

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 63 final

Brussels, 8 March 1990

Proposal for a
COUNCIL REGULATION (EEC)
on the operation of air cargo services

(presented by the Commission)

Explanatory Memorandum

1. In 1982 the Commission published a study on air freight. This study showed clearly that strong competition exists for the movement of freight inside the Community between air and road. In particular air transport seemed to be at a disadvantage because of costs but in particular because of delays in the transport chain caused by the regulatory environment within which air cargo services have to operate. This was in particular the case because each air freight operation involves many participants with no one party taking responsibility for the whole transport operation. The facilitation directives (1) did provide some opportunities to improve the situation, but matters are still not satisfactory. Many new developments; door to door service, small package delivery service, just in time service, 1, 2, 3, 4 day delivery, the growth in the transportation of perishable goods and of livestock have all served to underline the need for reform.

Air cargo services have different requirements from the passenger market. Cargo is inanimate and less sensitive to intermediate stops or reloading. It has in common, however, that more and more emphasis is placed on speed and quality of service.

(1) OJ N° L 359 of 22.12.1983.

OJ N° L 24 of 27.1.1987.

2. The rather complicated chain of transport for traditional air freight, i.e. from shippers to freight forwarder to airline to freight forwarder to shipper, each being responsible for only part of the total movement explains the growth of express air freight where one organisation, "the Integrator", takes responsibility for the whole movement of freight from door to door and thereby is better responding to the demand for more speed and quality of service.
3. Air freight operators have difficulties to react to market development because of regulatory restrictions in particular for market access. As a consequence their competitive situation has deteriorated. This is unfortunate since air freight can make a valuable contribution to the overall economic situation of an air carrier.
4. The air carriers have equally well seen the market potential of door to door products in addition to the traditional airport to airport service. In their efforts to meet this market demand they are hampered by existing regulations in the air transport sector. The basis for the exercise of all cargo services is the ~~operating~~ rights which derive from the bilateral air services agreements or arrangements. The existing EEC regulations which liberalise the Intra Community air services (the so-called December 1987 package) are limited to air freight in combination with passenger services. Air services carrying only cargo and mail are excluded from these regulations.
5. The gradual liberalisation and deregulation of the road transport sector has improved the competitive position of road transport versus the transportation of goods by air. Not only on the short distance, but also on the medium to long distance the traditional air carriers face severe competition from road hauliers and they experience a gradual reduction of their market share.

6. In order to give air carriers the same marketing opportunities as their competitors so that they can compete on equal terms, it will be necessary to lift existing limitations on market entry, market access and operating flexibility for all air carriers including the integrators, that are presently operating in the EC market.
7. Another condition for creating a level playing field for all operators in the air freight market is the liberalisation of the rate setting mechanism. Rates are completely free for road transport but in view of the specific safety considerations for air transport it is proposed to retain certain possibilities for intervention. To this end it is suggested that rates should remain to be filed with governments, but only for information purposes. Only when a government is not convinced that the rate includes a sufficient margin to ensure satisfactory technical and safety standards it can ask the Commission to disapprove that cargo rate.
8. It should be taken into account that air cargo creates a vital link between Member States. The close relationship between the availability of air cargo capacity and the development of trade makes it necessary to take a major step towards a substantial liberalisation of air cargo services.
9. The total amount of cargo that is moved by air within the Community is very limited. Only 400 000 tonnes of cargo, representing 0.08% of the total movement of cargo in the Community is transported by air. Combi aircraft mostly are used for the transportation of cargo:

tonnes x 1000	Intra-EC		
	1988	1987	1986
Combi a/c	314.2	295.4	285.1
Cargo only a/c	82.2	68.4	72.1

Proposal for a
Council Regulation (EEC)
on the operation of air cargo services

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas it is important to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty; whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Council Decision 87/602/EEC¹ only created a first step towards the liberalisation of air services for cargo in combination with passenger services;

Whereas Council Directive 87/601/EEC² is limited to the establishment of air fares for the carriage of passengers and baggage on scheduled air services;

1 OJ No L 374, 31.12.1987, p. 19.

2 OJ No L 374, 31.12.1987, p. 12.

Whereas this Regulation is without prejudice to the application of Articles 85 and 86 of the Treaty;

Whereas the air cargo industry still encounters national barriers which hamper the free movement of goods by air; whereas increased market access will stimulate the development of the Community air transport sector and give rise to improved services for users;

Whereas it is important to encourage the development of express parcel services, door-to-door services, just in time services, etc. within the Community, so that Community carriers can fully participate in these worldwide developments;

Whereas some Member States depend heavily on air cargo services for their connections with the rest of the Community; whereas the movement of air cargo is an essential element for trade;

Whereas as a consequence it is necessary to remove the existing barriers to market access for air cargo services;

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

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

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

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

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

Whereas publication of all available cargo rates creates more transparency in the market place;

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

HAS ADOPTED THIS REGULATION:

Scope and Definitions

Article 1

This Regulation concerns:

- a) access to the market for Community air cargo carriers
- b) criteria and procedures for the establishment of air cargo rates on an airport to airport basis.

Article 2

For the purpose of this Regulation:

- a) "Air cargo carrier" means an enterprise with a valid licence to operate air cargo services carrying only cargo and mail;

- b) "Community air cargo carrier" means:
 - (i) an air cargo carrier which has its central administration and principal place of business in the Community, the majority of whose shares are owned by nationals of Member States and/or Member States and which is effectively controlled by such persons or States,

 - (ii) an air carrier which, at the first of January 1990, did not meet the definition set out in (i) but:
 - (1) either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air cargo services in the Community during the 12 months prior to adoption of this Regulation,

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

- c) "cargo rates" mean the prices to be paid for the carriage of cargo and mail and the conditions under which these rates apply, including remuneration and conditions offered to agency and other auxiliary services.

d) "air cargo service" means scheduled or non-scheduled air services carrying only cargo and mail;

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

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

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

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

f) "airport system" means two or more airports grouped together as serving the same city;

g) "States concerned" means the States between which an air cargo service is operated;

h) "State of registration" means the Member State in which the Community air cargo carrier is registered.

Operating Licences

Article 3

1. The Council shall adopt, on the basis of a Commission proposal to be submitted at the latest the 1st of July 1991, and for implementation at the latest the 1st of July 1992, common rules concerning the granting of operating licences as air cargo carriers to undertakings established in the Community.
2. Until such common rules enter in force Member States shall, on a non-discriminatory basis, grant such licences and ensure that air cargo carriers established on their territory apply technical, operational and economic requirements. Member States shall publish such requirements and communicate them to the Commission.

Market Access

Article 4

1. Community air cargo carriers, duly authorised under Article 3 shall be permitted to exercise third, fourth and fifth-freedom traffic rights between airports or airport systems in one Member State to airports or airport systems in another Member State when these airports or airport systems are open for intra-Community air cargo services.
2. In operating intra-Community air cargo services Community air cargo carriers shall be permitted by the State concerned to exercise cabotage between points within that Member State when the Community air cargo carrier meets the common rules establishing according to Article 3. Until such common rules have been established, the Community air cargo carrier must meet the technical, operational and economic requirements referred to in Article 3(2) of the Member State within which cabotage will be exercised.

3. In operating Intra-Community air cargo services Community air cargo carriers shall be permitted by the States concerned to exercise traffic rights on routes between Member States without calling at their State of registration.
4. Member States shall not oppose the operation by Community air cargo carriers of fifth-freedom air services between an airport within the Community and an airport in a third country provided that the authorities of the third country concerned agree to the service in question.

Operating flexibility

Article 5

1. Community air cargo carriers may change aircraft at any point on a route and to freely position aircraft.
2. Subject to the provisions of Article 7 there shall be no restrictions on frequency of service, aircraft type and/or the amount of cargo and mail that may be carried.

Conditions for the exercise of traffic rights

Article 6

This Regulation shall not affect a Member States' right to regulate in a non-discriminatory way the distribution of traffic between the airports within an airport system.

Article 7

1. The exercise of traffic rights is subject to national, regional or local operational and technical published rules relating to the protection of the environment, social conditions, allocation of slots and safety and, in particular, to the following conditions:
 - a) the airport or airport system concerned must have sufficient facilities to accommodate the service;
 - b) navigational aids must be sufficient to accommodate the service.
2. When the conditions in paragraph 1 are not met, a Member State may, on a non-discriminatory basis, impose conditions on, limit or refuse the exercise of the traffic rights. Before taking such a measure it shall inform the Commission and provide it with all the necessary elements of information. The Commission shall examine the situation and within 2 months decide whether the Member State may take the measure.

Pricing

Article 8

1. Community air carriers shall publish all available cargo rates.
2. Air carriers operating air cargo services, or cargo services in combination with passengers within the Community shall inform the States concerned of their cargo rates applicable to the carriage of cargo and/or mail on an airport to airport basis 30 days before their introduction.

3. The State or States concerned may notify the Commission within 14 days after receipt of the information by the air carriers when it is considered that the cargo rates do not include a sufficient margin to ensure satisfactory technical and safety standards. The State or States concerned shall, in particular, examine in detail a cargo rate which is 20% lower than the corresponding rate in force during the previous corresponding season.
4. The Commission may give notice of disapproval of cargo rates which have been notified to it until 7 days before the envisaged day of introduction. In the absence of such notice cargo rates may be applied from that day onwards.

Final Provision

Article 9

This Regulation shall enter into force on 1 July 1990.

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

Done at Brussels,

For the Council,

The President

ISSN 0254-1475

COM(90) 63 final

DOCUMENTS

EN

07

Catalogue number : CB-CO-90-103-EN-C

ISBN 92-77-58234-0

Office for Official Publications of the European Communities
L-2985 Luxembourg