Type	Registration	Operator
11093	F28-4000	5T-CLG	Air Mauritanie

Morocco

Serial Nb.	Type	Registration	Operator
20471	B727-2B6	CN-CCG	Royal Air Maroc
21214	B737-2B6	CN-RMI	Royal Air Maroc
21215	B737-2B6	CN-RMJ	Royal Air Maroc
21216	B737-2B6	CN-RMK	Royal Air Maroc

Nigeria

Serial Nb.	Type	Registration	Operator
18809	B707-338C	5N-ARQ	DAS Air Cargo
19664	B707-355C	5N-AOQ	Okada Air

Saudi Arabia

Serial Nb.	Type	Registration	Operator
20574	B737-268C	HZ-AGA	Saudia
20575	B737-268C	HZ-AGB	Saudia
20576	B737-268	HZ-AGC	Saudia
20577	B737-268	HZ-AGD	Saudia
20578	B737-268	HZ-AGE	Saudia
20882	B737-268	HZ-AGF	Saudia
20883	B737-268	HZ-AGG	Saudia

Swaziland

Serial Nb.	Type	Registration	Operator
45802	DC8F-54	3D-AFR	African International Airways
46012	DC8F-54	3D-ADV	African International Airways

Tunisia

Serial Nb.	Type	Registration	Operator
20545	B727-2H3	TS-JHN	Tunis Air
20948	B727-2H3	TS-JHQ	Tunis Air
21179	B727-2H3	TS-JHR	Tunis Air
21235	B727-2H3	TS-JHT	Tunis Air

Uganda

Serial Nb.	Type	Registration	Operator
19821	B707-379C	5X-JEF	Dairo Air Services

Uruguay

Serial Nb.	Type	Registration	Operator
19239	B707-387B	CX-BNU	PLUNA

Zaire

Serial Nb.	Type	Registration	Operator
20200	B707-329C	9Q-CBW	Scibe Airlift

Zimbabwe

Serial Nb.	Type	Registration	Operator
18930	B707-330B	Z-WKU	Air Zimbabwe
45821	DC8F-55	Z-WMJ	Affretair

IMPACT ASSESSMENT

IMPACT OF THE PROPOSAL ON BUSINESSES with special reference to small and medium-sized enterprises.

Title of the proposal :

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Document reference number :

The proposal

The impact on business

1. Who will be affected by the Proposal ?

- Which sectors of business ?

Air Carriers

- Which sizes of business (what is the concentration of small and medium-sized firms) ?

The European market structure is essentially centred on large companies which represent 65.4 % of the market. Charter companies represent 26.7 % of the European aviation market. Small and medium sized enterprises represent only 0.5 % of the market, with regional air carriers sharing 0.4 % of the overall market and general aviation carriers - namely taxi operators and corporate operators - representing 0.1 % on the whole⁽⁹⁾.

- Are these companies located in specific geographical areas of the Community ?

No.

2. What will business have to do to comply with the Proposal ?

Council Directive 92/14 already requires the air carriers to phase-out gradually between 1 April 1995 and 1 April 2002 all their non compliant aeroplanes (the so-called Chapter 2 aeroplanes).

⁽⁹⁾ "The competitiveness of the European Community's air transport industry" Study by AVMARK Inc, prepared for the Commission, 28 February 1992.

3. What economic effects is the proposal likely to have ?

- On employment : None
- On investment and the creation of new business :

Some, since it might require air carriers to renew their fleet earlier than they would otherwise do.

- On the competitive position of business :

Air carriers with a relatively larger part of non-compliant aircraft could be more affected than those with a less-noisy fleet.

4. Does the Proposal contain any measures intended to take account of the specific situation of small and medium-sized businesses ?

Under its amended Article 7 it gives Member States the possibility to alleviate the effort for the air carriers, by allowing them to withdraw yearly not more than 10 % of their fleet. This provision has a larger relative impact on small and medium-sized businesses than on large businesses.

Consultation

5. List of the organisations which have been consulted about the Proposal and outline their main views.

- Member State Government experts have expressed wide agreement on the need to update urgently the list of exempted aircraft from developing nations as well as to provide clarification on certain provisions of Council Directive 92/14.
- The Joint Working Group composed of representatives of the European Commission and the European Civil Aviation Conference (ECAC) has already formally adopted an updated list of exempted aircraft from developing nations.

ISSN 0254-1475

COM(96) 413 final

DOCUMENTS

EN

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Catalogue number : CB-CO-96-401-EN-C

ISBN 92-78-07721-6

Office for Official Publications of the European Communities

L-2985 Luxembourg