

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## CIVIL AVIATION MEMORANDUM No 2.

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## PROGRESS TOWARDS THE DEVELOPMENT OF A COMMUNITY AIR TRANSPORT POLICY

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(Communication and Proposals by the Commission to the Council)

COM(84) 72 final

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- Annex I            Proposal for a Council Decision \_\_/\_\_/EEC on bilateral agreements, arrangements and memoranda of understanding between Member States relating to air transport;
- Annex II           Amended proposal for a Council directive \_\_/\_\_/EEC on fares for scheduled air transport between Member States;
- Annex III          A. Amendments to proposal for a Council Regulation (EEC) laying down the procedure for the rules on competition applying to undertakings in the air transport sector
- B. Proposal for a Council Regulation (EEC) on application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector
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- Annex IV           State aids to air transport - Policy paper and guidelines;
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- Annex VI           Programme of Commission's initiatives in the field of Civil Aviation 1984-1986.

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## SUMMARY

i. This communication seeks to develop and expand on the objectives of the Commission's 1979 memorandum in the light of the important regulatory and economic changes which have taken place and the renewed debate on possible improvements in the European air transport system in the interest of consumers, airlines and workers alike. The paper proposes, on the basis of the Treaty of Rome, an overall framework for a Community air transport policy, designed to improve the efficiency and profitability of the air transport industry as well as the quality and price of the product it offers, while at the same time maintaining the significant benefits the present system provides. However, it accepts the argument that a system suitable for application between the Member States of the Community will not necessarily be suitable for application on routes to third countries. The policy proposals therefore concentrate on air transport between the Member States as a step towards the creation of a Community market in aviation and a contribution to the improvement of the internal market in its wider sense.

ii. The paper also meets Parliament's request for a revised work programme for 1984/1985. Thus it complements, in relation to air transport, the Commission's 1984/85 work programme on inland transport which was presented to the Council in February 1983.

iii. The Commission suggests that American-style deregulation would not work in the present European context. The proposals made thus

- deal only with intra-Community air transport;
- maintain the structure of the present regulatory system based on bilateral intergovernmental agreements and arrangements and inter-airline co-operation, but
- introduce changes to make it more flexible and more competitive in order to increase airline efficiency, allow the efficient and innovative airline to benefit, encourage expansion and thus employment and better meet consumer needs.

iv. The central part of the paper deals with the relationship between competition policy (and in particular the application of the competition articles of the Treaty) and aviation policy. The paper goes much wider, however, and covers other aspects of aviation policy also.

v. As regards competition the main points of the paper are as follows

a) at the governmental level,

- in their bilateral agreements and arrangements Governments should not intervene to influence the share of the traffic carried by their airlines' services to another member state unless it was down to a certain minimum figure (the safety net principle).
  
- The Commission's proposed directive on the regulation of air tariffs has been amended in order to allow a variation in the degree of governmental control in accordance with the flexibility permitted to individual airlines.

b) at the airline level, it proposes to accept for a limited period

- capacity sharing agreements between airlines (or equivalent arrangements) provided they do not enable one partner to dictate the capacity to be provided by the other;
  
- revenue pools but to limit the degree of revenue transfers that can be made under them;
  
- air fare consultation provided that dissenting airlines have a right to propose and implement tariffs independently of other airlines, subject to government approval;

- c) as a complement to its action on competition the Commission will review the state aids given to airlines in accordance with the guidelines developed in this paper. This is necessary in order to avoid any increase in competition between airlines leading to a subsidy race between governments (Annex IV);
- d) in terms of implementation it proposes the following package :
  - a decision under article 84.2 providing for rules covering bilateral agreements and arrangements (Annex I);
  - amendments to the Commission's proposal under article 84.2 for a tariff directive (Annex II);
  - new proposals under article 87 for the application of the Treaty's competition rules to air transport (Annex III).

In view of the limitation of the obligations proposed under article 84.2 to Member States of the Community and the close interrelationship of action at governmental and commercial levels, the action proposed under article 87 has a similar geographical scope.

Since all the above proposals are interdependent it is necessary in order to ensure the regulatory system is compatible with the Treaty that they are adopted by the Council and the Commission and implemented, as a package.

The Commission realises that it will take time to discuss these ideas before they can be accepted. This period should not be too long and it preserves the freedom to initiate direct action against practices of airlines which in its view are in violation of the competition articles.

vi. Other aspects of aviation policy covered in this paper concern inter alia :

- a proposal for standstill and non-discrimination provisions (Annex V)
- initiatives designed to help reduce airline costs (e.g. airport charges, facilitation);
- initiatives to stimulate the activities of smaller airlines and charter airlines ;
- proposal for the mutual recognition of licences.

vii. The Commission's work programme for 1984/86 is at annex VI.

viii. The Commission believes that if measures along these lines are adopted, it will, whilst avoiding disruption in the aviation industry, lead gradually to a more efficient and cost-effective system, a better deal for the consumer, a healthier industry, and consequently better chances for employment and as a result to a strengthening of the ties between Member States and an improvement to the Community's internal market.



## PROGRESS TOWARDS THE DEVELOPMENT OF A COMMUNITY

### AIR TRANSPORT POLICY

#### INTRODUCTION

1. In July 1979, the Commission issued a memorandum on the contribution of the European Communities to the development of air transport services (1). One purpose of this memorandum was to create a debate on the contents of a common air transport policy for the EEC. Since then the Commission has received numerous comments and has had a number of informal discussions on them. Several proposals, inter alia on air tariffs, interregional air services and the procedure for the application of the competition articles to civil aviation have been made to the Council and have been or are being discussed by it, by the European Parliament and the Economic and Social Committee.
  
2. In the Commission's view it is now time for a more comprehensive statement of its attitude towards air transport in the Community. The growth of consumer criticism of the system in Europe, the effect of the recession on airline finances and the development of deregulated air transport in the U.S. have combined to stimulate a debate on whether the present European air transport system best serves the interests of the consumers or, in the long-term, of the airlines themselves; and whether indeed the present system is compatible with the Treaty of Rome. The purpose of this paper is, therefore, to review the developments that have taken place since 1979, to propose an overall framework for air transport policy in the Community, to describe the measures which the Commission proposes and the actions which it has in mind to take. The Commission wishes to acknowledge the help it has derived in the formulation of the paper from the Report on Competition in Intra-European Air Services prepared by the European Civil Aviation Conference.

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(1) "Air Transport : A Community Approach", Bulletin of the European Communities, supplement 5/79.

3. In the long-term the objective of a Community air transport policy must be the creation of a common air transport market. This will take a long time to achieve. The Commission takes the view, however, that in the shorter term it is possible and desirable to relax the existing system. Such a relaxation would result in a wider variety of choice for the consumer, lower costs and therefore lower prices, more scope and more profits for the efficient and innovative airline and a growth stimulus to the air transport industry. In the long-term this will provide more jobs and contribute towards the coherence of the internal market. The Commission further believes that this relaxation can take place without losing the significant benefits which the present system of air transport has so far provided to the Member States of the Community; that it can be so organised that the Community and its Member States can, acting together, control the process of change and ensure that national, social and economic objectives are safeguarded; and that at the same time the internal Community market as a whole can be promoted in a way that would not be possible, or at least would be much more difficult, for Member States acting individually.

PART 1

REACTIONS TO THE FIRST MEMORANDUM

COMMUNITY INSTITUTIONS

4. The European Parliament declared in two Resolutions (1) that air transport in the Community can and must be improved and that Community measures should be adopted to that end. However, it drew attention to the extremely complex nature of air transport and its extensive international ramifications and considered that while reform is necessary, this should not put the basic structure at risk. It invited the Commission to formulate appropriate proposals on :
- i. measures to remove restrictions on competition, in particular with regard to :
    - state subsidies,
    - fixed exchange rates,
    - simplification of formalities,
  - ii. measures to facilitate and promote the integration of air transport :
    - harmonisation of technical regulations (2),
    - compensation in the case of overbooking(2),
    - regulations on charter traffic,
  - iii. phased introduction of measures at the European level, in particular :
    - full implementation of the competition provisions,
    - access to the market,
    - freedom of establishment.

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(1) European Parliament, Resolution on restrictions of competition in the air transport sector, OJ No C 291, 10.11.1980, p.60 and Resolution on the Memorandum of the Commission of the European Communities on the contribution of the European Communities to the development of air transport services, OJ No C 219, 10.11.1980, p. 65.

(2) Action on these two points is not contained in part.3 of this Memorandum but will if necessary be taken up later.

In addition to this programme of action the Parliament was of the opinion that no viable alternative had yet been proposed to the present system for fixing tariffs and that the Commission should study this question further.

5. Other points made by Parliament include the following :

- i. efforts must be made to bring about a real increase in competition in air transport in the Community which would benefit users while promoting the productivity and competitiveness of the airlines and the economy of the Community as a whole. In this context, it called upon the Commission to adopt as quickly as possible a proposal on the application of the competition rules of the Treaty to air transport. At the same time it held that the extension of these rules to the air transport sector should be a gradual and judicious process in order to allow Community air transport companies to adjust to the new situation and thus to avoid a loss of competitiveness in Community, other European and intercontinental markets.
- ii. In many cases the air transport sector provides services of overriding public interest and this aspect should be taken into account when deciding on the implementation of the competition articles;
- iii. The social aspects of any common air transport policy should be taken into account.

6. Beyond these two basic resolutions, Parliament has expressed the view that :

- i. regional services should be encouraged;
- ii. the present high safety level should not be put at risk. On this aspect the European Parliament approved an own initiative report, in particular on the safety aspects of cabin equipment.

7. The Economic and Social Committee has in general taken a more conservative approach to the establishment of a common air transport policy. The Committee found it necessary that a common air transport policy should be created and that it should be coordinated with the common transport policy but it urged caution. In particular it did not see any short-term advantage to the Community in changing the present regulatory system, but found that the long-term aim should be the introduction of a more competitive regime in the interests of both the consumer and a healthy civil aviation industry. The Committee considered that many of the formalities still in existence in the Member States were superfluous and thought that controls and handling procedures should be made more flexible. It also was strongly concerned about safety. It considered that the 1979 memorandum was not sufficiently sensitive to the interests of airlines employees and suggested consideration of action on several specific points designed to take account of these social aspects. (1)
  
8. The Council noted, without detailed discussion, the Commission's memorandum and invited it to concentrate its efforts as a matter of priority on a proposal on frontier crossing interregional air services. The Council also requested its committee of permanent representatives to examine in detail the other items enumerated in the Council's 1978 priority programme on air transport. An account on the Council's further action is given in paragraphs 21 to 32.

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(1) OJ No C 230, 8.9.1980, p. 30.

AIRLINES

9. The reactions from airlines can be divided into two broad groups.
  
10. The first group is represented by the Association of European Airlines (AEA) which, although it in 1980 welcomed the Commission's efforts to promote European air transport, considered that the present system is to a large extent adequate and pointed out the risk of undermining the system's strengths in the attempt to correct its deficiencies. The AEA expressed doubts about the Commission's initiative on interregional air services and questioned in particular their economic viability. It concluded that national aviation authorities should continue to control market entry and the establishment of particular routes. The EEC members of the AEA expressed cautious approval of the Commission's approach to air fares, competition and the general economic development of airlines. While not opposed in principle to lower fares or greater competition, these airlines drew attention to the current precarious financial position of air carriers and to the importance of fair competition. They felt that priority should be given to problems of air traffic control, air traffic congestion, fuel allocation and changes in infrastructure. This point of view has been confirmed in September 1983.
  
11. These and other opinions expressed individually by some airlines amount to a strong recommendation to the Commission that any change in the present system should be evolutionary. In a hearing before the European Parliament the International Air Transport Association (IATA) (1) considered that the memorandum was a constructive working document. IATA felt, however, that the Commission's proposals on fares, capacity, productivity and competition were based on

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(1) P.E. 64.942 of 5.5.1980.

inconclusive evidence and required further study and that the problems in air transport rather concerned planning and management.

12. On the other hand the Association of Independent Air Carriers (ACE) welcomed the Commission's ideas and stressed the importance of quick action to avert a further strengthening of dominant positions. ACE offered its collaboration and urged the Commission to eliminate in particular existing differences between scheduled and non-scheduled carriers in the field of cargo and mail services.

#### EMPLOYEE ORGANIZATIONS

13. The transport employee organizations felt that the memorandum had paid insufficient attention to social problems of the industry. They urged in particular the creation of a joint committee between workers and employers under the auspices of the Commission. They feared that a more flexible civil aviation policy could lead to anarchy in the air, the costs of which would ultimately have to be borne by taxpayers and airline users. They therefore called for more detailed studies of the consequences of greater flexibility. They also saw no evidence of any intention to include civil aviation policy into an overall Community transport policy which would balance needs and contributions of the various sectors.

#### USER ORGANIZATIONS

14. User organizations generally supported the memorandum. Some, however, complained of excessive caution on the part of the Commission and of insufficient coverage of such problems as air safety, pollution, the role of air travel in the Community's regional policy and the relationship of air transport to the co-ordinated development of an overall European transport system. Much of the users' dissatisfaction is centred on the level and the present system of fixing air tariffs. More competition and changes in the tariff fixing system are necessary in their view.

INTERGOVERNMENTAL ORGANIZATIONS

15. The International Civil Aviation Organization (ICAO) stated in a hearing before the European Parliament (1) that improvement of technical and operational problems such as obtaining more direct routings at optimum flight levels and with minimal delays could only be satisfactorily resolved by the international and regional machinery of ICAO. The Organization also deemed European air safety satisfactory.

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(1) PE 64.992 of 7.5.1980



PART 2

DEVELOPMENTS SINCE THE FIRST MEMORANDUM

ECONOMIC DEVELOPMENTS

16. The first memorandum described the relative importance of the different markets of the European airlines : intra-Community markets were of less importance for most Community airlines than non-Community markets. This situation still persists. Major scheduled airlines (1) earn about 40% of their revenue in local Europe (about 25% in the Community) and the rest on routes to other international destinations, in particular on intercontinental routes. In air freight earnings, the percentage attributable to local Europe is in the region of 20%. At the time of the first memorandum non-scheduled carriers also earned a small part of their revenue from services inside the Community while the main part came from services to other international destinations, in particular in Europe and on the North Atlantic. With the advent of aggressive pricing policies of the scheduled carriers over the North Atlantic charter traffic there declined considerably. As a consequence the activity of EEC non-scheduled carriers is now concentrated on European destinations, in particular Spain, and they provide over 50% of the total number of passenger miles flown in local Europe
17. For practically the whole period since the first memorandum was published, the air transport sector in general has been in a severe recession. The EEC scheduled airlines have done no worse, and indeed have sometimes done rather better, than airlines outside the EEC. The figures below set out the operating statistics of the total international scheduled operations of EEC carriers as supplied to the Commission by A.E.A.

(1) EEC scheduled airlines, Members of AEA (Association of European Airlines)

These 11 major carriers which together form the bulk of international scheduled air transport operating within, to and from the Community countries thus failed to cover their operating costs and interest charges in 1981 and failed to cover part of their interest charges in 1982. Indications are that 1983 results will be marginally better than 1982. The Commission understands that although the operating ratios show signs of improvement interest charges will again not be fully covered.

18. In order to cover their interest charges and their dividend commitments and to renew their aircraft fleets, the airlines have calculated that a minimum profit requirement, before tax, is 7.5 percent of revenue. This translates into an operating ratio before interest of 108.1. Only one or two of the carriers came within four points of what they consider to be a minimum reasonable operating ratio before interest in 1981. On that basis, the 10 airlines were short of their necessary earnings levels by about US\$ 1,250 million in 1981 and a little under US\$ 800 million in 1982. The 1983 shortfall is expected to be slightly lower than in 1982.(1)
19. The 10 carriers (2) for which figures are available and which provide scheduled passenger services within local Europe have fared no better in that region than in total operations, within recent years. 1981 and 1982 data are the latest available for that region. In terms of individual operating ratios for passenger services, the picture is as follows:

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(1) Indications at the time of going to press are that this assessment may turn out to be too pessimistic

(2) Aer Lingus, Air France, Alitalia, British Airways, British Caledonian, KLM, Lufthansa, Olympic Airways, Sabena, SAS

AEA/EEC Carriers' Traffic and Economic Results 1981 and 1982 1)

I. Total International Scheduled Services

		<u>1981</u>	<u>1982</u>
A.1. Available tone-kms (ATK's)	mill	31686	32694
2. Revenue tonne-kms (RTK's)	mill	19699	20124
3. Load factor	%	62.2	61.6
4. Revenue passenger-kms	mill	135468	134343
5. Freight tonne-kms	mill	7212	7246
6. Mail tonne-kms	mill	466	466
B.1. Yield per revenue tonne-kms	UScents	70.15	68.56
2. Cost per available tonne-kms	UScents	44.00	41.18
3. Operating revenues US\$	mill	13818	13798
a) percentage passenger revenues	%	81.1	81.3
b) percentage freight revenues	%	17.2	17.0
c) percentage mail revenues	%	1.7	1.7
4. Operating costs US\$	mill	13942	13463
5. Operating result profit/loss before financial charges US\$	mill	- 124	+ 335
6. Interest charges US\$	mill	569	650
7. Operating costs after financial charges US\$	mill	14511	14113
8. Operating result profit/loss after financial charges US\$	mill	- 693	- 315
9. Operating ratio before financial charges	%	99.1	102.5
10. Operating ratio after financial charges	%	95.2	97.8

II. Total Scheduled Passenger Services

1. Total available seat-kms	mill	234897	234315
a) domestic	mill	19279	21121
b) local Europe	mill	47557	46962
c) total international	mill	215618	213194
2. Revenue passenger-kms	mill	148411	148947
a) domestic	mill	12944	14451
b) local Europe	mill	27293	26761
c) total international	mill	135467	134496

(1) Aer Lingus, Air France, Alitalia, British Airways, British Caledonian, KLM, Lufthansa, Olympic Airways, Sabena, SAS, UTA.

RANGES OF LOCAL EUROPE OPERATING RATIOS (PASSENGER SERVICES) BEFORE INTEREST

<u>Year</u>	<u>Operating ratio - range</u>	<u>Operating ratio - mean</u>
1978	88.9 - 110.2	103.0
1979	93.3 - 110.9	103.4
1980	79.3 - 104.4	98.3
1981	79.7 - 104.1	98.7
1982	89.1 - 110.0	103.9

As the table shows there are wide variations in the financial performance of those air carriers in Europe and some of them are under considerable financial strain.

CHANGES IN THE U.S. REGULATORY FRAMEWORK

20. Undoubtedly the most sweeping changes in the regulatory framework were made in the United States where far-reaching legislation was enacted in late 1978 removing any governmental regulation on domestic air transport in respect of market entry, capacity regulation and pricing. It is probably too early to say what the final result of deregulation will be. The adjustment to the new regime by the established carriers has taken longer and proved more difficult than was expected, though it seems that most of them will be able to cope. With the expansion of the secondary market the choice open to the consumers and the general public satisfaction with the system have increased. The relevance of this policy change for the European market is discussed at paragraph 43.

POLICY PROPOSALS TO THE COUNCIL OF MINISTERS

Consultation procedure

21. As the Commission emphasized in its 1979 memorandum, the interrelation between the Community and the world air transport system is important. There is therefore a need to establish a greater coherence in the actions of Member States towards international organizations and third countries. The Commission consequently together with the Memorandum sent to the Council in July 1979 a proposal for a consultation procedure with respect to international organizations and third countries. This was supported by the European Parliament in its resolution on the memorandum of the Commission of the E.C. on the Contribution of the E.C. to the development of air transport services (1). The Council adopted a decision in December 1979 (2) but did not agree to ex-ante consultations on the conclusion of bilateral agreements.

Aircraft noise

22. In December 1979 the Council also approved a Directive proposed by the Commission on the limitation of noise emissions from subsonic aircraft (1). The purpose of the proposal was to implement through Community legislation Annex 16 to the Chicago Convention. This was agreed and recently (3) - as envisaged in Annex 16 itself - application to subsonic aircraft from third countries has been made mandatory.

(1) OJ No C 291, 10.11.1980, p.65.

(2) OJ No L 18, 24.1.1980, p. 24

(3) OJ.No L 18, 24.1.1980,p.26 and amendment OJ.No L 117, 4.5.1983, p. 15.

23. The Commission submitted in 1981 to the Council a proposal for a Directive (1) on the limitation of noise emissions from helicopters. The purpose of this proposal is to make mandatory within the Community, the noise standards on helicopters described in Annex 16 to the Chicago Convention. No agreement has yet been reached because of the difference of viewpoints about the limits of the scope and the stringency of these noise standards. The progress made at the last meeting of the ICAO Committee on Aircraft Noise will, it is likely, allow an international agreement to be achieved on that item in 1984/1985.
24. The Commission has also developed a specific computer programme CANAR (consequence of aircraft noise abatement regulation) for calculating and plotting noise exposure contours around airports.

Search and Rescue co-operation

25. In 1979 the German Government proposed to the Council a Directive for co-operation between Member States with respect to search and rescue activities in Member States' frontier zones in the case of actual or suspected air accidents. However, agreement could not be reached and the Council asked the Commission to study the matter further. Detailed consultation was held with national experts which enabled the Commission to determine areas of co-operation and the extent to which Community rules might help implement important aspects of Annex 12 to the Chicago Convention.

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(1) OJ.No C 275, 27.10.1981, p.2

Accident investigation

26. In December 1980 the Council approved a proposal of the Federal Republic of Germany concerning future co-operation and mutual assistance between Member States in the field of air accident investigation (1). The Council Directive was much reduced in scope compared to the original proposal but it is to be hoped that even in its reduced form it will lead to a better utilisation of equipment and easier access to appropriate expertise.

Interregional air services

27. The Commission proposed a regulation on interregional air services in November 1980 (2) following the Council's invitation in the context of its discussion of the Commission's memorandum. The Commission did not advocate complete freedom of access to the market but in effect proposed to lift a specific and precisely defined segment of the market out of the bilateral structure and thus to give opportunities to more airlines to operate certain routes outside the trunk routes. The proposal was supported by the European Parliament (3), the Economic and Social Committee (4), the Chambers of Commerce, the European Regional Airlines Organisation (ERA), users and independent airlines. Other parties such as the representatives of Civil Aviation Unions, the Centre of European Public Enterprises (CEEP) and the major airlines either opposed it outright or had certain reservations on its scope. In the course of the discussions the Commission's original proposal has been considerably watered down and although the Council has now passed a directive (5) it is questionable how much effect it will have in its modified version.

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- (1) OJ No L 375, 31.12.1980, p.32  
(2) COM(80)624 final of 27 November 1980 and amendment COM(81)771 final of 10 December 1981  
(3) OJ No C 287, 9.11.1981, p. 114  
(4) OJ No C 343, 31.12.1981, p. 13  
(5) OJ No L 237, 26.8.1983, p. 19

Air tariffs

28. In July 1980 the Council invited the Commission, as did Parliament, to submit a report on the level of and the procedures for fixing air fares for scheduled carriers in the Community. The Commission submitted its report (1) one year later and pointed out in particular that although in certain cases an abuse of market positions could not with certainty be excluded, in general for operations in the Community neither the level of air fares nor the profits of the airlines were excessive in relation to the costs they incurred. It concluded moreover that improvements could be made in procedures for the fixing of air tariffs both as regards government supervision of tariff fixing and the fixing of tariffs by the airlines themselves.
29. In 1981 the Commission sent to the Council a proposal for a directive on tariffs for scheduled air transport between Member States (2). This has been discussed in the Council for well over two years, but there is no indication that a Council decision can be expected in the near future. However, some Member States have expressed general support, while objecting to certain specific features. The European Parliament has in general supported the proposal, but suggested several amendments (3). The Economic and Social Committee, while welcoming its objectives did not believe that the proposal in its present form was likely to achieve them (4). This matter is discussed further in paragraph 48 et al.

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(1) COM(81)398 final of 23 July 1981

(2) OJ No C 78, 30.3.1982, p. 6

(3) OJ No C 322, 28.11.1983, p. 10

(4) OJ No C 77, 21.3.1983, p. 27.



Application of the competition rules of the Treaty to air transport

30. Although it follows from Court of Justice rulings in 1974 (1), and 1978 (2), that the general rules of the Treaty, including the competition rules, are applicable to air and sea transport, these are in fact the only areas for which competition regulations in application of article 87 of the Treaty do not yet exist. The European Parliament in its resolution on restrictions of competition in the air transport sector urged the Commission "to work for the application of the provisions on competition in the EEC Treaty with the necessary derogations" (3). In August 1981 the Commission introduced to the Council a proposal for a regulation on the application of the competition rules of the Treaty to air transport which would have given to the Commission the means of obtaining the information required for decisions under articles 85 and 86 of the Treaty (4). The proposal is of a purely procedural nature. It has been discussed several times in the Council's joint transport and economic policy working group. The principal criticisms emerging from these discussions concerned the geographic scope of the proposal (application to routes to third countries in addition to intra community routes) and the absence of any method for according a group exemption to the existing commercial agreements or concerted practices between enterprises.

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(1) Judgement of the Court of 4 April 1974, case 167/73

(2) Judgement of the Court of 12 October 1978, case 156/77

(3) OJ No C 291, 10.11.1980, p. 60.

(4) OJ No C 291, 12.11.1981, p. 4.

31. In order to develop its policy approach and to take into account the real features of the air transport system in the Community the Commission wrote to the Member States and to airlines with the purpose of obtaining detailed information on the present air transport system (1). The Commission has requested supplementary information. This matter is discussed further in part 3.

Express low weight air cargo

32. In August 1980 the U.K. Government presented in the Council a proposal for a directive on the liberalisation of regulations for express low weight air cargo services. The Council could not agree because of the insufficient information at its disposal and therefore requested the Commission in July 1981 (2) to study the matter further and recommended meanwhile to the Member States to facilitate this type of transport as much as possible. The Commission has examined the matter with national experts and is now preparing a modified proposal which will be submitted to the Council this year.

OTHER ACTION BY THE COMMISSION SINCE THE FIRST MEMORANDUM

State aids

33. The Commission services convened a series of meetings with experts from Member States during 1981 and 1982, in order to know exactly the contents of state aids to air transport. As part of these meetings the Commission has been able to develop a picture of aids to airlines. This matter is discussed further in paragraph 61 et al.

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(1) SG(81) D/10641 of 7 August 1981

(2) OJ No L 203, 23.7.1981, p. 51.

Facilitation of air freight transport

34. The Council has identified this matter as a priority. A study was carried out for the Commission and followed by a series of visits to the main airports of the Community in co-operation with the IATA Facilitation Committee. The purpose of this exercise was to determine where obstacles to the free movement of air freight exist in the Community.
35. The results of the study suggest that air freight is not only more expensive than other modes of transport, but takes longer on many routes within the Community than road transport. The cause can be found, for example, in time-consuming procedures for cross-border purposes, handling procedures, communication between airlines, shippers, freight forwarders and customs services, etc. These difficulties seriously inhibit the development of intracommunity air cargo services. Future action is considered in paragraph 71 et al.

Safety

36. In the field of air safety the Commission has not the expertise for any action on its part. Its role can be only to draw attention to areas where in its view the existing system, based on Member States and the ICAO regional organisation, might be improved. With this limited objective in view it has signed a co-operation agreement with Eurocontrol (about which the European Parliament expressed its satisfaction (1)) and has had a study carried out on the constraints that exist on the development of air transport.

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(1) OJ No C 182, 19.7.1982, p. 29.

Right of establishment

37. It is disappointing to note that since the first memorandum no airline has availed itself of this possibility offered by the Treaty.

Users

38. The services of the Commission have encouraged the creation of national committees of air transport users. Such associations already existed in some Member States and under the initiative of the British Committee (AUC - Air Transport Users Committee) a steering committee was formed, consisting of representatives of most Member States. Associations representing business and leisure air travellers have then been established in Ireland, Italy and Belgium and are in the process of formation in other Member States. These representatives decided in October 1982 to merge into the Federation of Air Transport User Representatives in the European Community (Faturec), the objectives of which are to establish and maintain in each Member State a committee the purpose of which shall be to further the interests of all kinds of air transport users. It is naturally in the interest of the Commission that these organisations be associated with consumer organisations in the EEC. The Commission intends to consult all users organisations interested in air transport.

PART 3

COMMISSION INITIATIVES FOR THE FURTHER FORMULATION AND IMPLEMENTATION  
OF THE OBJECTIVES OF AIR TRANSPORT POLICY

BASIC CONSIDERATIONS CONCERNING A COMMON AIR TRANSPORT  
POLICY

39. The reactions to the first memorandum and the wider discussion on European civil aviation which has taken place in recent years have made it clear that although the present regime has produced an extensive network of aviation services, the rigidities of the system (mentioned in the first memorandum) give rise to an increasing degree of public dissatisfaction. This criticism (not all of which is justified) has tended to centre on the civil aviation services provided within Europe; and the Commission is confirmed in its view that within the Community there is scope for introducing more flexibility and competition into the existing system without destroying it or losing the benefits that it has brought about. Flexibility is not, however, an end in itself. It should be regarded rather as the means to improving the services to the consumer and the profitability of the efficient and enterprising airline.
40. One strand of the public debate has been the argument that it would be impossible to adjust the intra-Community system without unacceptable repercussions on the world-wide international system. The Commission does not accept this argument. It does, however, accept that a system suitable for application between Member States of the Community will not necessarily be suitable for application on routes to third countries. It therefore proposes to concentrate on the improvement of the air transport system within the Community as a step towards the creation of a genuine Community market in aviation and a contribution to the improvement of the internal market in its wider sense.

41. The Commission equally realises that even changes limited in scope in this way may have some repercussions on the services provided by the airlines of the non-Community states of Europe and in formulating its proposals has kept this aspect very much in mind.
  
42. In formulating the Community's policy towards air transport, it is necessary to bear in mind the following considerations:
  - i. all Member States have airlines with a significant network of services; many of them are owned, financed or otherwise supported by their governments. Most, if not all, Member States would regard it as unthinkable that their airline should go out of business. Some expect the airlines to operate particular routes or a route system, or to retain redundant staff. This may be important for overall economic, political or social reasons but it is not always compatible with sound commercial management principles. Many Member States are thus reluctant to expose their airlines to a degree of competition which in their view would put these objectives at risk. Equally, many of the airlines operate at a loss, and did so even before the present recession, and the desire to avoid any increase in these deficits increases the reluctance of governments to expose their airlines to further competition.
  
  - ii. Under the present system of inter-airline commercial agreements, governmental bilateral treaties and arrangements, and bilateral governmental control of airline services, which was established after the war, an extensive route network and high quality services have developed. This system also enables governments to ensure that their airlines do not suffer from the operations of competitors to a degree that they consider unacceptable. The protection afforded varies but at its most comprehensive in effect ensures that the traffic carried and the revenue earned on services between

Member States is divided equally between their carriers. It is thus considered normal by them for any advantage which an airline obtains (e.g. by the use of better equipment or as a result of better marketing) eventually to be eliminated by bilateral negotiations between the countries concerned. This system of bilateral control has over the years developed an increasing degree of detail and sophistication.

- iii. The present system, despite some criticism expressed of it, does contain within it a limited degree of competition. Major scheduled airlines have always competed on service; and in particular the charter airlines and other modes of transport have provided a competitive stimulus. On the other hand the ultimate protection afforded by the possibilities of correcting commercial failure by diplomatic negotiations has for long periods reduced the incentive of carriers to apply to their own operations the sort of critical approach that undertakings in a more competitive environment are driven to. The current recession (and the consequential demands on governments for increased subsidies) has caused airlines to examine their operations more critically or has at least caused some governments to demand that they should. But it is likely that the effect of the recession would have been less dramatic if airlines had been subject to a steady and continuing commercial pressure to control their operations and their costs. It is also likely that a more competitive environment would reduce the temptation on governments to expect their airlines to employ more staff than they really need and to use types of aircraft which are not necessarily those commercially most suitable.

- iv. The Commission's studies show that although the level of air fares in Europe is frequently criticised and compared unfavourably with those in the U.S. or on the North Atlantic, they are not in fact in most cases unreasonably related to airline costs. A change in the procedures relating to the fixing of air fares to encourage experiment will not in itself produce lower average fares but may produce a wider range of fares as experience in recent years has shown in Europe. A change in these procedures together with application of other competitive pressure may however ultimately result in cost adaptations and thereby produce a generally lower level of air fares. Recent experience in Europe with overcapacity has shown this to be true. It is therefore important to consider changes in the fare fixing procedures together with changes in other elements of the market structure to ensure that sufficient commercial pressure is created to ensure that the underlying cost structure of airlines is changed.
- v. The airlines point out, validly, that there are significant cost elements (in particular fuel, ATC and airport charges) which they can influence very little. A study prepared by consultants for the Commission estimates the proportion of costs which are manageable by the airlines at about 40%. The table below shows how this result is arrived at. The figures may of course be open to debate but the Commission is prepared to accept them as giving the order of magnitude of manageable airline costs.



SCHEDULED AIRLINE COSTS

WITHIN EUROPE AND THEIR SUSCEPTIBILITY TO MANAGEMENT CONTROL

	<u>% of</u> <u>total</u>	<u>%</u>	<u>% of</u> <u>total costs</u>
	<u>costs of which</u>	<u>manageable</u>	<u>manageable</u>
Cockpit Crew Salaries and expenses	5.07	30	1.52
Fuel and Oil	19.85	5	0.99
Flight Equipment Insurance	0.69	0	0.00
Cockpit Crew Training	0.53	30	0.16
Other Flight Operations Expenses	0.62	25	0.16
Maintenance and Overhaul			
- Materials	1.24	15	0.19
- Burden	3.19	30	0.96
- Staff	3.31	30	0.99
Flight Equipment Depreciation	4.92	20	0.98
Ground Property Depreciation	1.13	20	0.23
Other Depreciation	0.25	20	0.05
Landing charges	4.07	0	0.00
Airport Passenger Charges	5.15	0	0.00
En-Route Navigation	3.61	0	0.00
Aircraft and Passenger Handling	12.22	60	7.33
Airport Navigation	0.85	0	0.00
Passenger Catering	4.02	100	4.02
Passenger Insurance, Misc.	0.50	0	0.00
Cabin Crew Salaries and Expenses	3.57	30	1.07
Advertising and Public Relations	3.80	80	3.04
Ticketing, Sales and Promotion Staff	14.62	80	11.70
Reservations	1.84	40	0.74
General and Administrative	4.47	80	3.58
Other Operating Costs	<u>0.50</u>	<u>25</u>	<u>0.13</u>
	100.00		37.84

Source : Alistair Tucker and Transportation Analysis International;  
Relationship between scheduled airline costs and fares in  
Europe, January 1983.

vi. Of the costs which lie beyond airline control, the high price of fuel will eventually lead, and is in fact leading, to the development of more fuel-efficient engines and airframes. On this aspect market pressures appear to be working. It is noted that the use of these new technologies also results in the manufacture of aircraft generating lower noise levels, which assists airlines to comply with the noise rules in force. On air navigation and airport charges it is frequently argued that the airlines could charge lower fares if, as in the U.S., at least a part of their infrastructure costs (in which for the purposes of this paper both Air Traffic Control and airport charges are included) were transferred to the tax payer. Airlines or their customers should (as should other modes of transport), in relation to normal commercial operations, pay the relevant economic cost of the facilities they use and those who provide such services, whether they be governments or other bodies, should make a reasonable return on their investment. Airports and ATC should, therefore, be efficiently and economically managed. See further paragraph 70.

43. It is sometimes claimed that the Community should adopt a similar policy of deregulation for intra-Community air transport as the U.S. has done for its domestic market. Whatever merits this policy may have in U.S. conditions the Commission considers that for the reasons developed above, there is no point in adopting it in the European context since a number of the underlying conditions which made deregulation possible in the U.S. do not exist in Europe. Thus, in contrast to the situation in the Community, the U.S. is a large unified domestic market reserved to U.S. carriers; it was accepted policy to end governmental

intervention in the market; and to accept the social and economic effects of such a policy. Furthermore, the U.S. has 20 major carriers all operating on a commercial basis and the U.S. Government can take a relaxed view on the fate of any one of them. The issue in realistic terms, therefore, is not whether the Community should deregulate air transport, but whether the present system can be made sufficiently flexible so as to contain within itself enough pressures to ensure that airlines increase their productivity and provide their services at the lowest possible cost.

44. At the heart of the problem lies the question of competition. In terms of the treaty, this means in particular considering whether the degree of airline co-ordination and governmental intervention which may be inevitable can be so organised that a fair share of the resulting benefit is passed on to the consumer. Any action taken on competition needs to be seen in the context of overall aviation objectives and be complemented by other measures designed to support it and in particular by a control of state aids, since otherwise there is a serious risk that any relaxation will do no more than lead to a subsidy race between Member States. Thus, in order to develop further the common air transport policy, the main guidelines should be :

- a) given the general preference for an evolutionary approach to the common air transport policy, the Community should seek to develop Community rules on how the existing system should be operated in relation to intra-Community services;
- b) it should introduce into the system sufficient flexibility and competition to ensure enough pressure on airlines to control costs, increase productivity and provide efficient and attractively priced services to the user; and to enable the efficient and enterprising airline to benefit;

- c) it should, to the extent possible, aim to reduce the costs which lie outside airlines' control;
- d) it should take into account public service requirements that some governments make of their airlines;
- e) it should have at its base the control of state aids to the air transport sector.
- f) it should not endanger the maintenance of high levels of safety.
- g) It should take into account the job prospects of those employed in the industry;
- h) it should include action in the field of research.
- i) it should ensure, to the greatest extent, the reduction of the noise exposure levels around airfields by implementing technologically feasible and economically reasonable measures.

#### ACTION ON COMPETITION

45. Competition between international scheduled airlines in the Community is determined by a framework which governs the operating conditions of this industry both at the level of the enterprises and at governmental level. In most cases competition is structured :
- i) on bilateral agreements and arrangements between Member States dealing mainly with the scope of traffic rights granted to each other's airlines, and also with questions of capacity and tariffs.

ii) on the basis of commercial and tariff agreements between airlines which determine the economic aspects of their operations.

46. The Commission considers that the main measures to be taken are the following :

- a) Community rules on certain points affecting the content and method of application of the bilateral agreements and arrangements which Member States conclude;
- b) action to amend the machinery for the settlement of air tariffs;
- c) action to limit the effect of commercial and tariff agreements between airlines.

In proposing the changes to existing practice which are set out in the following paragraphs, the Commission's objective is to introduce a significant relaxation of the present system. It considers that if these changes are adopted and implemented as a co-ordinated package, they will lead to more competitive services and thus to lower fares for the consumer without endangering the benefits which the existing system has so far produced. It wishes in particular to remove the blocks which at present inhibit innovative and competitive airlines and enable both them and the consumer to benefit from such airlines' enterprise. The changes that these measures will induce should, and in the Commission's view will, come gradually and thus give the airlines and their employees time to adjust. In these circumstances the Commission believes that, when linked to the changes in Governmental procedures referred to at (a) and (b) above, an exemption, limited in time and subject to conditions, of the agreements referred to at (c) above would be justified under article 85(3).

Action with regard to the content and application of  
bilateral agreements and arrangements

Capacity and revenue sharing rules

47. If the system is to be made more responsive to the requirements of the market place the regulatory framework must be relaxed in order to allow more room for the airlines to compete. It would therefore be essential that Member States accept :
- i) that pooling agreements between airlines whether of capacity or revenues, are not made a condition of operations under the bilateral agreements;
  - ii) that they should not insist on a rigid 50/50 share of the traffic in services between their country and other members of the Community. At the same time the Commission acknowledges that total market domination by one side would not be acceptable to most Member States and takes the view that the bilateral agreements could, if Member States wish, contain safeguards against it. Thus, Community rules should provide that in agreements and arrangements with each other Member States should not seek to regulate capacity provided in such a way that any one party is guaranteed a traffic share of more than 25%. This would at the same time permit a greater degree of competition and assure a Member State that its airline would have as a safety net a level of operation below which it could not fall without the consent of its own government.

At Annex I is a draft Decision designed to give effect to this proposal.

Modification of the 1981 air tariff proposal

48. The Commission's proposal (1) has been the subject of considerable debate in the Community's institutions and elsewhere. The Commission thinks it should amend its original proposal to take account of their discussions, and in particular of the opinions of the Economic and Social Committee and the European Parliament. The revised proposal should in its view also reflect such recent developments in the economic and regulatory environment as the agreements between the U.S. and certain E.C.A.C. states on the establishment of a number of reference tariffs, and for zones of reasonableness i.e. a pricing range within which the airlines can establish their tariffs freely without seeking government approval. This concept has also been examined by E.C.A.C. in its report on competition in intra European air services (2). It seems to the Commission that this concept has considerable merit in the Community context.
49. The amendments proposed by the Commission are at Annex II. The proposal as amended would leave airlines and governments free to decide what type of fares the one should propose and the other approve. It accepts that airlines should be as free as possible to decide what sort of tariff suits their commercial needs; and is encouraged by the fact that the airlines are actively considering whether and in what form zones of flexibility might be used in Europe. The Commission noted the reluctance on the part of the Parliament and the Council to establish an arbitration procedure as originally proposed. On the other hand the Commission also noted that the procedure in the 1967 convention has not been used to resolve problems which have arisen. The Commission therefore proposes a procedure which obviates the need for arbitration. The proposal varies the degree of governmental

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(1) OJ No C 78, 30.3.1982, p. 6

(2) European Civil Aviation Conference (E.C.A.C.), Report on competition in Intra-European Air Services, Paris 1982.

control in accordance with the flexibility permitted to individual airlines. Airline pricing would be subject to double approval i.e. by both Governments if it included zones of flexibility with a minimum percentage range. Within the zones the fares would be free, or subject to double disapproval or to country of origin approval at the choice of the states concerned. If the fare proposal was an individual air fare and a dispute arose between governments, the governments would be expected to consult each other and seek an agreement. If this proved impossible, in the end the country of origin would be permitted to go ahead unless the country of destination accepted two zones of flexibility for the route in question. The proposal thus seeks to ensure in a much more direct way than through arbitration that the system of governmental approval (which will be reflected by the proposal made later in this paper on the system at the commercial level) gives adequate scope for the introduction by airlines of innovative and enterprising fare policies. The proposal also encourages a more direct contact with user representatives.

Action with regard to agreements between airlines

50. Agreements between airlines determine the operational modalities of their commercial co-operation. Their main features are scheduling agreements (1), capacity and revenue sharing in varying degrees and tariff agreements, whether multilateral or bilateral.

Capacity sharing

51. These are agreements between airlines with the object of fixing the numbers of seats offered by them, very often on a 50/50 basis. Such agreements have certain merits in that they help to ensure a spread of services in the less busy periods and in some cases on the less busy routes. On the other hand

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(1) This paper does not consider scheduling agreements further. An exception is already included in the present proposal for a competition regulation.



they can result in rather uniform market features as regards the type of aircraft and the services offered to the customer; and they tend to disadvantage the more efficient airlines. In the Commission's view taking into account the consideration set out in paragraph 46 capacity sharing agreements between airlines (or equivalent arrangements) should be permissible though not obligatory, provided that any party may withdraw from such an agreement on giving a reasonably short period of notice.

Revenue sharing

52. Agreements between airlines usually contain clauses on revenue sharing aimed at equalising (open pools) or almost equalising (limited pools) the revenue of the pool partners. Joint operations are special forms of pooling (para.55).
53. It is obvious that pooling agreements can be used as an effective instrument to restrict whatever competition might otherwise have taken place. In this respect pool agreements would be contrary to article 85.1. On the other hand revenue pools may provide an incentive to operate outside the profitable periods and thus improve the service to the consumer.
54. This leads the Commission to the view that revenue pools should be permitted if they meet certain criteria. The Commission is quite clear that open pools which simply distribute the revenue between the two airlines, on the basis of the capacity offered, cannot be exempted under article 85.3. There must be a limitation on the level of revenue sharing which can result from a pool agreement. These limitations must be based on the possibilities of exemption which are open under article 85.3. The revenue sharing resulting from a pool agreement must therefore be clearly related to the improvement in air transport service resulting from the agreement; it must represent the give and take of

schedule compromises with the minimum anti-competitive effect. The improvements may be with respect to the service itself or to the cost effectiveness of the service. From the investigations it has made the Commission is prepared to accept that a pool which limits the transfer of revenue from one airline to the other to 1% of the poolable revenue would qualify for a group exemption under article 85.3. All other revenue sharing agreements exceeding that ceiling would be subject to specific scrutiny in each case in order to determine whether they would qualify for exemption under article 85.3.

#### Joint operations

55. There are cases where a single airline operates on a route, or a route system, on the basis of a joint cost and revenue sharing agreement with its counterpart. In some cases these agreements allocate one route to one airline and one to the other, both being operated in their joint interest. Whether or not such agreements comprise a serious restriction of competition will depend on the circumstances prevailing. For this reason the Commission is clear that such agreements cannot benefit from a group exemption because competition is deliberately excluded from the route. However, there might be a case for an individual exemption where only a single airline could operate economically both from the point of view of the airline and the consumer or where, for example, it was necessary to facilitate shuttle services or other innovative services which clearly benefit the consumer.

#### Action with regard to tariff consultations

56. The responses given by the Member States to the Commission's inquiries on responsibility for tariff negotiations and agreements do not give a clear-cut picture. It seems that the exact role of airline and government varies with the state concerned and that responsibility is in varying degrees shared between them. Certain aspects of tariff fixing, as at present practised, may be contrary to articles 85 and 90.

57. Most Member States of the Community as well as a large majority of ICAO Member States regard tariff consultations between airlines as an essential element in their air transport policy and they often expect their airlines to conduct such consultations subject to government approval. Undoubtedly, tariff consultations between airlines restrict competition and result in an economic advantage to the air carriers. But on the other hand the system has allowed the provision of reliable, high quality services to the consumer. For the reasons set out in paragraph 46 the Commission is inclined to accept such consultations provided they also confer an equivalent advantage to the consumer, that they are not unduly restrictive and that a reasonable degree of competition is ensured.
58. With this in mind the Commission considers that conditions for granting a group exemption to tariff consultations would be met if :
- i) airlines had an effective right of independent action, both in terms of proposing tariffs independently of other airlines, and in terms of freedom to implement such tariffs, subject only to the limited government control described in paragraphs 48 to 49.
  - ii) The Member States concerned and the Commission were enabled to participate as observers in tariff consultations.

Nature of exemptions

59. The Commission takes the view that given the circumstances of the situation that a more competitive regime is desirable but that airlines should have a period in which to adjust, it would be wise to limit the intended group exemptions to 7 years and review them at the end of that period.

60. Annex III A is an amendment to the draft Council Regulation laying down the procedure for the rules on competition applying to undertakings in the air transport sector, transmitted to the Council on 18 November 1982. It limits the scope of the Regulation to international air transport between Community airports. Annex III B sets out a proposed Council Regulation empowering the Commission to grant group exemptions in certain cases. Annex III C contains the essentials of a Commission Regulation granting such group exemptions in pursuance of the Council's enabling power. Annexes III B and C have been drafted in the light of the Commission's present knowledge of the commercial agreements actually in force. The Commission reserves the right to open proceedings for infringement of the Treaty against those Member States which have not adequately replied to its request for information.

ACTION ON STATE AIDS

61. The Commission is aware that the relaxation in the existing regulatory system sketched out in the previous chapters will not work without taking state aids into consideration. The responsibility for implementing art. 92 and 93 of the Treaty concerning state aids lies with the Commission. It is clear, that unless the state aids rules are adequately applied any increase in competition between airlines could result in the financing of such competition out of state aid; in short a subsidy race. This is manifestly undesirable.

62. In order to clarify its intentions in this matter for the Member States and the civil aviation sector the Commission has prepared the attached document (Annex IV) which establishes guidelines in this area. The following is a summary of the main considerations to which the Commission will have regard.
- a) Member States must respect their obligations under article 93.3 to notify all proposed state aids or alterations thereto in advance, so as to enable the Commission to take a position on them. The aids must be transparent in the sense that their effects can be controlled. The Commission will prevent the granting of state aids from resulting in a transfer of the difficulties of the enterprise of one Member State to those of other Member States of the Community.
  - b) The Commission considers that, despite recent difficulties, the Community's air transport sector should normally be capable of coping with market forces. The Commission, therefore, believes that article 92, should be applied to civil aviation in the same way, mutatis mutandis, as to other economic sectors. Some Member States consider that certain aids compensate for the imposition of a public service obligation on their airlines. The Commission considers that the possibilities under the Treaty and in particular article 92.3 provide sufficient flexibility to handle the specific cases of which it has knowledge or which may be notified in the future. However, it will keep this subject under review. In addition, the Commission, in considering individual state aid cases, take into account whether undertakings fall within the scope of article 90.2.
  - c) The Commission in its application of the state aid rules will give primary attention to the intracommunity aspects. It will operate these rules in such a manner as not to put Community carriers at a competitive disadvantage with carriers from third countries, who are either subsidised or otherwise benefit from preferential treatment.

- d) The provision of capital, loans or of guarantees by a Government to an airline which it owns may constitute either an aid, a normal commercial transaction between the owner of an enterprise and that enterprise or a mixture of the two. Therefore it has to be determined in particular cases if there is an aid element and if so whether it is justifiable.
  
- e) The Commission can only authorise aids where there is a compensatory justification in terms of the common interest. Aids whose main purpose is to cover an airline's operating loss would not normally be considered as being compatible with the common market. However, in cases where the financial situation of an airline company is particularly precarious but where real possibilities for improvement exist the Commission could authorise the aids required for recovery of the enterprise provided that these interventions were an integral part of a programme containing adequate measures for restoring the financial viability and competitiveness of the enterprise within a reasonable time period.
  
- f) Subject to the facts of particular cases, aids to assist air services in economically under-developed regions of the Community would be acceptable, provided the difficulties of the region were assessed in a national and Community context.
  
- g) The Commission will, in general, tend to accept aids which are provided to facilitate the operation of domestic routes. In particular, the Commission considers that aid granted to purely domestic airlines, which do not have any direct or indirect links with international airlines is unlikely to fall within the terms of article 92 et seq. of the Treaty. Nevertheless such aids would be incompatible with the common market if they had the effect of diverting significant volumes of international traffic into the Member State in question or of allowing carriers to cross-subsidize their international operations.

- h) Aid provided to airlines to encourage the purchase and operation of specific aircraft would not be considered as conferring a benefit on the airline, provided such an aid merely covered the additional costs to the airline of purchasing and operating an aircraft other than the optimum from its commercial viewpoint, but as an indirect aid to the manufacturer, and would be assessed as such.

Consideration by the Commission of Existing Aids

63. All the Member States have supplied information to the Commission on the State aids granted by them and/or on their financial relations with airlines. The Commission is therefore in a position to review, in cooperation with each Member State, under the provision of article 93.1. the system of aid existing in the Member States, which were not notified in advance to it. If, as a result of this examination, it concludes that action should be taken on certain aids, it will ensure that the different Member States are treated equitably.

Legislation on state aids

64. The commission is considering the extension of its transparency directive (1) at an appropriate time. It would use the opportunity of such an extension to apply its provisions also to air transport.

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(1) Commission directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings in OJ L 195, 29.7.1980, p. 35.

Implementation

65. The measures advocated in paras.47-49 and 61-64 apply to the activities of governments and those advocated in paras 50-60 apply to the airlines as the commercial operators. The resulting Community action stems either from provisions of the Treaty that give direct powers to the Commission, and are directly applicable, such as articles 89, 90, 92 and 93, or it stems from articles 84.2 and 87 which require action by the Council. The various elements of the policy advocated above for airline and government activities obviously interact on each other and should be regarded as a whole. They should therefore, in the Commission's view, be enacted in parallel.
66. The Commission realises that these ideas, although in its view reasonable and moderate, will require time for discussion and acceptance. This period should not be too long and it preserves the freedom to initiate direct action on the basis of articles 89 and/or article 90 against particular commercial and tariff agreements between airlines, which infringe article 85, and against any practices which constitute an abuse of a dominant position under article 86 without waiting for the adoption of the legislation described above. It will proceed on its own responsibility to the examination of individual cases of state aids to airline companies in accordance with the principles set out in this paper.

MEASURES DESIGNED TO REDUCE AIRLINE COSTS

Infrastructure

67. The Commission has recently received the results of a study on capacity constraints for air transport in the Community. The study covered the capacity with respect to airports and air traffic control. It concluded that there were serious



inadequacies in the air route system, in particular countries or locations in Europe. Constraints resulted from physical organizational, procedural and political difficulties at local, national and international levels within and between the components of the industry and their operating agencies. The Report found significant shortcomings in the present Air Traffic Control (ATC) system but concluded that air carriers and airport operators are also partly responsible. Airport congestion, affecting carriers and consumers, was identified as an important problem for major airports. Furthermore, airlines complain about the level of charges made for the use of airports and the present system of slot allocation at peak periods may lead to a misallocation of resources.

68. In deciding the role of the Community in this area it is necessary to bear in mind the existing national or international arrangements; it would serve no useful purpose if the Community were to duplicate the work of bodies that already existed. ATC is covered by the subordinate regional bodies of ICAO and Eurocontrol.
69. It is not the intention of the Commission to involve itself directly in questions of ATC or airport investment and management. Given, however, the pressures which the proposals contained in this document will place on airlines, the Commission thinks it reasonable to seek to ensure, insofar as it can, that the infrastructural services on which the airlines have to rely, but in the operation of which they themselves have very little influence, are efficiently provided. To this end, it proposes :
- a) to study the ATC problem and publish the results and to draw the attention of the national authorities to any deficiencies of the system which in its view unreasonably handicap the airlines; and press for removal of such deficiencies;

b) to study, in consultation with all interested parties, the possibility of evolving efficiency criteria for airports which will enable a judgement to be made on their relative efficiency; it is not clear to the Commission whether efficiency criteria can be evolved relating to ATC services but it will consider with Member States whether it can be done.

70. The Commission will in due course develop a proposal for the Council on the implementation of common principles for user charges at major airports which will take into account (mutatis mutandis) those currently being evolved for surface transport.

Facilitation of air freight transport

71. To compete in the freight market air transport has to emphasize its primary characteristic of speed. It is important that this advantage is not negated by slow and cumbersome procedures on the ground. The Commission will present in 1984 a report concerning the existing difficulties for intracommunity air freight. It is already emerging from the study that the causes of certain problems can be found, for example, in time-consuming procedures for cross-border purposes, handling procedures, communication between airlines, shippers, freight forwarders and customs services (etc.). These difficulties seriously inhibit the development of intra-community air cargo services.

72. Some of the problems will be solved through the Council's recent directive, "on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States" (1) but it will be necessary to act in other areas also, be that at Community, national or airline level. The Commission intends to submit an appropriate proposal to the Council in 1984.

OTHER MEASURES

Access to the market

73. As has been stated earlier in this paper the civil aviation industry in the Community is dominated by the large, nationally owned or controlled airlines. In some Member States there is the policy (sometimes embodied in legislation) that the national airline should have a monopoly of scheduled services. In most Member States other airlines exist, but they tend to be limited in their operations by the preference given by the state to the national airline.
74. It seems to the Commission that the civil aviation industry would be given a stimulus and the services provided to the consumer improved if it were easier for smaller airlines to operate scheduled services. In many bilateral agreements between Member States there are rights to operate routes which are not at present being utilised. Many of these will be thin and capable of being profitably operated only by airlines with small aircraft which are better adapted to these routes. In the Commission's view it may be possible to stimulate the development of such airlines without significant damage to the major airlines if Community rules provided that, where unused rights exist in bilaterals, any

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(1) OJ No L 359, 22.12.1983, p. 8

airline of either of the two states involved should be allowed by its home state to operate without the necessity of a detailed justification or the insistence on a reciprocal operation. Such an obligation could, however, if a Member State so desired, be made subject to the offer of first refusal to the route of its own national airlines. The Commission understands that a system similar to this is being operated with success within Scandinavia and considers that *mutatis mutandis* it could with benefit be adopted on international routes between Member States of the Community. This would in itself be a relatively minor innovation but it would serve as a useful complement to the more important changes suggested elsewhere in this paper and respond to the suggestions expressed by the European Parliament in its resolution on restrictions of competition in the air transport sector (1). In order to put this innovation into practice Member States should generalize in their bilaterals the possibility of designating more than one national airline for the operation of intracommunity services.

75. Another possibility, which might complement, or possibly replace the idea in the previous paragraph would be to abandon any restrictions (subject of course to the usual safety and fitness regulations), on services run by any Community operator on routes between Member States of the Community with aircraft containing no more than, say, 25 seats. Such services would have no significant impact on the services run by the major operators, would tend to stimulate aviation activity and thus employment in the industry and would encourage the development of thin routes to and from areas which have few if any air connections.

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(1) OJ No C 291, 10.11.1980, p. 60

Non-scheduled services

76. Since the distinction between scheduled and non-scheduled services was first made, in the Chicago Convention, the scope and nature of non-scheduled services has expanded to such an extent that over half of air transport (in passenger-km) within Europe is carried out on non-scheduled services. The prices charged are in most cases uncontrolled and the market is highly competitive. The market is primarily bilaterally organised (e.g. only the German and Italian charter companies participate in the non-scheduled traffic between Germany and Italy) but the services are not normally covered in the bilateral agreements in the way that scheduled services are. Most of the traffic is inclusive tour traffic, mainly originating in the UK, Germany, Benelux and Scandinavia. In all these markets the airlines of the receiving states are free to bid for the business on the same terms as the airlines of the originating states.
77. The conditions subject to which non-scheduled traffic may be carried out vary from Member State to Member State and they sometimes differ from those imposed by the receiving state. The conditions themselves are designed to avoid undermining the scheduled services which Member States (for political, social or other reasons) wish to maintain.
78. In the Commission's view non-scheduled services are an important competitive element in the total air transport system which to some extent acts as a control on and a stimulus to the services provided and fares charged on scheduled services. Those airlines operating in the market are enterprising and they frequently modify the services offered (destinations, frequencies, etc.) in response to a demand which is met and sometimes created by them.

79. It would be ideal to have uniform rules applicable in both countries of origin and destination of the services and uniform rules in the Community for the operation of non-scheduled services. The Commission fears however that any attempt to produce such criteria for the operation of non-scheduled services would tend to rigidify the system; and therefore limits its proposals to two main changes.
80. There are many places, particularly in holiday areas, which are not directly served by scheduled services. There are equally other places where scheduled and non-scheduled services co-exist and where the competition between them is regulated by the conditions imposed by the Member States. In all these cases, the Commission considers it reasonable that a small percentage (such as 15%) of the seats available on non-scheduled services should be available for sale on a "seat only" basis. In the former case, it would cater for those who do not want to buy the inclusive tour ticket and would eliminate the "throw away" hotel reservation, and on other routes would introduce an element of competition with the scheduled services which would serve as a control on and a comparison with the fares charged on the normal scheduled services. At the same time the low percentage of such seats offered and the control which Member States would continue to exercise over these services would ensure that the basic system of scheduled services which Member States, at least at present, wish to preserve is not endangered.
81. The second change concerns the carriage of cargo and mail. At present non-scheduled passenger services are generally not allowed to carry cargo and mail. The Commission has received conflicting indications of whether the operators of non-scheduled services are in fact interested in carrying it. It seems to the Commission, however, that once a non-scheduled service has been authorised, it should be allowed to operate in an as efficient and cost-effective way as possible and that non-scheduled services should not be prevented from bidding for this business.

82. The Commission will make proposals designed to bring about these changes which were also recommended by the European Parliament in its resolution on restrictions of competition in the air transport sector (1). They will apply to countries both of origin and destination within the Community. The Commission will keep developments in this area, in particular with regard to the organisation of the market and competition under review.

Social matters

83. Social questions in air transport should as in other sectors of the economy in the first place be resolved within the broader approach on social policy of the Community. In addition to these broader considerations, there may also be specific problems for the air transport sector, as mentioned in the priority list of the Council of 1978. These could be dealt with through legislation specific to air transport and based on article 84, par. 2. Possible social consequences of Community legislation in air transport must naturally also be discussed with both sides of the industry, as was also emphasized by the European Parliament (2). The Commission will examine in more detail institutional aspects suitable in this respect.
84. Civil aviation inside the Community provides some 300.000 jobs directly and probably another 200.000 indirectly. It is extremely difficult to quantify the impact of the suggested initiatives on these figures. In the Commission's opinion any changes induced will be gradual. These should result in greater productivity in the airlines but they should also stimulate activity by opening up opportunities for carriers and thus in total have a long-term positive effect on employment.

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(1) OJ No C 291, 10.11.1980, p. 60.

(2) OJ No C 291, 10.11.1980, p. 65.

85. One area the Commission has for some time examined is the mutual recognition of licences. It seems sensible within the Community that certain licences issued in one Member State as well as training and qualifications obtained should be recognised by the others; this will enhance job prospects of airline employees affected and will give effect to the Treaty provisions concerning the free movement of persons.
86. Concerning the working conditions, the Commission has ordered a study on national regulations concerning flight time limitations of flying staff. It is very often claimed that the rules imposed by some countries are too lax and that certain airlines are cutting their costs by exploiting staff beyond safe levels. On the basis of the results of this study, the Commission will consider whether any action is necessary in this area.

#### Research

87. As in inland transport the Commission is working, on the basis of the objectives of the Commission's broader research programme for the development of modern technologies, on research proposals for new or improved technologies. Its aim will be to complement the research that already takes place rather than to seek to duplicate research done or likely to be done elsewhere. The Commission is developing a research programme for air transport which will be submitted to the Council for approval in 1984.

#### Aircraft noise

88. The policy in this area, is undertaken within the general requirements of the Treaty of Rome, the aims of which include the protection and improvement of the environment and are to ensure that there is no distortion of trade, economic distortions or technical barriers to trade within the Community. Aspects of the first two action programmes on the environment (1) are emphasized in the third action programme (2) which reaffirms the aim of promoting the use of quieter

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(1) OJ No C 112, 20.12.1973 - OJ No C 139, 13.6.1977

(2) OJ No C 46, 17.2.1983, p. 1.



aircraft and stipulates that greater consideration is to be given to the socio-economic consequences of any measures that are adopted. The Commission will continue to take into account the agreements reached in ICAO, ECAC or ISO organizations, and to use to the greatest extent possible the results of international research, for determining its actions in the field of aircraft nuisance in the environment.

General aviation

89. According to Annex 6 to the Chicago Convention, general aviation is defined as : "all civil aviation operations other than scheduled air services and non scheduled air transport operations for remuneration or hire". It constitutes a market which cannot be ignored. Its influence on other sectors of the economy is felt indirectly by gains in productivity, etc. which assist in the development of these sectors. Community action could be beneficial to general aviation in three areas, personnel, aircraft and customs formalities :
- i) as regards personnel, the Commission is presently considering taking action in connection with the mutual recognition of licences (see para. 85).
  - ii) concerning aircraft, the Commission notes that the criteria and equipment required for obtaining a certificate of airworthiness for an imported aircraft vary from state to state; this causes relatively significant costs for the buyers of second-hand aircraft and may constitute therefore a restriction on trade between Member States. A mutual recognition of certificates of airworthiness for aircraft weighing less than 5.700 kg. would permit an alleviation of this obstacle and the Commission will open discussions with interested parties about it.
  - iii) in the area of customs formalities, it should be noted that, contrary to the current practice in surface

transport, general aviation users are submitted to complete customs formalities both on departure and arrival. This forces them very frequently to undertake detours and intermediate landings which are expensive in time and operating costs. A Community action allowing controls to be limited to either the airport of departure or arrival would give tangible evidence of European integration and the Commission will consider whether action in this area is necessary.

#### INTERNATIONAL RELATIONS

90. Although the Commission proposals are restricted to air transport between Member States of the Community, there may obviously be some repercussions for other countries, and in particular for neighbouring European countries who are members of ECAC. Member States will have an obligation under article 234 to take appropriate steps to eliminate provisions in agreements with third countries which are incompatible with the regime which is eventually agreed for the Community. The Commission accepts, however, that these third countries will have their own priorities, that in many cases the circumstances of these routes differ considerably from those of the Community, and that in consequence the regime adopted will vary widely. In addition, it is clear that any changes in the air services provided within the Community will affect, in varying degrees, those provided to and from immediately neighbouring states. As indicated earlier, the Commission has tried to take this into account. Further, it believes that any changes brought about by its proposals will be gradual in their effect and that the other ECAC states and their airlines will have adequate time to adjust. It will in any case seek to develop closer consultation with these states with a view to avoiding any problems that might otherwise arise. In some cases, such machinery already exists (e.g. with Norway and Sweden because of their participation in the SAS Consortium) and the Commission attaches great importance to it.

91. The Commission has, pursuant to Article 229, entered into co-operation agreements on behalf of the Community with the European Civil Aviation Conference (ECAC) and Eurocontrol.
92. The Community has already established legislation in certain areas that come within the purview of ICAO (e.g. noise control, and facilitation). The Commission will seek to develop co-operation with and participation as an observer in the work of ICAO.

PROCEDURAL MEASURES

93. The Commission is of the opinion that non-discrimination provisions and a standstill clause, similar to the one contained in Article 76 of the Treaty, would also be useful in the air transport sector in order to prevent the increase of discriminatory measures in the Member States as regards the provision of air services. Consequently it is presenting (Annex V) a proposal for this purpose to the Council. It is desirable that the existing situation should not be made less favourable in its effects on carriers of the other Member States while the package is being discussed. This decision should therefore be adopted as quickly as possible.
94. In addition to the proposals set out in Annexes I-III and V, to this Communication, Annex VI contains a detailed work programme up to 1986, as suggested by Parliament. The Programme has been formulated in the light of the policies developed in this Communication.

ANNEXES

- Annex I            Proposal for a Council Decision \_\_/\_\_/EEC on bilateral agreements, arrangements and memoranda of understanding between Member States relating to air transport;
- Annex II           Amended proposal for a Council directive \_\_/\_\_/EEC on fares for scheduled air transport between Member States;
- Annex III          A. Amendments to proposal for a Council Regulation (EEC) laying down the procedure for the rules on competition applying to undertakings in the air transport sector
- B. Proposal for a Council Regulation (EEC) on application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector
- C. Content of an intended Commission Regulation (EEC) exempting certain commercial agreements and concerted policies in the air transport sector.
- Annex IV           State aids to air transport - Policy paper and guidelines;
- Annex V            Proposal for a Council Decision \_\_/\_\_/EEC on non-discrimination and standstill provisions in air transport.
- Annex VI           Programme of Commission's initiatives in the field of Civil Aviation 1984-1986.

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Proposal for a Council Decision \_\_\_/\_\_\_/EEC on bilateral agreements, arrangements and memoranda of understanding between Member States relating to air transport

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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 submitted by the Commission,

Having regard to the opinion of the European Parliament (1),

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

Whereas, in order to introduce sufficient flexibility and competition into the air transport system in the Community and to ensure a degree of pressure on airlines to control costs, increase productivity and provide efficient and attractively-priced services to the consumer, airlines registered in Member States should be free from any state obligation to enter into capacity- and revenue-sharing agreements between each other;

Whereas, to enable efficient and enterprising airlines to benefit, Member States should not normally refuse capacity increases and/or reductions of the airlines designated by other Member States;

Whereas, in order to reasonably safeguard the job prospects of those employed in the industry, Member States should be able to intervene if the traffic share of their airlines have fallen below a given percentage;

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(1)

(2)

Whereas Member States, after consulting the Commission, should modify the provisions of their bilateral arrangements which are contrary to this Decision;

HAS ADOPTED THIS DECISION :

#### Article 1

Member States shall not for scheduled air transport

a) require, in respect of any route between itself and another Member State, an airline to enter into any agreement with another airline providing services on that route relating to :

- capacity sharing, including provisions as to the share of the traffic to be carried,
- revenue sharing;

b) refuse capacity increases and/or impose capacity restrictions on airlines designated by another Member State for services on routes between itself and that other Member State,

unless the scheduled traffic share of the airline(s) it has designated for the operation of the routes between itself and that other Member State has, during the previous 6 months, been less than 25 % of the total scheduled traffic carried by the airlines designated by itself and that other Member State for those routes.

#### Article 2

The total scheduled traffic between the two Member States shall for the purpose of this Decision not include direct transit and transfer traffic or traffic resulting from the application of Council Directive 83/416/EEC of 25 July 1983 concerning the authorisation of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States (3).

Article 3

The Commission shall make a report, every three years, on the implementation of this Decision. To this end, Member States shall provide the Commission with all relevant information and in particular shall, once a year, send to the Commission a list of cases where they have imposed capacity reductions or refused capacity increases as referred to in Article 1 above.

Article 4

After consulting the Commission, Member States shall, before ....., make the necessary adaptations to all bilateral agreements, arrangements and memoranda of understanding with other Member States, which contain provisions contrary to this Decision.

Article 5

This Decision is addressed to the Member States.

Amended proposal for a Council Directive .../.../EEC on fares  
for scheduled air transport between Member States

Old textNew textPreamble

Whereas the adoption of this measure together with the Council Regulation laying down the procedure for the rules on competition applying to undertakings in the air transport sector (1), the Council Regulation on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (2) and the Council Decision on bilateral agreements, arrangements and memoranda of understanding between Member States relating to air transport (3) should bring about substantial economic progress in the air transport sector with resulting benefits to the consumer.

DirectiveSCOPE AND DEFINITIONSArticle 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 between a point in one Member State to a point in another Member State.

Article 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,

Article 1

This Directive shall apply to government procedures and criteria to be applied with respect to the establishment of scheduled air fares charged by air carriers for carriage of passengers between a point in one Member State to a point in another Member State.

Article 2

For the purposes of this Directive

- a) Scheduled air fares mean the prices to be paid in the applicable national currency for the carriage of passengers

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(1)  
(2)  
(3)



baggage and freight, in accordance with the conditions under which those prices apply, including prices and conditions offered to intermediaries;

and baggage on scheduled air services, 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;
- b) Zone of flexibility means a pricing zone grouping together air fares with similar characteristics within which double approval is not required. The range of a zone is calculated as a percentage of its upper limit.
- c) Fixed individual air fare means a scheduled air fare established outside a zone of flexibility;
- d) 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 ;
- e) A third freedom air carrier means an air carrier having the right to put down, in the territory of a foreign country, passengers, freight and mail taken in the country in which it is registered.  
  
A fourth freedom air carrier means an air carrier having the right to take on, in a foreign country, passengers, freight and mail, for off-loading in its country of registration.  
  
A fifth freedom air carrier means an air carrier having the right to undertake the commercial air transport of passengers, freight and mail between two countries other than its country of registration.

- 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 service traffic between the same two or more points, either
- (1) according to a published time-table, or
- (2) with flights so regular or frequent that they constitute a recognized systematic series.
- f) State of origin means the Member State from which the carriage commences in respect of which an air fare is established, i.e. both for single and return air fares;
- g) State of destination means the Member State in which the carriage terminates in respect of which an air fare is established;
- h) States concerned mean the state of origin and the state of destination;
- i) Scheduled air service means a series of flights each possessing all the following characteristics :
- i) it passes through the air space over the territory of more than one Member State;
- ii) it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that each flight is open to use by members of the public;
- iii) it is operated so as to serve traffic between the same two or more points, either
- (1) according to a published time-table, or
- (2) with flights so regular or frequent that they constitute a recognizably systematic series.

CRITERIAArticle 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.

Article 3

1. States concerned shall for a route approve fixed individual air fares and/or zones of flexibility in accordance with article 5 and 6.
2. The States concerned shall take all appropriate measures to ensure that air fares established for a route, whether as fixed individual air fares or within zones of flexibility
  - a) are reasonably related to the costs of the applicant third or fourth freedom air carrier operating on that route while allowing for a satisfactory return on investment and taking due account of the market place;
  - b) generate sufficient revenue to cover the direct operating costs of the individual third or fourth freedom air carrier on the route in question;
  - c) have due regard to the requirements of significant user categories and encourage the development of demand by new categories of users while the fare structure remains 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 tariff, which has been approved for another airline in accordance with the 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 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 4

Member States shall permit air carrier(s) at the option of each individual air carrier to propose fixed individual air fares and zones of flexibility and file air fares either :

- a) following consultation with any other air carrier(s) provided the consultations take place under the conditions of a Commission Regulation laid down subject to Regulation (EEC) N° (2).

or

- b) individually.

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\* This subject has been moved to article 5.7.

(2)

## II.6

### 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.

### Article 5

1. Without prejudice to the provisions of Article 6 hereof, fixed individual air fares and zones of flexibility shall be approved or decided by the States concerned and remain in force until replaced.
2. For this purpose third and fourth freedom air carriers(s) shall be invited to submit proposals to the States concerned.
3. Such submission may be required by those States not more than 60 days before the entry into force of the fixed individual air fares and zones of flexibility.
4. Decisions on a zone of flexibility shall be given expressly by the States concerned.
5. Within a zone of flexibility States concerned shall permit third or fourth freedom air carriers to charge air fares at their own choice provided those air fares have been filed with the States concerned not later than 14 days before their entry in force, unless those States agree to :
  - exercise a system of double disapproval;or
  - exercise a system of country of origin approval.

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.
6. Fixed individual air fares shall be submitted for double approval to the States concerned.  
Approval may be given expressly, but unless one of those States decides otherwise within 30 days following the submission the proposed air fares shall be considered as approved.
7. States concerned shall permit an air carrier operating a direct or indirect scheduled air service on a route to match an air fare approved for that same route provided the indirect air service is not more than 20% longer in distance than the direct service.

#### 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

#### Article 6

1. When a State concerned (hereinafter called the first State) decides not to approve or agree a fixed individual air fare and/or a zone of flexibility in conformity with Article 5(4) or 5(6), it shall inform 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 fixed individual air fare and/or the zone of flexibility shall not come into force.
3. If the second State disagrees with the decision of the first State, it shall so notify the first State within two weeks of being informed and request a consultation. The first State shall make its representatives available at short notice for consultation on the fixed individual air fare or zone of

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 where the other state concerned within this period refers the matter to the Commission for decision under paragraph 6.

flexibility. 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 fixed individual air fare or zone of flexibility. One of the two States concerned may request the Commission to be present at the consultation.

4. If, at the expiry of one month after the date on which the second State was notified, disagreement still persists with respect to existing services, the State of origin may, subject to Article 3, approve either fixed individual air fares or zones of flexibility, provided that it may not give such approval where the other State has agreed or is prepared to agree to zones of flexibility for at least two products on the route or routes in question, which respect the criteria set out in paragraph 5.

5. The criteria which the two zones of flexibility referred to in paragraph 4 must satisfy are as follows :
- (a) each zone must have a minimum range of 25%; and
  - (b) the first zone shall extend at least 15% on either side of the existing air fare for economy class and the other zone shall be situated below the first and cover restricted use air fares.

6. Fixed individual air fares or zones of flexibility approved under paragraph 4 shall come into force two weeks after approval.
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.
7. Where no agreement is reached under the procedure set out in paragraph 3, or where action is taken under paragraph 4, the Commission shall be informed thereof by the second State or the State of origin respectively.
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 state 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

##### 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.
1. At least once a year, the Commission shall consult with representatives of air transport user organisations in the Community, including the Federation of Air Transport User Representatives in the EEC (FATUREC), on air tariffs and related matters, for which purpose the Commission shall supply appropriate information to the participants.



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.
2. Member States shall encourage the establishment within their territories of committees representing airline users if no such committee exists.

3. Users shall at all times be enabled to acquaint themselves with the rates and conditions of carriage applied by the airlines. Particulars to be specified shall include the exact extent of the services covered by any charge levied by the airline, and other practice in such matters.

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.

Article 8

1. The Commission shall every second year after 1 January 1987 publish a report on the application of this Directive, which shall include statistical information on the cases where Article 6 has been invoked.
2. Member States and the Commission shall co-operate on the application of this Directive, particularly as regards the collection of the information referred to in paragraph 1.

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.

Article 9

Confidential information obtained by the application of this Directive shall be covered by professional secrecy.

Article 10

This Directive shall apply only to fixed individual air fares and zones of flexibility intended to come into operation after 1 April 1985.

Article 11

Where a Member State has concluded an agreement with one or more non-member countries, which gives fifth freedom rights for a route between Member States to an air carrier of a non-member country and in this respect contains provisions which are 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 non-member countries arising from such an agreement.

Article 12

1. The Member States shall, before 1 January 1985, 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.

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 13

This Directive is addressed to the Member States.

Amendments to Proposal for a Council Regulation (EEC) laying down the procedure for the rules on competition applying to undertakings in the air transport sector (1).  
(Transmitted to the Council pursuant to Article 149(2) of the EEC Treaty)

1. The sixth recital is replaced by :

"Whereas to remedy this situation, implementing rules are needed which are analogous to the regulations covering other forms of transport and other sectors of the economy;"

2. New seventh and eight recitals are added :

"Whereas the air transport industry is characterized by special features which are peculiar to this sector; whereas, furthermore, international air transport is regulated by a network of bilateral agreements between States which define the conditions under which airlines designated by the parties to the agreements may operate routes between the two territories;

Whereas practices which may affect competition relating to international air transport between Member States may have a substantial effect on trade between Member States; whereas it is desirable therefore that the rules laid down in this Regulation for the application of Articles 85 and 86 of the EEC Treaty apply, as a first stage, to international air transport within the common market;"

3. Article 1(2) reads as follows :

"2. It shall apply only to international air transport between Community airports."

## PROPOSAL FOR A COUNCIL REGULATION (EEC)

on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof;

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament(1);

Having regard to the Opinion of the Economic and Social Committee(2);

Whereas Council Regulation (EEC) No. (3) lays down the procedure for the rules on competition applying to undertakings in the air transport sector;

Whereas Article 85(1) of the Treaty may in accordance with Article 85(3) be declared inapplicable to certain categories of agreements, decisions and concerted practices which fulfil the conditions contained in Article 85(3);

Whereas the provisions for implementation of Article 85(3) must be adopted by way of Regulation pursuant to Article 87;

Whereas the air transport sector has to date been governed by a network of international agreements, bilateral agreements between States and bilateral and multilateral agreements between airlines; whereas the changes required to this international regulatory system to ensure the introduction of competition in the air transport sector, must be effected gradually so as to avoid disruption to the air transport industry; whereas such disruption would prejudice the provision of continued and regular services to the consumer; whereas the avoidance of such disruption benefits the consumer;

Whereas it is desirable that, in order to bring about changes to the system gradually and thus to avoid major disruption in the air transport industry, group exemptions for certain categories of agreements should be granted; whereas these exemptions should be granted for a transitional period only, during which airlines can adapt to a competitive environment;

Whereas, in order to achieve these benefits it is desirable that the Commission should be enabled to declare by way of Regulation that the provisions of Article 85(1) do not apply to certain categories of agreements and concerted practices;

Whereas it should be laid down under what conditions the Commission, in close and constant liaison with the competent authorities of the Member States, may exercise such powers after sufficient knowledge of the content of such agreements and concerted practices has been gained and it becomes possible to define categories of them in respect of which the conditions of Article 85(3) may be considered as being fulfilled;

Whereas under Article 5 of Regulation (EEC) No (3) the Commission may provide that a Decision taken pursuant to Article 85(3) of the Treaty shall apply with retroactive effect; whereas it is desirable that the Commission be also empowered to adopt, by Regulation, provisions to the like effect;

Whereas, since there can be no exemption if the conditions set out in Article 85(3) are not satisfied, the Commission must have power to lay down by Decision the conditions that must be satisfied by an agreement or concerted practice which owing to special circumstances has certain effects incompatible with Article 85(3);

Whereas the implementation of the common transport policy as established by Council Decision   /  /EEC on bilateral agreements, arrangements and memoranda of understanding between Member States relating to air transport(4) will mean an end to

(4)



the capacity sharing regime whereby Member States in their bilateral agreements provide for a 50/50 sharing of the capacity offered on the routes between the two States concerned;

Whereas Member States may therefore no longer require their airlines to enter into capacity-sharing agreements; whereas Member States may no longer refuse capacity increases or impose capacity reductions on the designated airlines of the other Member States, unless certain conditions are met; whereas the liberalisation of this strict capacity-sharing régime should be achieved gradually and there should therefore be a transitional period during which the airlines should be allowed to adjust;

Whereas agreements between airlines on the capacity to be offered on a particular route have certain merits in that they help to ensure provision of services during the less profitable periods and on the less profitable routes; whereas the continued provision of such services and the co-ordination of schedules and capacity will contribute to economic progress and benefit the consumer; whereas such agreements should not contain other restrictions on competition which are ancillary to the agreement on capacity and which are therefore not indispensable to the achievement of economic progress and consumer benefit; whereas competition is not thereby eliminated;

Whereas certain revenue-pooling agreements lead to an improvement in the air transport service provided by the parties to the agreement in so far as they compensate an airline for the disadvantage involved in operating services during the less profitable periods;

Whereas the provision of such compensation and the consequent equalisation of the burden involved in providing services during the less profitable periods provides an incentive for the airlines to continue to provide such services; whereas the provision of such services contributes to economic progress and provides benefit to the consumer; whereas without financial in-

centive the provision of such services would not continue; whereas the limitation of pooling to 1 % of revenue means that the competitiveness of the more efficient airline is largely unaffected by the decision to pool; competition is therefore not eliminated and the incentive toward greater efficiency is therefore not affected.

Whereas under the above-mentioned international regulatory system air fares have to date been approved by Member States following submissions agreed between the airline companies; whereas the same tariffs have been applied by all airlines serving a given route; whereas until the present there has not been a significant degree of competition in regard to price in the air transport sector, whereas Council Directive \_\_\_/\_\_\_/EEC on fares for scheduled air transport between Member States(5) provides for a new procedure for the establishment of air fares which represents a substantial step forward in the introduction of price competition in the air transport sector;

Whereas until the present the airlines were required to obtain the approval of the government of origin and destination for the fares they proposed; whereas it was possible therefore for one Member State to block innovative and competitive proposals by an airline from the other Member State; whereas Directive \_\_\_/\_\_\_/EEC(5) places serious limits on the possibility of blocking such proposals in the future; whereas competition is therefore not eliminated;

Whereas airlines should be allowed to consult with a view to the common preparation of price proposals in accordance with Articles 4 to 6 of Directive \_\_\_/\_\_\_/EEC(5) in view of the variety and complexity of these fares and the conditions attached thereto; whereas the resulting transparency on air fares benefits the consumer;



HAS ADOPTED THIS REGULATION

Article 1

This Regulation shall apply to international air transport between Community airports.

Article 2

1. Without prejudice to the application of Regulation (EEC) No. (3) and in accordance with Article 85(3) of the Treaty the Commission may by Regulation declare that Article 85(1) shall not apply to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices which, in the sector of scheduled air transport and, for a given route, have as their object any of the following:
  - (a) capacity sharing
  - (b) revenue pooling
  - (c) consultation over tariffs
2. The Regulation shall define the categories of agreements to which it applies and shall specify in particular:
  - (a) the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices;
  - (b) the clauses which must be contained in the agreements, decisions and concerted practices, or the other conditions which must be satisfied.
3. Paragraphs 1 and 2 shall apply by analogy to categories of concerted practices for a given route.

Article 3

A Regulation pursuant to Article 2 shall be made for a limited period.

It may be repealed or amended where circumstances have changed with respect to any factor which was basic to its being made; in such case, a period shall be fixed for modification of the agreements and concerted practices to which the earlier Regulation applies.

Article 4

A Regulation pursuant to Article 2 may stipulate that it shall apply with retroactive effect to agreements and concerted practices to which, at the date of entry into force of that Regulation, a Decision issued with retroactive effect in pursuance of Article 5 of Regulation (EEC) No. (3) would have applied.

Article 5

Before adopting a Regulation, the Commission shall publish a draft thereof and invite all persons and organisations concerned to submit their comments within such time limit, being not less than one month, as the Commission shall fix.

Article 6

1. The Commission shall consult the Advisory Committee on Restrictive Practices and Dominant Positions in the Transport Industry

(a) before publishing a draft Regulation

(b) before adopting a Regulation

2. Article 8(4) of Regulation (EEC) No. (3) relating to consultation with the Advisory Committee shall apply, it being understood that joint meetings with the Commission shall take place not earlier than one month after dispatch of the notice convening them.

#### Article 7

Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case agreements or concerted practices to which a Regulation adopted pursuant to Article 2 of this Regulation applies have nevertheless certain effects which are incompatible with the conditions laid down in Article 85(3) of the Treaty, it may in order to put an end to those effects in accordance with Articles 4 and 6 of Regulation (EEC) No. (3)

- address Recommendations to the persons concerned; and
- in the event of failure to observe such Recommendations and depending upon the gravity of the effects observed, adopt a Decision that either :
  - . will prohibit them from carrying out or require them to perform specific acts and impose fines; or
  - . while withdrawing the benefit of the block exemption which they were enjoying will grant them an individual exemption in accordance with Article 5 of Regulation (EEC) No. (3),
  - OR
  - . will withdraw the benefit of the block exemption which they were enjoying.

#### Article 8

This Regulation shall enter into force on

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

Content of an intended Commission Regulation (EEC) exempting certain commercial agreements and concerted practices in the air transport sector

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Subject to the enabling Regulation at Annex III B being adopted by the Council and subject to agreement on the overall package contained in this memorandum, it would be the Commission's intention, taking account of the normal consultative procedures, to adopt a group exemption Regulation along the following lines :

Agreements, decisions and concerted practices by airlines relating to air transport between Member States shall be exempted from the prohibition set out in Article 85(1) of the Treaty until 31 December 1991 if they have any of the following objectives :

- joint planning of the capacity to be provided on a scheduled air service, on condition that any party can withdraw without penalty on giving 3 months notice;
- sharing of revenue from scheduled services on condition that the transfer does not exceed 1 % of the revenue earned on a particular route by the transferring partner, no costs are shared or accepted by the transferring partner, and the transfer is made by way of compensation for the detriment incurred by the transferee in scheduling flights at less busy times of day or during less busy periods;
- the common preparation of proposals on price and transport conditions for transmittal of the competent national authorities for decision in conformity with the procedure set out in the directive on air tariffs, on condition that any airline is free to introduce individual proposals and on condition that the Commission and the Member States may participate as observers in such consultations.

As regards agreements which are in existence when the Commission's Regulation comes into force, the exemption shall have retroactive effect from the time when the conditions of application of this Regulation were fulfilled. As regards all other agreements the exemption shall have effect from the time when the conditions of application of the Commission's Regulation are fulfilled.

Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case agreements or concerted practices which receive the benefit of the group exemption have nevertheless certain effects which are incompatible with the conditions laid down in Article 85(3) of the Treaty, it may in order to put an end to those effects take action in conformity with Article 7 of Council Regulation No. (see Annex III B).

STATE AIDS TO AIR TRANSPORT

POLICY PAPER AND GUIDELINES

## STATE AIDS TO AIR TRANSPORT

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## I. Introduction

1. The purpose of this paper is to state the policy of the Commission in relation to state aids to air transport operations and to place it in the overall context of its policy towards state aids in general.

2. At the same time the Commission considers that its policy with regard to state aid to the air transport sector is a necessity for and a part of the general air transport policy for the Community. It cannot, of course, be a substitute for a Community air transport policy, since the control of state aids cannot by itself create all the necessary market conditions for such a policy. It is clear, however, that unless the state aid rules are properly applied any increase in competition between airlines could result in the financing of such competition out of state aid, in short a subsidy race. This is manifestly undesirable.

3. Although the air transport sector includes inter alia airlines, airports and air traffic control authorities, the Commission decided as a matter of both priority and convenience to commence with a general study of state aids to the airline part of the sector. The Commission is satisfied that this approach has enabled an objective study to be undertaken and that the principal conclusions in respect of airlines would not have differed if the rest of the sector had been included at this stage.

4. Throughout this paper, therefore, references to the "air transport sector", "air transport", or "this sector" should, where appropriate, be interpreted as referring to the airline part of the air transport sector only. However, some of the sections, such as section II on the Legal Framework, have a broader application. Also, while the issues discussed in sections IV to VII have general relevance, any conclusions drawn have been related solely to the airline industry.



II. Legal Framework

5. The Treaty contains provisions on State Aids both in the Chapter dealing with Competition and in the Title on Transport. Article 92 states the general rule that State Aids which distort or threaten to distort competition are incompatible with the Common Market in so far as they affect trade between Member States. It goes on to provide that certain types of aid shall be compatible with the Common Market (e.g. aid having a social character, granted to individual consumers) and that other types may be considered to be compatible with the Common Market (viz aid to promote economic development of poor areas, aids to promote projects of common European interest or to remedy a serious disturbance in a Member State's economy, aid to facilitate the development of certain economic activities or of certain economic areas).

6. Article 93 provides that if the Commission finds that a State Aid is incompatible with the Common Market, having regard to Article 92, it shall decide that the aid shall be abolished or altered. If the State concerned does not comply, the Commission may refer the matter directly to the Court.

7. The Member States are also obliged under Article 93.3 to inform the Commission of any plans to grant or alter aid. Furthermore the Member States are prohibited from implementing the proposed measures until the procedure laid down has resulted in a final decision on the compatibility with the Common Market of the aid in question. However, the Court has ruled that the Commission should normally give its decision within two months of receipt of all the necessary information including any supplementary information requested (in certain cases the Commission has undertaken to respond quicker) and in the absence of a Commission decision within the time limit, the Member State is free to implement the aid. This does not prevent the Commission from subsequently reviewing the aid as an existing aid.

8. It can be seen from the above that it is for the Commission to decide in particular cases whether state aids may be considered compatible with the Common Market under Article 92. Also, in the event that the Commission decides that in a particular case aid is incompatible with the Common Market, it has to decide whether the aid should be abolished or merely altered, and it may decide to give the Member State time to undertake the abolition or alterations and if so how much time.

### III. Notification of state aids in the air transport sector

9. A consistent application by the Commission of its powers, is, of course, dependant on the Member States observing their obligation to notify State Aids under Article 93.3 (see paragraph 7 above). Indications that this was not necessarily the case led the Commission in July 1980 to remind all Member States by letter of their obligation in this respect (1). The Commission informed the Member States, inter alia, that it considered the full application of Article 93.3 to be absolutely necessary.

10. In 1981 and 1982 the Commission convened a number of meetings with experts from Member States in order to seek their opinion on certain matters concerning state aids in the air transport sector, and agreed subsequently to restrict the exercise, at least initially, to aid to airlines. All the Member States have now supplied information concerning state aids to air carriers and/or information on the financial relationships between them and their state owned airlines.

11. The following is a brief summary of the types of aid granted by one or more Member States to airlines and/or the financial relations between them. Such financial relations may constitute state aids, or normal commercial transactions between the owner of an enterprise and that enterprise. It has been compiled solely from the information supplied by Member States;

(i) Financial aid covering all the activities of an airline

This type of aid has taken a number of different forms; e.g. a limited subsidy on the airline's interest charges or of an amount equal to the airline's depreciation charges in respect of aircraft, spare parts and certain other equipment; or to cover the deficit in operating its scheduled services.

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(1) O.J. C 252 of 30.9.1980, page 2.

(ii) Aid for the operation of certain routes

This type of aid is granted to assist in the provision of domestic or intra-Community flights (1) to remote regions. In one case the aid is granted for a short international flight between a category 1 and a category 3 airport which is located in a depressed region of the second Member State.

(iii) Reduction of or exemption from landing charges for carriers from the Member State in question

Aid may occur through payment of lower landing charges for carriers from a Member State than for foreign carriers or through total exemption of these landing charges. In the latter case, the exemption is part of the compensation provided under a contract between the Member State and the national airline for the performance of certain public service obligations. However, because of the lack of transparency of this contract, it is not possible to determine whether the aid is commensurate with the cost of performing the public service obligations.

(iv) Grant for Aircraft Acquisition

Aid has been granted to a small regional carrier in order to aid it acquire aircraft for flights between the mainland and islands off the coast.

(v) Aid for the operation of particular aircraft types

Aid has been provided to airlines in order to enable them to use certain aircraft types, the operation of which is not economically viable. The aid has been provided by writing off an amount of capital equal to the capital value of the aircraft less the residual value thereof or by an annual operating subsidy to the airlines so as to cover their additional costs.

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(1) Throughout this paper the term "intra Community flight" has been used to describe a flight from one Member State to another; "international flight" has been used for flights between a Member State and a third country, or between third countries.

(vi) Government Guarantees

Two types of guarantees exist as :

- (a) guarantees by the state of airline borrowings, normally for aircraft acquisition;
- (b) a limited guarantee in favour of a shareholder in an airline of repayment of an amount equal to the reduction of its capital contribution in the airline below a certain amount caused by the airline's losses, subject always to a fixed annual ceiling.

(vii) Exemption from taxation and custom's duties

Such aids may be listed as follows :

- (a) Preferential Tax System. The possibility to deduct from taxable profits a certain proportion of the purchase price of an aircraft, provided it is used in international transport.
- (b) Exemption of aircraft fuel from taxation. (In fact this exemption exists in all Member States, and is based on the Chicago Convention).
- (c) Exemption from Value Added Tax of the domestic part of international air transport. Foreign companies also benefit, provided reciprocal treatment is afforded by their countries.
- (d) Exemption from capital taxation of the capital of the state owned airline.
- (e) Exemption for the state owned airline from paying custom's duties.

(viii) Contributions of Equity Capital

Clearly contributions of equity capital are made from time to time by Member States to state owned airlines. However, only one Member State felt it necessary to inform the Commission of its contributions of equity capital to the state owned airline. Furthermore this Member State took the view that its equity contributions were normal financial transactions between the owner of a business and that business, and therefore did not constitute aid. It may be that some or all of the other Member States share that point of view, and therefore did not feel it necessary to report such transactions to the Commission.

#### IV.6

(ix) Compensation for the provision of air services to the government at no charge, or at less than the normal charge.

(x) Provision of land free of charge at state owned airports.

(xi) Particular cases of grants under an approved general aid scheme

One Member State has from time to time sought the Commission's approval for grants to an airline under an approved general aid scheme designed to encourage investment in employment creating projects. This general aid scheme was approved on the basis that it would be necessary for the Commission to evaluate the compatibility with the Treaty of each individual case under the scheme.

In some such cases the Commission has approved or raised no objection to the aid in question, whereas in another case the Commission is still considering the aid.

12. Certain Member States have provided justifications for the state aids granted by them. The main justifications for these actions seem to be :

(i) That the aids described in paragraph 11(ii), 11(v) and 11(ix) constitute compensation for the performance of public service obligations.

(ii) That the state aid in question does not distort or threaten to distort competition and/or does not affect trade between Member States. For example, it is alleged that certain aids for domestic routes do not affect trade between Member States, or, if they do, only to a negligible extent.

(iii) That the financial transactions in question (e.g. guarantees, contributions of equity capital, etc.) do not constitute an aid, but are part of normal transactions between the owner of a business and that business.

(iv) That the aid is justified by article 92.2 (c) (aid granted to the economy of certain areas of the Federal Republic of Germany).

(v) That the aid may be considered to be compatible with article 92.3 (a) as promoting regional development. This justification has been put forward by certain Member States for aid granted for the operation of certain routes. However, other Member States have advanced public service obligations as justification for the same type of aid.

- (vi) The provision of aid so as to enable an airline to operate certain types of aircraft, instead of other aircraft types which the airline would otherwise have selected, has been justified by one Member State on the grounds of compatibility with article 92.3(b) (execution of an important project of common European interest) or article 92.3(c) (development of certain economic activities or areas). Another Member State has used the concept of compensation for the performance of a public service obligation as justification for the same type of aid.

IV. Exercise of the Commission's Responsibilities - General

13. The Commission will exercise its responsibilities in relation to aids to air transport to ensure that competition is not distorted and to further Community objectives and the development of the common market.

The corollary of this is that the Commission in its evaluation of aid proposals cannot normally accept national objectives as necessarily sufficient to justify the use of aids; whether they are or not will depend on the repercussions on the common interest.

14. While it is difficult to provide theoretical examples of how these general principles would be applied in practice, they could be relevant to the structure of an airline's network of routes. For example, from a purely national point of view, it might be considered essential that an airline provide a specified route network. However, this might only be possible if substantial state aids were provided. The Commission could only approve such aids under the derogations contained in Article 92.3, if overall Community objectives would be served by the carrier in question continuing to provide these services.

15. The Commission's policy with regard to aids in the air transport sector is also dependent to a certain extent on its assessment of the economic situation of the Community air transport industry. In other sectors the Commission's policy has varied depending on its perception of the industry in question as being in a state of crisis, or operating normally, and adjusting to the changing needs of the market. While the rate of return on capital employed in the airline industry in Europe has been below the average for industry generally, nevertheless the typical pattern for most airlines has been of cyclical fluctuations from profit to loss.

16. The present difficulties of the airline industry in Europe are seen as a temporary phenomena caused by the combination of a rapid increase in fuel prices and the general economic recession. An improvement in the economic situation of European airlines is generally expected, and indeed recent indications suggest that it may have started. The Commission considers therefore that circumstances do not justify any derogation under Article 92.3 from the general rule laid down in article 92.1 that state aids are incompatible with the common market if they distort competition and affect trade between Member States.

17. The immediate rigid application of the aid rules to airlines might cause some of them to cease operations. The control will therefore become systematic only with time.

18. The Commission may in certain cases decide in accordance with article 92 that aids may be granted to individual airlines, which have serious financial difficulties, provided certain conditions are met :

- a) The aids must form part of a programme, to be approved by the Commission, to restore the airline's health, so that it can, within a reasonably short period, be expected to operate viably without further aid. Thus the aids must be of limited duration. If the restoration of financial viability requires capacity reductions, this would be included in the programme. Any alterations in the programme would also have to be approved by the Commission. Naturally any proposed changes to the aids would also have to be notified to the Commission.
- b) The aids in question must not transfer the difficulties from that Member State to the rest of the Community.
- c) Any such aids must be structured so that they are transparent and can be controlled.

19. In the case of aids, which have purposes other than the needs of the airline industry as such, including regional aids, the Commission will also ensure that Community objectives are furthered before agreeing to grant a derogation under Article 92.3

In the case of aids for regional development purposes the Commission will have regard to its general policy for such aids, as set out, for example, in the principles it adopted for coordination of regional aids.



V. Distinction between the state's role as owner of an enterprise and as provider of state aid to that enterprise

20. The neutrality of the Treaty in respect of ownership of undertakings (article 222) is fundamental in making the necessary distinction on a case by case basis that, depending on the circumstances, the same transaction may constitute either an aid, a normal commercial transaction between the owner of an enterprise and that enterprise, or a mixture of the two. This difficulty is of particular relevance to the air transport sector given the predominance of state owned enterprises in the sector.

21. A preliminary examination of the information supplied by Member States reveals that the main types of transaction which fall under this heading in the case of airlines are the provision of equity capital by the state in question, the guaranteeing by the state of the airlines borrowings, and the provision by the state of loans. In certain cases, the distinction between equity capital and loans has been somewhat blurred.

22. In particular, reference should be made to Commission Decision N° 2320/81/ECSC (1), which received the unanimous assent of the Council. The following statement is contained in the introductory part : "When assessing aid no discrimination must be practised between undertakings, notably on account of their ownership, whether public or private. Accordingly, the rules established by this Decision must also apply to any aid elements contained in financing measures taken by Member States in respect of public-sector steel undertakings. These include the provision of equity capital, the setting-off of losses, the foregoing of dividends or of normal returns on public funds or the compensation of financial burdens imposed by public authorities. The Commission's scrutiny of such aid elements cannot result in control by it of the structure of the Member States' economic systems" and later in article 1 § 2 : "The concept of aid includes aid granted by regional or local authorities, and any aid elements contained in the financing measures taken by Member States in respect of the steel undertakings which they directly or indirectly control and which do not count as the provision of risk capital according to standard company practice in a market economy".

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(1) Commission Decision n° 2320/81/ECSC of 7.8.81 establishing Community rules for aids to the steel industry; O.J. L 228/14 of 13.8.81.

While there are important differences between the steel and air transport sectors, there is no reason why these general principles should not be applied in a manner which takes account of the particular characteristics of the air transport sector.

23. Previously, when deciding on the compatibility of states participating in enterprises in difficulties, the Commission stated that if it was a question of acquiring share-holdings in the capital of undertakings who could not raise the necessary capital among normal financial sources, such participations could contain elements of State aid which demand the exercise of a control on its part.

24. In a particular case (1) the Commission considered that the acquisition by the State of a holding in a group of companies, the provision of a loan on an interest free basis for part of the period, and the provision of a State guarantee for loans previously raised by the group constituted an aid within the meaning of Article 92 § 2 of the Treaty.

25. Having established the general principle that such transactions may contain an aid element, it is necessary to consider how the general rule may be applied in particular cases. The guiding principle is whether the financing measures contain elements which do not count as the provision of risk capital according to standard company practice in a market economy. While in certain clear cut cases, it will be evident whether the state is behaving as pure entrepreneur/owner of a business, or is acting exclusively as the provider of aid, in many cases it will be necessary to proceed to a detailed examination of the facts of the particular case in order to reach a decision which could involve both elements.

#### A. Loans

26. In the case of loans, the Commission would have regard to whether the loans were made on normal commercial terms and whether such loans would have been available from a commercial bank. In some Member States it is normal practice, or even obligatory, for nationalised industries, including airlines, to borrow exclusively from the State. In such cases the Commission will, as part of its determination of whether a loan was made on normal commercial terms, compare the rate of interest paid by the State on its borrowings with the rate charged by it to the airline.

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(1) Commission Decision of 10 March 1982 concerning the aid granted by the Belgian Government to an industrial and commercial group manufacturing wall coverings; O.J. L 138/18 of 19.5.1982.

27. In the case of both loans and guarantees, regard should be had to whether private shareholders (if any) are participating in the loan or guarantee proportionately to their shareholding. If so, it might safely be concluded that it is a normal commercial transaction. If not, there is probably an aid element, unless the value of the loan or guarantee is charged for on a fully commercial basis.

B. Guarantees

28. As in the case of loans, the Commission would have regard to whether the guarantee was or could be made on normal commercial terms. It is also possible that even if the state charged the full market rate for a guarantee, there could be an aid element, since the airline's overall borrowing position might be improved, both as to rate, amount, and other conditions.

29. The general principles contained in paragraph 18 are also applicable to guarantees. More specifically the conditions laid down in paragraph 18 apply to guarantees in a modified form to take account of their special characteristic, which is that a payment is only made on the occurrence of a contingent event. Guarantees are in practice so common that at least initially the Commission will concentrate on the conditions on which they are granted. In its view it is important that the guarantees should be finite in time and amount; that they should not automatically operate as soon as an airline incurs a loss but should leave room for commercial pressures to operate. If they are called upon the Commission should be notified; and the call must entail an examination of the need to take action to restore the airlines' finances and a justification if no action is proposed. This examination should be carried out in consultation with the Commission.

C. Equity contributions

30. Some of the elements to which the Commission would have regard include :

- (a) The past and projected rate of return on capital employed in the airline.
- (b) Past and projected level of dividend payments by the airline, taking into account retained profits.

- (c) The relative efficiency and viability of the airline.
- (d) The debt-/equity ratio of the airline.
- (e) The foregoing by the state of a normal return on equity capital.
- (f) The write-off by the state of equity capital invested by it in the airline.
- (g) The purpose of the contribution.

31. In the case of equity contributions, once again, if the other shareholders contribute proportionately to their shareholding, the transaction is probably a normal commercial one. If, however, the other shareholders do not contribute proportionately, this provides prima facie evidence of aid. However, since of course in normal commercial situations capital contributions are not always made proportionately, further examination could reveal a valid commercial reason for the contribution being disproportionate.

VI. Transparency

32. As has been noted the Treaty is entirely neutral as between private enterprise and nationalised industries. It follows that the Commission's objective should be not to interfere with the methods of financing nationalised industries when similar to commercial practices. As will have been seen in section V, certain financial transactions between states and publicly owned enterprises sometimes constitute a state aid, and sometimes are normal commercial transactions between the owner of a business and that business. Given the extensive role of public enterprises in the airline sector, this problem is bound to arise frequently. However, there is no consistent pattern of reporting of such transactions by the Member States to the Commission, since Member State's interpretations of whether a particular transaction constitutes an aid is bound to vary. Thus there is a serious risk that in the absence of transparency in the financial relations between Member States and publicly owned enterprises, the state aid rules cannot be applied effectively to both private and public undertakings.

33. Similar problems caused by lack of transparency in other sectors of the economy led the Commission to issue Commission Directive 80/723/EEC (1) of 25 June 1980 on the transparency of financial relations between Member States and public undertakings. This did not apply to air transport (in common with other forms of transport). The purpose of this directive, which is based on Article 90.3 of the Treaty is to ensure that the financial relations between public authorities (2) and public undertakings (3) are transparent so that the public funds made available to public undertakings, directly or through the intermediary of public undertakings or financial institutions and the use of which those funds are actually put, emerge clearly.

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(1) O.J. N° L 195 of 29.7.1980, page 35.

(2) A "public authority" is defined in the directive as meaning the State and regional or local authorities.

(3) A "public undertaking" is defined in the directive as meaning any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. Such a dominant influence is to be presumed when these authorities directly or indirectly in relation to an undertaking hold the major part of the undertaking's subscribed capital, or control the majority of the votes attaching to shares issued by the undertakings, or can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

The transparency of financial relation which is to be ensured is to apply in particular to the setting-off of operating losses, the provision of capital, non-refundable grants, or loans on privileged terms, the granting of financial advantages by forgoing profits or the recovery of sums due, the forgoing of a normal return on public funds used, and also compensation for financial burdens imposed by the public authorities.

34. The transport sector was excluded from the scope of the directive because to some extent transparency was ensured by other legislation for the other modes of transport, while air transport was excluded because of the need to make distinct provision for it. The Commission considers that greater transparency in the financial relations between the Member States and publicly owned companies in the air transport sector would assist in the fair and effective application of the aid rules to both private and public undertakings. It will take an appropriate opportunity to extend the scope of the transparency directive also to air transport.

VII. Public Service Obligations

35. Article 77 does not apply to air transport. The question, therefore, arises whether there is a need to introduce legislation, based on article 84.2, so as to apply a provision similar to article 77 to air transport.

36. The concept of public service in the Treaty involves an activity, exercised either by a publicly or privately owned enterprise, which is basically in the public interest and carried out under governmental supervision and regulation.

37. A public service obligation is defined in Regulation 1191/69 (which does not apply to air transport) as an obligation imposed on a transport enterprise, which the enterprise would not assume if considering only its commercial interests, including the obligation to operate (certain routes, categories of traffic minimum conditions as to kind and frequency of service), the obligation to carry (at specified rates and subject to certain conditions), and "tariff obligations" (i.e. to apply for certain types of traffic or on certain routes rates not in conformity with the commercial interests of the enterprise).

38. Apart from definitions, Regulation 1191/69 also lays down the circumstances in which compensation for a public service obligation may be paid. The essential rule is that Member States must terminate public service obligations, or if that is not feasible provide compensation. New public service obligations are only to be imposed if they are essential for the provision of an adequate transport service.

39. The Regulation also lays down certain procedural rules. In summary, the enterprise applies for the termination of the public service obligation and if the state is unwilling to permit the enterprise to cease performing the public service obligation it is obliged to provide compensation as calculated in accordance with the rules laid down in the regulation.

40. In considering the necessity of introducing legislation so as to apply provisions similar to article 77 and Regulation 1191/69 to air transport, the Commission has taken into account the advice offered by the experts at the meetings with the national experts held during 1981 and 1982, on state aids to the air transport sector, as well as the information provided by the Member States on public service obligations in the sector.

41. Three Member States informed the Commission that they have the right to impose public service obligations on airlines but in one case it seems that they are not currently being imposed. It is, of course, possible that there are other cases, where the State imposes a public service obligation, but fails to provide compensation.

42. A preliminary examination of the aids reported to the Commission as being compensation for public service obligations, reveals that to a large extent they could probably be considered within the context of article 92.

43. On the types of public service obligation, which have been reported to the Commission (some of which seem rather to fall under article 90, paragraph 2), compensation for the performance of the obligation to operate particular routes within a Member State could perhaps be compatible with article 92.1 as not affecting trade between Member States, or under article 92.3(a) as promoting regional development. The obligation to operate particular intra-Community routes could also perhaps be justified under article 92.3(a) but given the likely distortion of competition (or threat thereof) and effect on trade between Member States, which would result, the community interest might not be served by granting a derogation in such a case. Furthermore, it is unlikely that such an exemption would be warranted if other airlines were willing to provide the required level of service on the route without receiving aid.

44. The other type of public service obligation, of which the Commission has been informed, is the obligation to operate a particular type of aircraft (see paragraphs 11.v and 12.vi). Provided the aid is simply sufficient to cover the additional costs incurred by the airline in acquiring and operating the type of aircraft in question as compared with the aircraft type chosen by the airline, there is no benefit to the airline.

45. A further difficulty with the introduction of compensation for public service obligations in this sector as compared with others is that air transport is to a much greater extent international whereas a far higher proportion of transport in other modes is undertaken within a Member State. If therefore the decision of introducing this concept is taken it will be necessary to have a precise definition. Otherwise the decision as to whether compensation ought to be provided for a public service obligation would be left to the individual Member States and there would be an even greater risk of distortion of air transport traffic within the Community.



46. The Commission considers that the existing provisions contained in the Treaty and in particular Article 92.3 are sufficiently flexible to cope with the specific cases of compensation for public service obligations, which have come to the Commission's attention to date. Should, however, other cases come to light in the future, which do not fall within the scope of these provisions, but which ought to be approved, alternative procedures will have to be examined. This could be considered on the basis of a decision under Article 84.2 EEC applying a provision similar to Article 77/EEC as implemented by Regulation 1191, to air transport.

### VIII. Implications for International Routes

47. In applying the state aid rules the Commission will pay particular attention to the effect of competition from non Community carriers. The Community's airlines are confronted with competition from two sides. On the one hand, they face competition from carriers in a similar or somewhat more advanced state of development, such as carriers in the rest of Western Europe and the U.S. On the other hand they are in competition with carriers in a lesser state of development, such as those in third world countries, who are often subsidised to some extent. Competition is also provided by carriers from Eastern bloc countries, who sometimes engage in price discounting in order to satisfy objectives such as the maximisation of earnings of hard currency.

48. In the absence of any agreement between the Community and third countries which explicitly covers subsidies in the air transport sector, the Commission has concluded that as a general rule it can take decisions on state aids, which affect trade between Member States, without reference to the effect of competition from non Community carriers only if the non Community airline in question does not receive aid or other unfair advantage.

49. If the non Community carrier was receiving aid and a Community carrier would be put at the competitive disadvantage with such a carrier, the Commission would consider authorising the granting of the amount of aid necessary to combat the unfair competition from the non Community carrier, while ensuring that trade between Member States was not affected or not unduly affected.

50. It should be noted that the Chicago Convention (1) contains a number of provisions designed to ensure the non discriminatory treatment of airlines, irrespective of nationality. In particular, attention is drawn to articles 15 and 24 of the Chicago Convention. Article 15 provides that airport and air navigation charges imposed by a State on aircraft of another contracting State shall not be higher as to scheduled services than those that would be paid by its national aircraft of the same class engaged in similar operations. The same rule is laid down for non scheduled services. Article 24 provides that States shall exempt fuel on board an aircraft of a contracting State from customs duties and other charges. This provision is the basis for the exemption of aviation fuel used in international flights from taxes. It should be noted that the 6th Directive on Value Added Tax (2) has the effect of exempting the supply of aircraft fuel from V.A.T., if it is for use by a company engaged essentially in international air transport.

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(1) Convention of International Civil Aviation of 1944.

(2) Council Directive of 17.5.77 - O.J. L 145/1 of 13.6.77.

IX. Conclusions

(a) Guidelines

51. These guidelines give some indications of the Commission's general attitude to aids to airlines, to particular types of aid, and to some of the more important issues that have arisen based on the information available to it.

52. The Commission's general attitude towards aids in the sector may be summarised as follows :

1. Member States must respect their obligations under article 93.3 to notify all proposed state aids or alterations thereto in advance, so as to enable it to take a position on them.  
The aid must be transparent in the sense that their effects can be controlled. The Commission will prevent the granting of state aids from resulting in a transfer of the difficulties of the enterprise of one Member State to those of other Member States of the Community.
2. The Commission considers that, despite recent difficulties, the Community's air transport sector should normally be capable of coping with market forces. The Commission, therefore, believes that article 92 should be applied to civil aviation in the same way, mutatis mutandis, as to other economic sectors. Some Member States consider that certain aids compensate for the imposition of a public service obligation on their airlines. The Commission considers that the possibilities of the Treaty and in particular article 92 § 3 provide sufficient flexibility to handle the specific cases of which it has knowledge or which may be notified in the future. However, it will keep this subject under review. In addition, the Commission will, in considering individual state aid cases, take into account whether undertakings fall within the scope of article 90.2.
3. The Commission in its application of the state aid rules will give primary attention to the intracommunity aspects. It will operate these rules in such a manner as not to put Community carriers at a competitive disadvantage with carriers from third countries, who are either subsidised or otherwise benefit from preferential treatment.
4. As described in detail in paragraphs 20 to 31, the provisions of capital, loans or of guarantees by a government to an airline, which it owns, may constitute either an aid, a normal commercial transaction between the owner of an enterprise and that enterprise or a mixture of the two. Therefore, it has to be determined in particular cases if there is an aid element and if so whether it is justifiable.

5. The Commission can only authorise aids where there is a compensatory justification in terms of the common interest. Aids whose main purpose is to cover an airline's operating loss would not normally be considered as being compatible with the common market. However, in cases where the financial situation of an airline company is particularly precarious but where real possibilities for improvement exist the Commission could authorise the aids required for recovery of the enterprise provided that these interventions were an integral part of a programme containing adequate measures for restoring the financial viability and competitiveness of the enterprise within a reasonable time period.
6. Subject to the facts of particular cases, aids to assist air services in economically under-developed regions of the Community would be acceptable, provided the difficulties of the region were assessed in a national and Community context.
7. The Commission will, in general, tend to accept aids which are provided to facilitate the operation of domestic routes. In particular, the Commission considers, that aid granted to purely domestic airlines, which do not have any direct or indirect links with international airlines is unlikely to fall within the terms of article 92 et seq. of the Treaty. Nevertheless such aids would be incompatible with the common market if they had the effect of diverting significant volumes of international traffic into the Member State in question or of allowing carriers to cross-subsidize their international operations.
8. Aid provided to airlines to encourage the purchase and operation of specific aircraft would not be considered as conferring a benefit on the airline, provided such an aid merely covered the additional costs to the airline of purchasing and operating an aircraft other than the optimum from its commercial viewpoint, but as an indirect aid to the manufacturer, and would be assessed as such.
9. The Commission does not intend to take any action in respect of the exemption of aviation fuel from taxation, since the same exemption is granted by all Member States, in accordance with their obligations under the Chicago Convention. Furthermore, there is no risk of a distortion of competition

between airlines from different Member States. In fact the Commission has proposed to the Council to continue these exonerations.

10. The exemption from value added tax of airline tariffs (both as regards the domestic and international sections of an international route) is permitted by the sixth Directive on Value Added Tax (1), and will continue unless eliminated after the forthcoming review of the working of the Directive. The Commission is satisfied that this exemption does not result in a distortion of competition between the Community's airlines.

(b) Legislation

53. As mentioned in paragraph 52.7 it does not seem necessary to introduce new legislation in respect of public service obligations. However, the Commission will keep the subject under review. In addition, it will, in considering individual state aid cases, take into account whether undertakings falling within the scope of article 90.2 need state aid for the performance of the tasks assigned to them.

54. As explained in paragraphs 32 to 34, the Commission intends to extend a directive under article 90.3 on the transparency of financial relations between Member States and public undertakings to the air transport sector in due time.

(c) Consideration by the Commission of Existing Aids

55. All ten Member States have supplied information to the Commission on the state aids granted by them and/or their financial relations with airlines. The Commission is therefore in a position to review, in cooperation with each Member State, under the provisions of article 93.1, the systems of aid existing in the Member States which were not notified in advance to it. If as a result of this examination it concludes that certain aids are incompatible with the common market appropriate measures will be taken. The Commission will ensure that the different Member States are treated equitably.

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(1) Council Directive of 17.5.77 - O.J. L 145/1 of 13.6.77.

Proposal for a Council Decision \_\_\_/\_\_\_/EEC on non-discrimination  
and standstill provisions in air transport

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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 (1),

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

Whereas for the purposes of facilitating the adoption of a  
common air transport policy Member States should in the  
meantime avoid taking measures which would lead to further  
divergence of national policies and which in their direct or  
indirect effects would make the situation of airlines of other  
member States less favourable,

HAS ADOPTED THIS DECISION :

Article 1

Until common rules have been adopted on the basis of Article  
84(2) of the Treaty on a particular matter, no Member State  
may, without the unanimous approval of the Council, make the  
various provisions governing the subject, at the time of the  
adoption of this Decision, less favourable in their direct or  
indirect effects on air carriers of other Member States as  
compared with air carriers who are nationals of that State.

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(1)

(2)

Article 2

Member States shall take measures to ensure that arrangements at airports, including the system or systems for the allocation of slots are not less favourable in their direct or indirect effects on air carriers of other Member States than on their own air carriers.

Article 3

Member States shall not render their national legislation, laws and administrative measures with respect to the access to the market on routes between Member States of air carriers established in Member States less liberal than those in force on the 1 February 1984.

Article 4

1. The Member States shall, before 1 January 1985, and after consultation with the Commission, take the necessary steps to amend their laws and administrative provisions to comply with this Decision.
2. The Member States shall communicate to the Commission all laws and administrative provisions made in furtherance of this Decision.

Article 5

This Decision is addressed to the Member States.

Programme of Commission's initiatives in the field of Civil Aviation 1984-86

1984

- Proposal on mutual recognition of certain licences and training in civil aviation
- Modified proposal concerning air services for low weight express air cargo
- Proposal on facilitation of freight and passenger air transport and general aviation
- Proposal on measures to facilitate market access

1985 and 1986

- Extension to air transport of transparency rules for financial relations between Member States and public enterprises
- Proposal on the widening of the field of activities of non-scheduled services
- Review of the Directive on interregional air services
- Airport efficiency criteria
- Proposal on airport charges