



European Communities

EUROPEAN PARLIAMENT**SESSION DOCUMENTS**

English Edition

22 october 1990

A3-0260/90

★

SECOND REPORT

of the Committee on Transport and Tourism

on the Commission proposal to the Council for a
Regulation on the operation of air
cargo services

(COM(90) 0063 final - C3-0098/90)

Rapporteur : Mr Pavlos SARLIS

PE 140.397/fin.2

Or. EN

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

*	= Consultation procedure requiring a single reading
---	---

**II	= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment
------	---

**I	= Cooperation procedure (first reading)
-----	---

***	= Parliamentary assent which requires the votes of a majority of the current Members of Parliament
-----	--

CONTENTS

	<u>Page</u>
Procedural page.....	3
A. Amendments to the Commission proposal	4
DRAFT LEGISLATIVE RESOLUTION	16
B. EXPLANATORY STATEMENT.....	17
Opinion of the Committee on Economic and Monetary Affairs	23
Opinion of the Committee on Legal Affairs and Citizens' Rights	27

At the sitting of 8 October 1990 the first report was referred back to the Committee on Transport and Tourism pursuant to Rule 103.

At its meeting of 23 to 25 April 1990 the committee had appointed Mr SARLIS rapporteur.

At its meeting of 22 October 1990 it considered the draft second report.

At this meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: AMARAL, chairman; SARLIS, rapporteur; BOURLANGES; DENYS; JOANNY; PORRAZZINI; VISSER

The opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and Citizens' Rights are attached.

The report was tabled on 22 October 1990.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A.

Commission proposal for a Council regulation on the operation of air cargo services

COMMISSION TEXT

AMENDMENTS

(Amendment No 1)
Preamble, first citation

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

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 84(2) and 100a thereof, and taking into account Articles 130r-t,

(Amendment No 2)
New recital 6a

Whereas the transport of freight by air over short distances ought not to be encouraged but rather, for environmental reasons, preference should be given to transport by rail;

(Amendment No 3)
New recital 8a

Whereas in order to create comparable conditions for competition the same restrictions should be imposed on the transport of air freight throughout the Community as regards night flying, noise and other environmental issues;

(Amendment No 4)
9th recital

Whereas common rules concerning the granting of operating licences will have to be developed and should be implemented after adoption by the Council, not later than the 1st of July 1992;

Whereas common rules concerning the granting of operating licences will have to be developed and should be implemented after adoption by the Council, not later than 31 December 1992;

(Amendment No 5)
10th recital

Whereas Member States shall apply their national rules concerning licensing until these common rules are implemented, provided that these national rules should not discriminate between air cargo carriers established within the Community, i.e. on the basis of nationality;

Whereas Member States shall apply their national rules concerning licensing until these common rules are implemented, provided that these national rules should not discriminate between air cargo carriers established within the Community, i.e. on the basis of nationality; whereas Member States shall grant such licences giving all air cargo carriers equal opportunities and fair treatment;

(Amendment No 6)
New recital 10a

Whereas measures should be taken so that air freight be delivered to and collected from airports by rail if possible, since this is environmentally preferable;

(Amendment No 7)
11th recital

Whereas Member States should not oppose the operation of fifth freedom air services by Community air cargo carriers between the Community and a third country when these rights have been obtained in accordance with applicable rules and regulations;

Delete

(Amendment No 8)
12th recital

Whereas taking into account airport infrastructure and navigational aids it is necessary to include certain limitations concerning the use of traffic rights;

Whereas restrictions on the use of traffic rights necessitated by airport infrastructure and navigational aids must in no event be tighter than those for passenger air transport;

(Amendment No 9)
New recital 12a

Whereas there is an urgent need for rules allowing customs formalities to be speeded up considerably in order to reduce the length of time that air freight has to spend on the ground;

(Amendment No 10)
13th recital

Whereas it is desirable to complement the existing regulations with a procedure to establish cargo rates not only on air services carrying only cargo and mail but also on air services for cargo in combination with passengers;

Whereas it is desirable to complement the existing regulations with a procedure to establish cargo rates not only on air services carrying only cargo but also on air services for cargo in combination with passengers;

(Amendment No 11)
New recital 14a

Whereas consistent flight schedules and effective rules concerning liability should raise the quality of air cargo services;

(Amendment No 12)
15 th recital

Whereas air carriers need flexibility in setting cargo rates in accordance with their own commercial judgement in order to be better able to compete; whereas it is also necessary, however, to ensure that cargo rates include a sufficient margin to guarantee satisfactory technical and safety standards;

Whereas air carriers need flexibility in setting cargo rates in accordance with their own commercial judgement in order to be better able to compete; whereas it is also necessary, however, that in case of excessively high or low cargo rates the Commission must be able to suspend a cargo rate;

(Amendment No 13)
New recital 15a

Whereas the principle of equivalent treatment based on non-discrimination, equal opportunities and differentiability shall prevail in arranging the operation of air cargo services between the Community and third countries;

(Amendment No 14)
New recital 15 b

Whereas it is important to develop a code of conduct for computerized reservation systems (CRS) for cargo, taking into consideration all its specific requirements;

(Amendment No 15)
Article 2 a)

a) "air cargo carrier" means an enterprise with a operate air cargo services carrying only cargo and mail;

a)"air cargo carrier" means an enterprise with a valid operating licence from a Member State to operate air cargo services carrying only cargo and mail;

(Amendment No 16)
Article 2 b) (ii)

b) "Community air cargo carrier"
means:

(ii) an air carrier which, at the first of January 1990, did not meet the definition set out in (i) but:

1) either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air cargo services in the Community during the 12 months prior to adoption of this Regulation,

2) or has been providing scheduled or non-scheduled air cargo services between Member States on the basis of third and fourth freedom traffic rights during the 12 months prior to adoption of this Regulation;

b) "Community air cargo carrier"
means:

(ii) an air carrier which, at the first of January 1990, did not meet the definition set out in (i) but:

1) either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air cargo services in the Community during the 12 months prior to adoption of this Regulation,

2) or has been providing scheduled or non-scheduled air cargo services between Member States on the basis of third and fourth freedom traffic rights during the 12 months prior to adoption of this Regulation;

The air carriers which meet the above criteria are listed in the Annex.

(Amendment No 17)
Article 2 e)

e) "a third-freedom traffic right" means the right for an air carrier established in one State to put down, in the territory of another State, passengers, cargo and mail taken up in the State in which it is registered;

"a fourth-freedom traffic right" means the right for an air carrier established in one State to take on, in the territory of another State, passengers, cargo and mail, for off-loading in the State in which it is registered;

"a fifth-freedom traffic right" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail, between two States other than the State in which it is registered;

"cabotage" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail between two points within a Member State other than the State in which it is registered;

e) "a third-freedom traffic right" means the right for an air carrier licensed in one State to put down, in the territory of another State, passengers, cargo and mail taken up in the State in which it is licensed;

"a fourth-freedom traffic right" means the right for an air carrier licensed in one State to take on, in the territory of another State, passengers, cargo and mail, for off-loading in the State in which it is licensed;

"a fifth-freedom traffic right" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail, between two States other than the State in which it is licensed;

"cabotage" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail between two points within a Member State other than the State in which it is registered;

(Amendment No 18)
Article 3(2)

2. Until such common rules enter in force Member States shall, on a non-discriminatory basis, grant such licences and ensure that air cargo carriers established on their territory apply technical, operational and economic requirements. Member States shall publish such requirements and communicate them to the Commission.

2. Until such common rules enter in force Member States shall, on a non-discriminatory, equal opportunities and fair treatment basis, grant such licences to air cargo carriers established on their territory and ensure that they apply technical, operational, economic, social and safety requirements.

A Member State which has not defined such a set of requirements shall do so within three months from the entry into force of this Regulation. Member States shall publish such requirements and communicate them to the Commission.

(Amendment No 19)
New Article 3(3)

3. Any decision to refuse a licence or authorization or to attach conditions shall be accompanied by the reasons therefor in writing. Air carriers may appeal to the Commission against a decision adopted by a Member State. After hearing all the parties concerned the Commission shall take a decision within two months of receipt of the appeal. At the request of the Member State concerned the Council may decide by a qualified majority to amend the decision.

(Amendment No 20)
Article 4(2)

2. In operating intra-Community air cargo services Community air cargo carriers shall be permitted by the State concerned to exercise cabotage between points within that Member State when the Community air cargo carrier meets the common rules establishing according to Article 3. Until such common rules have been established, the Community air cargo carrier must meet the technical, operational and economic requirements referred to in Article 3(2) of the Member State within which cabotage will be exercised. Delete

(Amendment No 21)
Article 4(4)

4. Member States shall not oppose the operation by Community air cargo carriers of fifth-freedom air services between an airport within the Community and an airport in a third country provided that the authorities of the third country concerned agree to the service in question. Delete

(Amendment No 22)
Article 5(1)

1. Community air cargo carriers may change aircraft at any point on a route and to freely position aircraft.
1. Community air cargo carriers may change aircraft at any point on a route and use change of gauge without restrictions.

(Amendment No 23)
New Article 5(3)

3. Without prejudice to the application of legislation governing surface or sea transport, Community air cargo carriers may use surface or sea transport instead of air transport on any part of the route from the point of origin to the point of final destination within the Community.

(Amendment No 24)
New Article 5(4)

4. The safety, health or acquired social rights of the flight personnel shall not be jeopardized. Radioactive freight and dangerous merchandise shall not be transported on flights carrying passengers.

(Amendment No 25)
Article 7(1)

1. The exercise of traffic rights is subject to national, regional or local operational and technical published rules relating to the protection of the environment, social conditions, allocation of slots and safety and, in particular, to the following conditions:

- a) the airport or airport system concerned must have sufficient facilities to accommodate the service;
- b) navigational aids must be sufficient to accommodate the service.

1. The exercise of traffic rights is subject to published Community, national, regional or local operational and technical rules relating to the protection of the environment, social conditions, allocation of slots and safety and, in particular, to the following conditions:

- a) the airport or airport system concerned must have sufficient facilities to accommodate the service;
- b) navigational aids must be sufficient to accommodate the service.

(Amendment No 26)
Article 7(2)

2. When the conditions in paragraph 1 are not met, a Member State may, on a non-discriminatory basis, impose conditions on, limit or refuse the exercise of the traffic rights. Before taking such a measure it shall inform the Commission and provide it with all the necessary elements of information. The Commission shall examine the situation and within 2 months decide whether the Member State may take the measure.

2. When the conditions in paragraph 1 are not met, a Member State may, on a non-discriminatory basis, impose conditions on, limit or refuse the exercise of the traffic rights. Before taking such a measure it shall inform the Commission and provide it with all the necessary elements of information.

(Amendment No 27)
New Article 7(3)

3. The Commission shall examine the application of paragraph 2 in any particular case and within one month decide whether the Member State may take the measure.

(Amendment No 28)
New Article 7(4)

4. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission decision to the Council within a time limit of one month. The Council may take a different decision within a period of one month.

(Amendment No 29)
Article 8(1)

1. Community air carriers shall publish all available cargo rates.

1. Air carriers operating in the Community shall publish all available cargo rates.

(Amendment No 30)
Article 8(4)

4. The Commission may give notice of disapproval of cargo rates which have been notified to it until 7 days before the envisaged day of introduction. In the absence of such notice cargo rates may be applied from that day onwards.

4. The Commission may give notice of disapproval of cargo rates of which has been notified to it until 7 days before the envisaged day of introduction if a cargo rate is 20% higher or lower than the corresponding rate in force during the previous corresponding season. In the absence of such notice cargo rates may be applied from that day onwards.

(Amendment No 31)
New Article 8a

Air cargo carriers the majority of whose shares are owned by nationals of third countries and/or by third countries and which are effectively controlled by such persons or countries cannot derive any rights from this Regulation unless the third country concerned extends equivalent treatment, based on the principles of non-discrimination, equal opportunities and differentiability, to air cargo carriers the majority of whose shares are owned by nationals of Member States and/or Member States and which are effectively controlled by such persons or States.

(Amendment No 32)
New Article 8b

The Council shall adopt, on the basis of a Commission proposal to be submitted at the latest by 31 December 1990, and for implementation at the latest by 1 July 1991, common rules concerning a code of conduct for computerized reservation systems (CRS) for air freight services providing easy access to up-to-date and accurate information on freight, cargo rates and freight availability.

(Amendment No 33)
Article 9

This Regulation shall enter into force on 1 July 1990.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

This Regulation shall enter into force on 1 January 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a Regulation on the operation of air cargo services

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(90)0063 final)¹,
 - having been consulted by the Council pursuant to Article 84(2) of the EEC Treaty (C3-0098/90),
 - having consulted the Committee on Legal Affairs and Citizens' Rights on the proposed legal basis,
 - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A3 -0239/90)
 - having regard to the second report of the Committee on Transport and Tourism and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights (A3-0260/90)
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Council to inform Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council.

B.

EXPLANATORY STATEMENT

Air freight market

1. Only 400.000 tonnes of cargo is transported by air within the Community. Air cargo currently accounts for only 0,08% of the total movement of cargo within the Community and most of this cargo is transported by combined passenger/cargo aircraft. However the proportion of airfreight traffic handled by all-cargo aircraft is rising rapidly (in 1988 it was one quarter and in 1989 it rose to 29%).

But in 1988 the 21 member airlines of the AEA - Association of European Airlines - loaded three million tonnes of freight; the real importance of air cargo can also be seen in its contribution to the airlines' revenue (total revenues for air cargo amounted to US\$ 5 billion and one dollar in every seven earned from scheduled operations came from the carriage of air cargo).

Air cargo in fact contributes more than its fair share to the overall profitability of the European airlines.

2. Two different types of services are offered to the customer

- (a) carriage of goods between airports - a traditional and highly complicated chain of transport that requires many intermediaries (from shipper to freight forwarder to airline to freight forwarder to shipper), each being responsible for only part of the total movement;
- (b) express air freight - with many developments such as door to door service, small package delivery service, just in time services, 1, 2, 3, 4 day delivery, etc., where one single operator ("the integrator") undertakes the whole operation.

3. For the first parcel of the market many delays are encountered in the transport chain caused by the regulatory restrictions that air cargo carriers have to face in which customs play an important role (only around 10% of the total transport time in intra - European air freight movements is spent in the air and the rest is accounted for by handling time on the ground).

4. The second area - of high-speed specialized transport, delivery of letters and parcels and air transport of perishable goods - is expanding extremely rapidly (it was about 10% in 1980 of the total air freight market and 20% in 1985; conservative estimates for 1990 suggest at least a 40% share of the market) although integrators have no counterpart in the passenger market.

Other advantages of the express market are lower packaging and insurance costs and a reduced need of warehouse space.

5. We must bear in mind that the transport of goods has different requirements from the passenger services. Cargo is inanimate and less

sensitive to intermediate stops or reloading. It is also acceptable (and sometimes even preferable) to transport goods at times of the day, and by indirect routings, which would be unacceptable for passengers.

6. It is also important to stress that an expansion of air cargo services will benefit the long distance trade. Therefore this expansion is rather important to the peripheral countries of the Community and the islands and will contribute to reduce the disparities between Community regions.

7. Air cargo transporters who have responded to the new technologies and opportunities of the market still face barriers which hamper the free movement of goods by air and the development of air freight services in the Community. The gradual liberalization and deregulation of the road transport services has improved their competitive position versus air transport.

II. Community action in this field

8. On 16 October 1981 the European Parliament adopted a resolution on measures to improve and liberalize the carriage of express low-weight air cargo within the European Community².

9. On 23 October 1985 the Commission published a communication to the Council on "Intra-Community air freight - Report on facilitation"³, where a proposal was submitted for a Directive amending Council Directive 83/643/EEC on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States⁴. The outcome was another facilitation Directive⁵, which had implications for air freight and improved somehow the situation, although in an unsatisfactory manner.

10. The specific problems involved in air freight were considered in detail by the European Parliament in a resolution adopted on 11 February 1988 on air freight in the Community⁶.

This resolution contained, among others, two main points:

- a call to the Commission to submit to the Council proposals concerning the facilitation of physical inspections and administrative formalities in respect of carriage of goods between Member States and the preferential handling of intra - Community air freight;
- concern that, if suitable Community measures were not adopted, certain American specialist low-weight air cargo companies were likely to obtain a virtual monopoly position in Europe.

11. Concerning this question, the present situation is that most of the integrators operating express air freight within the Community are non-Community and these companies are now moving to the carriage of goods between airports.

12. It may be noted that the first package of EEC regulations which liberalized the intra-Community air services⁷, which entered into force in 1988, are only applied to air freight in combination with passenger services and exclude freight-only services.

III. The Commission's draft Regulation (COM(90)63 final)

13. The present proposal aims to establish the conditions for the single market of 1992 in the field of freight-only air services, trying to implement a system to cover the Community market, as regards licensing, access to the market and the organization of services, and prices. Let us briefly analyse the main features of this system:

i) Licensing

Concerning the granting of operating licences for air cargo services (carrying only cargo and mail) - Member States will continue, for the time being, to grant such licences, publishing and communicating to the Commission the technical, operational and economic requirements they demand of the air cargo carriers established on their territory.

Common rules for the granting of operating licences shall be submitted by the Commission at a later stage (at the latest by 1 July 1991, to be implemented at the latest by 1 July 1992).

ii) Access to the market and the organization of services

Member States are to allow the exercise of third, fourth and fifth freedom traffic rights to Community air cargo carriers. Cabotage between points within Member States is also proposed.

Air cargo transporters will be able to change aircraft in an airport of their choice according to their needs. Any limitations that the Member States may impose on air cargo transporters on the frequency of service, aircraft type and/or the amount of cargo and mail that may be carried will have to be justified on the grounds of air traffic control, protection of the environment, social legislation or safety regulations and must in no case be discriminatory.

iii) Prices

Community air cargo carriers must publish their cargo rates and inform the Member States concerned 30 days before they come into effect, with no requirement for prior approval from Governments.

Member States may refer the matter to the Commission if they believe that the rates proposed do not contain a sufficient margin to guarantee compliance with technical standards and safety regulations. Member States are to carry out a detailed enquiry when the proposed tariff varies by 20% from the corresponding tariff in the previous season.

Tariffs of which the Commission has been notified can be applied automatically unless the Commission gives notice of disapproval at least seven days before their introduction.

IV Critical remarks

14. The liberalization of air cargo services should be compatible with the second package of measures proposed by the Commission for civil aviation, especially as regards access for air transport undertakings to the routes corresponding to the regular air services within the Community⁸. As is well

known, Parliament has recently expressed its opinion on these proposals⁹, on the basis of the VISSER report¹⁰.

The need to ensure compatibility between the respective liberalizations of cargo and passenger transport was taken into account in drafting a number of the amendments tabled to the Commission proposal. Obviously, due account has been taken of the existing differences between the two sectors, especially as regards pricing.

15. In order to examine the Commission proposal and prepare his amendments, the rapporteur requested the views of the Community airlines and other organizations with an interest in air cargo services.

Replies were received from the Association of European Airlines (AEA), Aer Lingus, Lufthansa, TAP, Alitalia, British Airways and Air France, and also from TNT Express and the European Air Shippers' Council.

16. Leaving aside the first seven amendments, which refer to the recitals of the Commission proposal, the substantive amendments on the articles may now be analysed as follows:

17. Amendments Nos. 15 and 16 are intended to improve the definitions of "air cargo carrier" and "Community air cargo carrier" contained in Article 2(a) and (b) (ii) of the proposal.

18. Amendments Nos. 18 and 19 are intended to provide more guarantees in respect of the provisions for the granting of operating licences - in the present transition period a responsibility of the Member States - in line with the Commission's proposals concerning passenger transport and the amendments adopted by Parliament. It is proposed that the introduction of a Community-wide licence should be postponed until 31 December 1992, to tie in with the implementation of the single market.

19. Amendment No. 20 is intended to exclude the exercise of rights of cabotage from the proposed regulation; in the rapporteur's view, this question should be considered at a later stage.

Amendment No. 21 is intended to remove the automatic right of Community carriers to fifth-freedom rights between a Member State and a third country; the rapporteur considers that this question should be dealt with at a later date, when the Community rules for negotiation of traffic rights with third countries have been established.

20. Amendment No. 22 is introduced purely for reasons of linguistic exactitude; the same applies to Amendment No. 25.

21. Amendment No. 23 is intended to introduce an option for the Community air carriers to substitute air transport by road, rail or sea transport for part of the journey, a practice which is widespread in this market for economic or physical reasons (in the latter case, depending on the type of goods involved).

22. Amendments Nos. 26, 27 and 28 are intended to approximate the rules governing air cargo to those proposed for passenger transport, in the context of the desire, as stated above, to achieve consistency between the two sectors.

23. Amendments Nos. 29 and 30 relate to Article 8 of the Commission proposal (pricing).

Your rapporteur does not share the view that a control mechanism of the pricing system is not needed. There should be a minimum control of pricing.

On this basis, through Amendments No. 30 the system proposed by the Commission has been considerably amplified, giving only the Commission the right to oppose prices, in the case of excessively high cargo rates.

24. Amendment No. 31 takes up the problem of relations with third countries, and introduces the principle of reciprocity.

As is well known, the Commission recently submitted two proposals concerning relations between the Community and third countries in the field of civil aviation, and, although this report is certainly not the ideal place to raise the matter, it appears important to affirm the general principle of "equivalent treatment". This comprises the notions of "non-discrimination", "reciprocity" (meaning a guarantee of equal, or at least non-discriminatory opportunities) and "differentiability" (between the several third countries concerned - thus, for instance, the USA should not be treated on the same basis as the EFTA countries or other third countries such as South Korea) and should be a condition for permitting third country air cargo carriers to benefit from this regulation.

25. Amendment No. 32, which concerns a code of conduct for computerized reservation systems (CRS), to be applicable to air cargo services, is intended to oblige the Commission and the Council to respect the deadlines for the introduction of this code of conduct. As is well known, such a code already exists for passenger transport¹¹; it would represent an important step forward in terms of the development and competitiveness of the air cargo market.

26. Finally, Amendment No. 33 is justified on the grounds that Parliament did not, on 12 June 1990, approve the Council's request for application of the urgent procedure in the debate, with the result that the entry into force of the regulation will be delayed.

1. OJ No. C
2. OJ No C 287, 9.11.1981, p. 117 (own-initiative report drawn up by Mr KEY on behalf of the Committee on Transport - Doc. 1-559/81).
3. COM (85) 436 final
4. OJ No L 359, 22.12.1983, p. 8
5. OJ No L 24, 27.1.1987, p. 3
6. OJ No C 68, 13.3.1988, p. 88 (own-initiative report drawn up by Mr van der WAAL on behalf of the Committee on Transport - Doc. A2-244/87).
7. Council Directive 87/601/EEC (OJ No L 374, 31.12.1987, p. 12)
Council Decision 87/602/EEC (OJ No L 374, 31.12.1987, p. 19)
8. COM(89) 373 (OJ No. C 258, 11.10.1989)
9. see minutes of the sitting of 14 March 1990
10. Doc. A 3-42/90
11. Council Regulation No. 2299/89 of 24 July 1989 (OJ No. L 220, 29.7.1989, p. 1)

OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr de Donnea

At its meeting of 31 May 1990 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr de Donnea draftsman of its opinion.

At its meeting of 26-28 June 1990 the committee considered the draft opinion. It unanimously adopted the conclusions on 26 June 1990;

The following took part in the vote: Beumer, Chairman; Desmond, Vice-Chairman; De Donnea, rapporteur; Barton, Bernard-Reymond, Bofill Abeilhe, Colom I Naval, Cox, Dalsass (for Gallenzi), De Piccoli, Di Rupo (for Donnelly), Fitzsimons (Rule 111(2)), Lulling, Merz, Metten, Patterson, Read, Roth (for Ernst De La Graete), Siso Cruellas, Speciale, Stevens and von Wogau.

1. Current state of the air cargo service sector in the Community

The total amount of cargo that is moved by air in the Community is very limited i.e. 400 000 tonnes or 0.08% of the total movement of cargo within the Community. This volume is, however, constantly increasing and generally comprises high-value cargo (as well as perishable foodstuffs or spare parts which have to be transported very swiftly).

The significant air cargo traffic between the Community and the United States and, too, the countries of Asia must also be taken into account. Cargo therefore has a significant place in the operations of air carriers². Until now, however, as far as cargo is concerned, carriers have been subject in the matter of market access and rates to the constraints arising from bilateral agreements between governments. This explains the development of integrated companies specializing in express air freight. In this type of company, one single organization, the integrator, takes responsibility for the whole movement of cargo from door to door. The specialist operators, who are not subject to the same constraints as those imposed on standard air carriers, have won an increasingly large share of the air cargo market (the 20% quota of door-to-door transport carried out by integrators in 1985 could reach 40% in 1990)³.

Finally, for distances under 600 km, the air carriers have to face increasingly keen competition from road freight carriers whose market is on the way to complete liberalization. It is, therefore, necessary to liberalize the air cargo market in the Community in order to allow European air carriers to remain competitive in the face of integrators which are all non-European companies.

The Community has, indeed, already taken measures to optimize services in the air cargo sector (simplification and compatibility of programming languages for customs clearance; longer opening hours for customs offices at airports). The present regulation confines itself to liberalizing the air cargo market as regards both market access and price fixing⁴.

2. Operating licences and market access

Article 3 stipulates that the Council must adopt, by 1 July 1991 at the latest and on the basis of a Commission proposal, common rules concerning the granting of operating licences for air cargo. As for market access, Community air cargo carriers would henceforward be authorized to exercise freely third, fourth and fifth-freedom traffic rights between airports in two different Member States. The same would apply to cabotage.

² The total volume of cargo transported by the companies belonging to the Association of European Airlines was 3 million tonnes in 1988, representing approximately one seventh of profits.

³ Door-to-door transport is currently increasing by 35 to 40% per year while airport-to-airport transport is increasing by only 7%.

⁴ The 1987 regulation applied only to air passenger services.

Community air cargo carriers would enjoy full operational flexibility (frequency of service, aircraft type, amount of cargo). A Member State could, however, make the exercise of traffic rights subject to conditions and limits relating to the protection of the environment, working conditions or security regulations (Article 7) after informing the Commission.

3. Pricing

Community air cargo carriers would henceforward be obliged only to publish their cargo rates and inform the Member State concerned of those rates (Article 8). Consequently, any approval system would disappear. The Member States could refer the matter to the Commission only where the rate concerned did not include a 'sufficient margin to ensure satisfactory technical and safety standards' (Article 8), particularly if the rates are 20% higher or lower than the previous corresponding rate.

Finally, the regulation is due to come into force on 1 July 1990. Its adoption by the Council is scheduled at the same time as the package of proposals relating to air passenger services (COM(89) 373).

4. Appraisal of the proposal

There are grounds for approving this proposal which meets a need emphasized time and again by the European Parliament⁵. Liberalization of the market, both from the point of view of access and of rates, should allow European air carriers to boost their competitiveness in the face of competition from cargo integrators in an area where speed and quality of service are crucial.

A reservation on one point must, however, be expressed.

For the sake of transparency all air carriers operating in the Community should publish their rates and not just the Community carriers, as laid down in Article 8 of the draft regulation.

⁵ In particular, the report by Mr van der WAAL (Doc. A 2-244/87) on air cargo in the Community.

Proposed amendment

Commission text

Parliament text

Amendment No. 1

Article 8, paragraph 1

Article 8, paragraph 1

1. Community air carriers shall publish all available cargo rates.

1. Air carriers operating in the Community shall publish all available cargo rates.

Conclusions

1. Even if the volume of air cargo appears limited in relation to that of freight carried by rail or road, air cargo constitutes an important area of activity for air carriers and a balancing factor in their operations.
2. The air cargo market is expanding rapidly, in particular the door-to-door service provided at present exclusively by non-Community integrated air cargo carriers (40% of total air cargo).
3. In fact, in this field where flexibility and speed of service play a decisive role, European air carriers suffer from the constraints of the current organization of air cargo in the Community, as regards both market access and pricing.
4. This regulation totally frees access to the third, fourth and fifth-freedom traffic rights and cabotage, subject to the observance of environmental, working and safety conditions which may be stipulated by a Member State.
5. The regulation likewise abolishes all prior authorizations as regards pricing and simply requires carriers to inform the Member State concerned of their rates.
6. These provisions called for by the European Parliament are vital in order to allow European air carriers to increase their ability to face competition from non-Community integrated carriers and road haulage contractors in general.
7. On the other hand, all the air carriers operating in the Community should publish their cargo rates and not just the Community carriers, contrary to Article 8(1) of the regulation.
8. The proposal for a regulation should be approved, subject to the amendment proposed above which the Committee on Transport and Tourism is asked to take into account.

Brussels,

Mr R. AMARAL
Chairman of the Committee
on Transport and Tourism
European Parliament
BRUSSELS

MC/cn
180/90

Dear Mr Amaral,

At its meeting of 15 and 16 October 1990 the Committee on Legal Affairs and Citizens' Rights, of which I am chairman, considered the appropriateness of the legal basis of the proposal for a Council regulation on the operation of air cargo services (C3-98/90 - COM(90) 63 final).

After hearing the conclusions submitted by Mr García Amigo, the member responsible for matters involving legal bases, the Committee on Legal Affairs and Citizens' Rights decided (*) that Article 84(2) of the EEC Treaty was the appropriate legal basis for the above proposal for a regulation, as proposed by the Commission. In fact, this provision of the Treaty should be considered the 'lex specialis' as compared with Article 100a, which is therefore not applicable in this case.

Graf STAUFFENBERG

(*) The following were present for the vote: Stauffenberg, chairman; Vayssade, first vice-chairman; García Amigo, draftsman; Anastassopoulos, Blak, Bandrés Molet, Bontempi, Casini, Inglewood, Janssen van Raay, McIntosh, Medina Ortega, Price, Salema, Sarlis and Wijssenbeek.

