

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 590 Final

Brussels, 26 October 1981

PROPOSAL FOR A COUNCIL DIRECTIVE (EEC) ON TARIFFS  
FOR SCHEDULED AIR TRANSPORT BETWEEN MEMBER STATES

---

(presented by the Commission to the Council)

COM(81) 590 Final

A. EXPLANATORY MEMORANDUM

I. Background

1. In June 1978 the Council of Ministers approved a priority programme for air transport. This priority programme included among other points competition, not necessarily with the aim of introducing full competition, but with a view to examining to what extent competition is desirable in air transport and with a view to the application of the competition articles of the Treaty of Rome. On the basis of this priority programme and in order to create a conceptual framework the Commission published in July 1979 a memorandum on air transport "Contributions of the European Communities to the Development of Air Transport Services".<sup>(1)</sup> In this memorandum, competition is treated extensively both with respect to market entry, capacity and pricing. The European Parliament approved two resolutions<sup>(2)</sup> on this subject on 17 October 1980, which urge action by the Community in this area.

2. Subsequent to the priority programme and the Commission's memorandum the Council of Ministers in December 1979 invited the Commission to develop its ideas with respect to market structure and innovation in the field of interregional air transport and in July 1980 invited the Commission to examine scheduled passenger air fares in the Community. The Commission in November 1980 presented a proposal on interregional air services which contains rules both for market entry and pricing for those services. With respect to scheduled passenger air fares, an examination has been carried out together with national experts and a report was published by the Commission in July 1981. It is on the basis of the conclusions of this report that the present directive on passenger air fares is being put forward. The Commission in August 1981 also asked Member States to describe their precise procedures of price fixing. In this way the Commission has complied with the request of the European Parliament in pt. 18 of its resolution on the air transport memorandum.

---

(1) Suppl. 5/79 of Bulletin EC.

(2) Resolution on restriction of competition in the air transport sector and Resolution on the Memorandum of the Commission of the EC on the contribution of the EC to the development of air transport services. O.J. of the EC, C 291 of 10.11.1980.

## II. Main results of the air fares examination

3. The following conclusions were reached on the basis of the air fares examination <sup>(1)</sup>:

- a) The present fare fixing procedures are time consuming and a disadvantage to airlines and consumers alike in so far as airlines cannot quickly adapt to new market and cost situations;
- b) As a consequence the European Community should seek to achieve a less rigid tariff setting procedure for intra-Community air travel;
- c) No excessive profits for EEC airline operation inside local Europe overall was found. On the contrary, scheduled airlines claimed that the overall profitability of their operations in local Europe leaves much to be desired. In this context it was noted how sensitive financial results are with respect to the allocation of fixed costs between different areas of operation in the world;
- d) A wide variation in profitability exists between routes implying that cross subsidization exists in particular to the benefit of short haul routes and at the expense of long haul routes;
- e) On some routes, the profitability is so high that it becomes unreasonable and it might be indicative of unfair prices and/or capacity limitations;
- f) There is a marked relationship between fares and distances flown both for the normal economy fare and excursion fares. This relationship is more pronounced than an adherence to a criterion on cost relationship would warrant. In fact, a cost relationship criterion and a distance relationship criterion would be in conflict with each other. The Commission finds that similar fares over similar distances to some extent are desirable but that important differences in the cost of operation between airlines and/or routes should be reflected in the tariffs;

---

(1) Report COM(81)398 final

- g) It seems evident that few governments dispose at present of the necessary information to control whether individual air fares are reasonably related to costs;
- h) The relation between fares and costs on shorter routes seems to be quite reasonable but the margin of profits increases considerably on longer distances. On some longer routes this may in fact indicate the existence of unfair prices;
- i) It seems unreasonable that the economy fare in some instances is profitable at a break even load factor of only 30% or less;
- j) Cost efficiency of scheduled airlines is somewhat lower than for non-scheduled but not enormously so. An average difference of about 15 % seems indicated;
- k) Cost control seems possible both with respect to cost elements under airline control and those external to the airlines. Examples are sales costs which are under airline control and government charges for the use of infrastructure which are outside airline control;
- l) Although cost control therefore may lead to relatively lower prices, a larger effect for the passenger may be produced through changes in the products (service offered on certain conditions) which airlines are offering, maybe by eliminating some of the facilities they offer at present as a matter of course;
- m) In the present situation where scheduled airlines are protected from market entry by other airlines, the Commission thinks that passengers should be given the opportunity to travel at a fare level which is based on point-to-point transportation costs with an option of buying a reservation or in other words that airlines should offer at least one unbundled fare on each route they operate;
- n) The Commission considers that the present fare structure is too much a result of the interests of the airlines and that there are many routes where the consumer choice is too limited and where no low tariffs (e.g. based on a break-even seat factor of 85 %) are available;

o) With respect to transparency the Commission thinks that the present situation is intolerably complicated. Simplification would improve the understanding of the travelling public for what it is paying for;

p) In the present system all airlines within a traffic conference of IATA have an influence on air fares while it seems more reasonable in the Commission's opinion that the fare fixing should be under the control of airlines operating a route. Dumping would be avoided if fares have a reasonable relationship to costs;

q) The situation which the Commission found with respect to tariff setting, fare structure and cross subsidization between routes and most probably also between fare types has strengthened the Commission's opinion that more opportunities should be given to airline initiatives in intra-Community traffic both with respect to fare innovation and market entry;

4. The conclusions as they have been presented above are naturally rather brief. Further information and other findings which would give more depth to them are to be found in the report itself.

### III. Other considerations

5. There are other factors which the Commission has had to take into account when developing the following proposal for an air fares directive. A short description of these factors follows.

#### Cost differences

6. Through studying working conditions in air transport it has become evident to the Commission that substantial cost differences in particular with respect to labour costs exist between the Member States. Since Air Transport is in reality a market for perishable products where it is difficult

to build up customer preference, which can sustain even small price differences, it is clear that price differences would lead to important customer diversions. The danger of disruptive effects can therefore not be disregarded. This does not mean that the Community should not consider improving the present system but this fact has to be taken into account as the European Parliament urged in its resolutions of October 1980 on the Commission's Air Transport Memorandum<sup>(1)</sup>.

#### International context

7. It should be recognized that the Community is only one part of world-wide aviation and internal Community measures may have certain consequences for Community airlines in the world market. After all Community airlines are earning about 75 % of their revenue outside the Community and their competitiveness on the world market should therefore not be endangered. On the other hand, it would also be detrimental to Community competitiveness as such if air transport within the Community were unduly to cross-subsidize activities outside the Community. In this respect the Directive is sufficiently flexible to permit, within the limits of article 3, reasonable cross - subsidisation between routes. This is recognised as normal commercial practice in the Air Fares Report.

8. It is also necessary to compare the criteria and procedures contained in this proposal with the existing international arrangements. At present, the legal framework for tariff-setting is constituted by national civil aviation laws and regulations, bilateral agreements and especially a multi-lateral agreement, i.e. the international agreement of 1967 on the procedure for the establishment of tariffs for scheduled air services, which was established by ECAC and published by I.C.A.O. Although not all Member States have ratified this agreement, it is in practice being followed by all (2).

In summary, the agreement of 1967 provides that the airlines of the states concerned should try to agree on tariffs, using IATA procedures wherever possible. The tariffs so agreed are submitted to the aeronautical authorities of the two states concerned for approval.

---

(1) OJ, C 291 of 10/11/80 in particular page 60 pt 3, page 62 pt 13, 18, 19 and 20, page 65 pt 2 and 3 and page 66 pt 10 and 11.

(2) ICAO Paris, 10 July 1967. Germany and Luxembourg are not parties to this agreement. The following non EC countries are parties to this agreement: Austria, Cyprus, Finland, Norway, Portugal, Spain, Sweden.

The agreement contains procedural provisions concerning the approval mechanism, and also contains a procedure for resolving disputes between States.

The criteria and procedures contained in this proposal differ somewhat from those contained in the 1967 agreement, although some of the changes are similar to those which have already been discussed in ECAC. Other changes suggested are appropriate in a Community context.

After the adoption of the proposed Directive, its provisions will supersede any conflicting provisions of the 1967 agreement or bilateral agreements, in so far as the relationship between the Member States of the Community is concerned. With regard to fifth freedom traffic within the Community with an origin outside the Community, the Member States concerned will be obliged to take all appropriate steps to eliminate any incompatibilities between the 1967 agreement or applicable bilateral agreements and this Directive, in so far as the country of the fifth freedom carrier is concerned. Until the incompatibilities have been eliminated the Member States concerned will be obliged to honour the obligations to third states contained in such agreements, notwithstanding any conflicting provisions of this Directive (1). The directive will not prejudice the applicability of the 1967 agreement or bilateral agreements to air transport between Member States and third countries, except as described above in relation to fifth freedom traffic.

#### Inherent positive qualities in the present system

9. The Commission has always recognized that the present air transport system has important qualities and that these qualities must be maintained when introducing new measures. With respect to pricing it is evident that many users want the ability to be able to move freely in a market which consists of many airlines each with limited geographical scope. Interlining is therefore an important advantage of the present system and any measure with respect to air fares must allow for interlining to be able to continue.

10. This aspect has been included in the proposal. In this connection it should be noted that the Directive does not prejudice the application of either the competition articles of the treaty to air transport or more specifically the proposed regulation concerning their application.

---

(1) 10/61 Commission v. Italy (1962 E.C.R. 1.

11. Other facilities which are associated with a ticket (reservation, check-in possibilities etc.) and inflight services (meals, drinks, seating etc.) are in the Commission's opinion matters where the consumers should be able to make a choice and in this way indicate their preferences. The Commission's attitude in this context has been strongly influenced by indications it received from consumer organisations in the course of the above-mentioned air fares examination. At present these matters are to a very large extent dictated by the airlines with little possibility for consumers' choice. It is recalled that the Commission in August 1981 wrote to Community airlines asking about common rules observed in this area.

#### Evolutionary approach

12. As a consequence of the air fares examination the Commission concludes that the present air fare fixing system needs to be improved. The main thrust of this improvement should be to introduce more scope for airline innovation and consumer choice without leading to disruptive effects and endangering the viability of Community airlines and at the same time entailing unacceptable labour disturbances.

13. The Commission is therefore of the opinion that a gradual, evolutionary approach has to be adopted which would not lead to these unacceptable results but which would nevertheless induce airlines and governments to consider new ideas. Such an evolutionary approach should also gradually lead towards an integrated labour market.

#### IV. Intentions of the proposal

14. The proposal has the following goals:

- a) To introduce a more flexible and speedy fare fixing procedure;
- b) To establish the principles on which pricing should be based;
- c) To better represent the consumer interest;
- d) To give greater scope for airline initiative;



- e) To maintain the interlining facility;
- f) To incorporate elements of the present bilateral system in a Community framework;
- g) To avoid disruptive effects for airlines and labour.

Each of these aims will be explained in more detail in connection with the ensuing explanations of the specific articles.

B. REMARKS CONCERNING SPECIFIC ARTICLES

Article 1

15. This article establishes the scope of the directive which concerns government procedures for controlling scheduled air tariffs for passengers and freight within the Community. The directive concerns all air tariffs where both origin and destination of the carriage by air is within the Community. These air tariffs may be charged by Community airlines or fifth freedom non-Community airlines. The directive only concerns cross-border air traffic and not domestic traffic.

Article 2

16. This article defines a number of important elements in the directive of which the following merit special comment:

Air tariff: This definition corresponds closely to the definition contained in the existing ECAC international agreement of 1967. It has been changed slightly to reflect the fact that this directive only concerns passenger and air freight. It has also been changed to underline that air tariffs and associated conditions should be considered as a whole.

Air carrier: This definition is straight forward and simply reflects the fact that an air carrier must be authorized by two or more Member States in order to operate scheduled services within the Community. The definition includes fifth freedom carriers to the extent that they offer their services within the Community.

Article 3

17. This article establishes the criteria which air fares must follow. The main principle is that air fares shall be related to the costs of an efficient air carrier (in most cases this would

simply reflect the operations of the applicant carrier). It is, however, to be noted that the cost level which is to be used must be that of an efficient carrier on the assumption that its principal place of business is in the state of origin. In this way it is possible to take account of the important cost differences which exist between Member States and arrive at an interpretation of the criterion of cost relationship of air tariffs which would take account of the national cost differences. It would have to be applied to all air tariffs irrespective of whether these tariffs are charged by an airline registered in the country of origin or an airline from another state.

This principle was strongly urged by the EP in pt.16 of its resolution(1) on the Commission's Memorandum.

18. The importance of the cost relationship of tariffs is further underlined where it is stated that selling below cost is not allowed. Paragraph 2, however, does give a carrier the possibility of matching an approved tariff in order to stay in the market.

19. Paragraph 1 further established that air tariffs should meet the requirements of different user groups which, as said in the report of the air fares examination, is important in the present air transport system where airlines are protected against market access.

20. It is difficult to predict with precision what consequences for air tariffs on different lengths of route will flow from the criteria of article 3. Based on the conclusions of the Air Fares Report concerning costs, there might be a tendency for tariffs to increase on the shorter routes, and decrease on the longer within the Community. This could have certain implications for the competitive balance between air and other modes of transport on short routes.

21. The Commission agrees fully, however, with the EP in its resolutions(2) on competition in air transport and on the memorandum that the present tariff structure is too complicated. The existence of a variety of consumer types should therefore not lead to a bewildering tariff structure. Furthermore the conditions associated with the tariffs should be much clearer.

---

(1) OJ C 291 of 10.11.80, page 67

(2) OJ C 291 of 10.11.80, page 61 pt.9 and 10 and page 68 pt.17.

Article 4

22. This article, while allowing airlines to establish fares individually, permits the airlines to co-operate in order to preserve the continuation of the interlining system. This quality of the present system is important and should be continued - that is not to say that the present structure of the interlining system cannot be improved and article 5 would not prevent airlines from doing so.

23. There are three situations in which **interlining as defined might** occur. The first would be that a carrier issues point-to-point or multipoint tickets for carriage only on its own services but where the user would have the possibility to use this ticket on another airline. The second situation would be that a carrier issues point-to-point return ticket in one direction over its own services and in the other direction on another carrier's services. The third situation would be that a carrier issues a multipoint ticket involving transportation partially on its own services and partially on the services of another carrier. It should be possible for airlines to consult with each other in order to find solutions to preserve interlining in all three situations.

Article 5

24. This article simply notes that air fares must be filed for approval with the states concerned and paragraph 3 establishes a reasonable time period within which such a filing can be required by the States. This reflects the present system and ensures that the states concerned can implement article 3. In the normal case the present double approval system will continue to operate, and the states concerned will not be precluded from reaching agreement or mutual understanding on the approval of a fare, as long as article 3 is respected.

25. Paragraph 4 on the other hand would permit the airlines in most cases to start charging the new tariffs quickly and thereby react to changes in the market situations and/or cost developments. This paragraph would not remove the possibility of Member States reacting to unreasonable air fares. The procedure in this case is described in article 6.

#### Article 6

26. This article describes the procedures to follow if a filed air tariff does not meet with the immediate acceptance of a state concerned.

27. It confirms the principle in paragraph 2 and 3 that both States concerned are involved and shall try to reach agreement on the tariffs.

28. If, however, disagreement persists paragraph 4 gives the country of origin the possibility to decide on the air tariff in question. In that event the other state concerned is given the possibility of referring the dispute to the Commission, which is then obliged to give a speedy decision. Although the legality of a Commission decision can always be reviewed by the Court of Justice, this would in general avoid prolonged conflicts to the detriment of airlines and users alike.

#### Article 7

29. This article is necessary in particular in this directive since consumer influence has been found wanting.

#### Article 8

30. In order to promote better knowledge of air tariffs, it would be useful every second year to examine the situation. This activity could not be carried out without the necessary information flowing to the Commission and without consultation with interested parties.

#### Articles 9

Purely a transitional measure.

#### Article 10

This article expressly provides that Member States shall eliminate at the first opportunity from their agreements with third countries, which give fifth freedom rights for a route between Member States, any incompatibilities with the provisions of the Directive. It further confirms that pending the

elimination of the incompatibilities, the Directive shall not effect the rights and obligations of the parties to such an agreement.

Fifth freedom rights consist of the right conferred on an airline to carry passengers and/or freight for reward between points in two or more states, where none of the points are in the state of registration of the airline.

Articles 11 and 12

Purely procedural articles.

COUNCIL DIRECTIVE (EEC) ON TARIFFS FOR  
SCHEDULED AIR TRANSPORT BETWEEN MEMBER STATES

---

ANNEX

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular article 84 (2) thereof;

having regard to the proposal from the Commission;

having regard to the opinion of the European Parliament;

having regard to the opinion of the Economic and Social Committee;

whereas more flexible procedures for controlling scheduled passenger air fares for air services between Member States will give air carriers greater scope to develop markets and meet consumer needs;

whereas common rules to define fair prices should be established and whereas such rules should lay down criteria for the establishment of air fares so that they bear a reasonable relationship to the costs of an efficient air carrier;

whereas disruptive effects on the air transport system in the Community should be avoided and in particular appropriate measures should be taken to prevent selling below cost including a reasonable margin for overheads and profit;

whereas due attention should be paid to the requirements of various user categories in establishing fares, while at the same time the tariff structure should remain as simple as possible.

whereas fares should be offered on clear and understandable conditions;

whereas air carriers should be free to establish air tariffs individually, but should be permitted to consult with other airlines for the purpose of fixing the terms of interlining arrangements, given the important benefits conferred by interlining facilities on air transport in the Community and in the world;

whereas within the air transport sector differences in social conditions between Member States exist;



whereas provision should be made for rapid consultation between Member States in the case of any disagreement and for procedures for settling such disagreements as are not resolved by consultation;

whereas provision should be made for the regular consultation of consumer groups on matters relating to air fares;

HAS ADOPTED THIS DIRECTIVE

### SCOPE AND DEFINITIONS

#### Article 1

1. This directive applies to government procedures and criteria to be applied with respect to the fixing of scheduled air tariffs for passengers and air freight, established by air carriers for carriage between a point in one Member State to a point in another Member State.

#### Article 2

2. For the purposes of this directive

- a) Air tariffs mean the prices to be paid in the applicable local legal tender for the carriage by air of passengers, baggage and freight, in accordance with the conditions under which those prices apply, including prices and conditions offered to intermediaries;
- b) Air carrier means an air transport enterprise which is authorised by two or more Member States to operate scheduled international air services between those states;
- c) State of origin means the Member State from which the carriage commences in respect of which an air tariff is established, i.e. both for single and return air tariffs;
- d) State of destination means the Member State in which the carriage terminates in respect of which an air tariff is established;
- e) States concerned mean the state of origin and the state of destination;
- f) Interlining means a facility conferred by a ticket or an airwaybill granting the right to use more than one airline for the carriage;
- g) Scheduled air service means a series of flights each possessing all the following characteristics:
  - i) it is performed by aircraft for the transport of passengers or cargo for remuneration, in such a manner that each flight is open to use by members of the public;
  - ii) is operated so as to serve traffic between the same two or more points, either
    - (1) according to a published timetable, or
    - (2) with flights so regular or frequent that they constitute a recognized systematic series.

CRITERIA

Article 3

1. The states concerned shall take all appropriate measures to ensure that air tariffs
  - a) are reasonably related to the costs of an efficient air carrier on the assumption that its principal place of business is located in the state of origin, while allowing for a satisfactory return on investment and taking due account of the characteristics of the route;
  - b) are sufficient to cover the costs of the carrier on the route in question plus a reasonable margin for overheads and profit;
  - c) have due regard to the requirements of various user categories and encourage the development of demand by new categories of users while the tariff structure shall remain as simple as possible;
  - d) are offered on conditions which are clear and understandable.
2. An air carrier shall, however, be permitted to match an existing tariff, which has been approved for another airline in accordance with this Directive for the same route with the same originating point.

PROCEDURES

Article 4

Member States shall permit an air carrier to establish air tariffs:

- a) individually;  
or
- b) at the option of that air carrier, following consultation with any other airline(s) for the purpose of fixing the terms of interlining or in order to simplify and standardise conditions associated with air tariffs.  
Member States concerned and the Commission may participate as observers at these consultations.

Article 5

1. Without prejudice to the provisions of article 6 hereof, air tariffs shall be approved by the states concerned.
2. For this purpose air tariffs established by an air carrier shall be filed with the states concerned.
3. Such filing may be required by those states not more than 60 days before the entry into force of the air tariffs.
4. Approval may be given expressly, but unless one of those states decides otherwise within 30 days following the filing the filed air tariffs shall be considered as approved.

## Article 6

1. When a state concerned (hereafter called the first state) decides not to approve an air tariff in conformity with article 5.4., it shall inform the airline and the other state concerned (hereafter called the second state) in writing stating its reasons.
2. If the second state agrees with the decision of the first state, the state of origin shall request the airline concerned to file a new air tariff.
3. If the second state disagrees with the decision of the first state, it shall so notify the first state within 2 weeks of being informed and request a consultation. The first state shall make its representatives available at short notice for consultation on the air tariff(s). For this consultation the states concerned shall on request supply all relevant information to each other. At the consultation the states concerned shall endeavour to agree on the air tariff as filed or agree on modifications thereto.
4. If at the expiry of one month after the date on which the second state was notified disagreement still persists, the state of origin can approve the air tariff unilaterally, after having ascertained that the criteria of article 3 are met, or subject to such modifications as will make it comply with article 3. In this case the air tariff shall come into force two weeks after the approval of the state of origin except where the other state concerned within this period refers the matter to the Commission for decision under paragraph 6.
5. Where no agreement is reached under the procedure set out in paragraph 3, or where action is taken under paragraph 4, the dispute may, at the request of any Member State concerned, be referred to the Commission.
6. The Commission shall within 30 working days of the date of referral after consulting the Member States concerned take a decision. Upon referral of a dispute to the Commission, the states concerned shall immediately make available all pertinent information at their disposal to the Commission. The Commission shall notify its decision to the states concerned.
7. In the absence of a decision by the Commission within 30 working days from the date of referral the air tariff shall come into effect until such date as the decision of the Commission comes into force.

## GENERAL PROVISIONS

### Article 7

1. At least once a year, each Member State shall call on an Air Transport Users Committee to express its opinion on air fares and related matters for which purpose the members of the Committee shall be supplied with an appropriate information. This Committee shall in each Member State include the main consumers' interests concerned with matters of this kind. If no such Committee exists, the state concerned shall set one up.
2. The Commission shall convene periodically, at least once a year, representatives of the transport users committees referred to in paragraph 1, for an exchange of views at Community level.

### Article 8

1. The Commission shall every second year after the 1st of January, 1983, publish a report on the scheduled air tariffs to which this directive applies.
2. For the purposes of this report, the Member States shall inform the Commission of all such air tariffs filed with them and of any instance when article 6 has been invoked during the relevant period, and, at the request of the Commission, provide details with respect to the conformity of the procedures actually adopted by Member States with the provisions of this directive and the conformity of such air tariffs with the criteria in article 3.
3. Before issuing the report, the Commission shall as it thinks fit consult with the representatives of the Air Transport Users Committees, airlines, governments and other interested parties.
4. Confidential information obtained by the application of this directive is covered by the professional secrecy.

### Article 9

Air tariffs being applied at the entry into force of this directive remain valid until replaced by other air tariffs.

### Article 10

Where a Member State has concluded an agreement with one or more third countries, which gives fifth freedom rights for a route between Member States to an air carrier of a third country and in this respect contains provisions incompatible with this Directive, the Member State shall take at the first opportunity all appropriate steps to eliminate such incompatibilities. Until such time as the incompatibilities have been eliminated this directive shall not affect the rights and obligations vis-à-vis third countries arising from such an agreement.

### Article 11

1. The Member State shall, before 1 January 1983, and after consultation with the Commission, take the necessary steps to amend their laws and administrative provisions to comply with this directive.
2. Such measures shall cover, inter alia, the organisation of, procedures for and means of control, and the penalties for any breach.
3. The Member States shall communicate to the Commission all laws and administrative provisions made in furtherance of this directive.

### Article 12

This directive is addressed to the Member States.

Done at Brussels