

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMPLETION OF THE CIVIL AVIATION POLICY IN THE EUROPEAN COMMUNITIES

TOWARDS SINGLE MARKET CONDITIONS

Proposal for a
COUNCIL REGULATION (EEC)

on licensing of air carriers

Proposal for a
COUNCIL REGULATION (EEC)

on access for air carriers to intra-Community air routes

Proposal for a
COUNCIL REGULATION (EEC)

on fares and rates for air services

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

The second phase of the air transport policy as approved in June 1990 also made clear the steps which have to be taken before 1 January 1993 in respect of further liberalisation. However, it must be recognised that liberalisation is only one element in the common air transport policy and it might therefore be useful shortly to situate liberalisation in the overall picture.

II. OVERALL POLICY

Objectives

The ability of the air transport system to bring people from all parts of the Community and abroad quickly together is an indispensable element for the integration process within the Community and for the development of closer relations between the Community and other parts of the world.

Over longer distances air transport has to carry out an essential task for fulfilling consumer demand and for the economic and social integration process in the Community.

It may serve to establish closer and quicker links not only between central regions but also between peripheral and central parts of the Community. The latter point is of particular importance because air links may help - in conjunction with improved telecommunications systems - to overcome disadvantages for peripheral regions and facilitate, thereby, regional economic development, in particular, in the field of services including tourism. The main importance of air transport in the Community relates to the transport of people but air cargo should not be forgotten.

A more specific objective in this context is the need to establish air links serving less developed peripheral regions with low traffic demand where the actual and potential traffic volume on these routes would not justify a commercial service. In such instances the air transport system may therefore have to fulfil occasional public service requirements.

The importance of regular air links between the major centres of the Community and all other parts of the world is self-explanatory in view of the close interrelationship between the existence of direct air links and economic cooperation. An extensive external network is to be considered as a prerequisite of developing good economic and other relations between the Community and the rest of the world. In this context air cargo assumes a much more important role.

Apart from these basic transport aims, a number of further objectives exist and must be considered.

It is clear that the transport function would suffer dramatically if the cost of transport is too high. This might not be critical when other modes of transport may serve but for distances over 1000 km air transport is of particular importance and fares must be kept reasonably low.

In many areas of the Community tourism is dependent on air transport being available at low cost.

It is also necessary to look at quality of services for passengers (safety, reliability, frequency, choice, flexibility).

Air transport activities depend on sufficient infrastructure being available and the provision of such facilities is not without problems in particular taking the environmental effects into consideration.

It is necessary to ensure that air transport is provided on a sound financial basis. This is necessary not only to ensure a reliable service to the passengers and shippers but also to ensure acceptable working conditions.

It is important that the Community aviation industry is competitive at world-wide level in view of the important role air transport and air transport-related activities, for example, the aerospace industry play in creating highly qualified jobs, in the development of new technologies, also in other sectors and - last but not least - for balance of payments considerations.

As a consequence the common air transport policy must on the one hand ensure a financially healthy industry providing a certain economic stability and reasonable conditions for employment and on the other hand ensure a market structure where air carriers can adapt their operations according to the growth and shifts in the market and provide sufficient choice of services to the consumer at reasonable prices.

Experience has shown that competition is desirable in order to achieve these objectives. However, a completely unregulated market may lead to abuse, and indeed to anticompetitive behaviour and a certain regulation is therefore necessary to guard against such practices and to protect consumers.

However, there should be no need to intervene unless things go wrong.

At any rate the regulatory framework which is to remain or which will be created, should create a situation where unfair advantages to individual air carriers will be banned in particular if they would be at the expense of safety.

These objectives have led to the development of four main areas of policy :

- A. Liberalisation
- B. Harmonisation
- C. Infrastructure
- D. External policy.

A. LIBERALISATION

1. Air transport policy

Four different elements are covered, namely: air fares, market access, capacity control and licensing of air carriers. The aim of this policy is to ensure the creation of a market structure which will encourage competition and provide flexibility in the market so that air carriers can pursue their operations on a commercial basis and so that choice will be available to the consumer. The policy implements the Treaty principles of freedom to provide services and the right of establishment. The present proposals aim to complete the policy in this area and further details are presented on page 13 et seq.

2. Protection against anticompetitive behaviour

The Commission has adequate means to intervene against anticompetitive conduct. Competition regulations are in place and recently possibilities have been added to intervene immediately against predatory behaviour. At the same time the Commission has been given the possibility to exempt co-operation between air carriers which leads to a more efficient air transport system to the benefit of users.

The Commission has also power to control State aids in order to avoid distortion of competition.

3. Protection against unfair behaviour

The Commission has already been given a very direct role to control unfair behaviour. It has power of decision concerning too high or too low fares, discriminatory traffic restrictions at airports, excessive protection of new air services, too restrictive public service obligations and the freezing of or reduction in capacity growth in the case of economic hardship.

B. HARMONISATION

The very fact that the liberalisation really will create one air transport market within the Community has created the need to ensure that norms and standards in a number of areas are harmonised in order to ensure a level playing field for competition among EEC air carriers irrespective of where in the EEC they are established.

It has therefore been agreed that harmonisation must take place in a great many areas amongst which the most important are the following.

1. Safety

For accident investigation, cooperation and exchange of expertise a directive already exists. Improvements are under consideration.

Common airworthiness requirements (JARs) will soon be approved by the Council.

Common requirements for licences are under development.

The same is true for flight-time limitations.

The need for proposals for the last three subjects has been confirmed by the Council.

2. Fair competition

A code of conduct for Computer reservation systems (CRS) is in force which ensures unbiased competition and to some extent consumer protection.

A code of conduct for allocation of slots has been proposed with the purpose of ensuring transparency, non-discrimination and a certain movement in the market. This proposal is also a response to a need expressed by the Council.

Regular consultation between airports and users has been proposed. These rules seek to ensure the best possible use of scarce facilities but the proposals also introduce the principle of cost-relatedness for airport charges. In addition, it is proposed that airports as part and parcel of the consultation process must be entitled to participate in slot allocation procedures. This whole initiative should be seen as a first step towards coming to terms with the capacity problem at airports.

3. Consumer protection

Denied boarding compensation rules have been adopted.

A code of conduct for travel agents is under development.

Common rules for liability (Warsaw Convention) are being developed.

4. Environment

Noise limitations in the form of non-operation rules for aircraft not conforming to chapter 2 were adopted already 10 years ago. Non-addition rules for aircraft not conforming to chapter 3 are also in force. Non-operation rules for aircraft not conforming to chapter 3 has recently been proposed. The Council is expected to agree quickly.

Airport environmental rules are under development.

C. INFRASTRUCTURE

Serious capacity problems exist in the European aviation system. These capacity problems derive both from an unsatisfactory air traffic control system and from insufficient runway capacity at important economic centers of the Community. Legislation will be necessary in both of these areas.

In fact the Council has itself called for legislation on common specifications for ATC equipment.

The Commission is also studying the situation at all major airports in the Community with a view in particular to investigate whether a kind of environmental contract could be established which would allow capacity increases at airports on condition that certain environmental action is taken. The study should be finished by July and immediately afterwards preparation of legislative action will be commenced.

These problems will continue well beyond 1992.

D. EXTERNAL RELATIONS

Community legislation already exists for air fares, capacity control and market access and for a great many other areas. These first three matters are traditionally the backbone of any bilateral agreement. External relations and the discussion of Community competence is therefore not only an intellectually amusing question. The fact is that an agreement between a Member State and a third country in nearly all instances will affect the commercial situation inside the Community for air carriers from the other Member States.

There are thus important reasons for the Community to deal with the matter of external competence with urgency. The procedural problems are dealt with in a specific proposal COM (90) but action must soon be taken in order to avoid squandering Community assets.

III. PROPOSALS FOR LIBERALISATION

Three proposals are to be found in the annex namely :

- a. Licensing of air carriers
- b. Market access
- c. Air fares and rates

In order to establish a clear legal situation these three proposals will cover all types of civil aviation. This means for example that air cargo has been incorporated in these texts.

The Council requested in art. 3 of Regulation 2343 that proposals should be put forward concerning licensing of air carriers and route licensing. A specific proposal has been put forward on licensing of air carriers but with regard to route licenses it was felt that it would be inappropriate to discriminate between air carriers operating into a Member State and air carriers established in the Member State, i.e. reverse discrimination should not take place. The proposal on route licensing has therefore been incorporated in the proposal on market access which ensures that air carriers are treated in the same way independently of in which Member State they are licensed.

a. Licensing of air carriers

At present no specific Community rules governing the relationship between the competent national authorities and carriers established or to be established in the Member States exist. However, the Council has, in its decision on the second phase, stipulated that it is necessary to base policy in this area on harmonised Community criteria to be implemented from 1.7.1992 onwards.

The Commission's proposals for the second aviation package already contained a first set of rules for governing decisions on operating and route licensing. The basic aim at that time was adoption of the principle that when an applicant company is considered as economically and technically fit then it is entitled to be licensed as an air carrier.

The Council, while recognizing the need for Community action, reached the conclusion that common rules concerning the requirements for economic and technical fitness must be adopted prior to the implementation of specific commitments in this area.

The Commission always considered the lack of a coherent policy in the area of issuing (or confirming) operating licences for air carriers as a major outstanding policy question in the area of market access and market entry. It has therefore, in close cooperation with experts from Member States and interested parties (AEA, ACE, ERA and consumer organisations) thoroughly examined this issue. It has, in this context, carefully analysed existing systems in Member States and other parts of the world (U.S.A.).

All interested parties and experts agreed that a high degree of safety and a sufficient degree of stability of air services have to be considered as the main objectives to be achieved.

The Commission, accordingly, identified five key questions to be addressed :

1. Which are the requirements in relation to ownership and location ?
2. How can reasonable and meaningful economic and financial standards be defined?
3. Is it necessary or useful to establish different requirements for different types of air carriers (or operations) ?

4. Should the market situation in general be taken into account when deciding on an application?
5. Which standards for the assessment of the technical fitness should apply?

The Commission, after having carefully analysed basic options related to these questions, arrived at the following conclusions :

ad 1 : (see Article 4)

Due to basic characteristics of the international aviation system, requirements on Community ownership, control and location are required. An air carrier must be owned and effectively controlled by a majority of Community nationals and the majority of the board must consist of such nationals.

It is, however, clear that the ownership limitations may hinder a normal business development in the interests of Community air carriers. It is, therefore, desirable to introduce a possibility to conclude more liberal agreements with third countries on a mutually beneficial basis, without prejudice to international commitments.

ad 2 : (see Article 5)

Financial and economic requirements need to be defined in order to fulfil the underlying political objective of achieving a sufficient degree of stability of air services (i.e. only financially sound carriers shall operate). The rules need to be well-balanced in order, on the one hand, to implement in all Member States effective and clear-cut rules and, on the other hand, to avoid too rigid and too bureaucratic standards which would damage the air carriers possibilities in terms of market developments. The principle of non-discrimination must be ensured in all instances.

The Commission has opted for a set of simple but clear economic and financial standards defining acceptable levels below which a licence should not be granted or maintained.

They differ between new entrants and already established carriers only to the extent necessary for ensuring that new entrants start operations on a sound financial and economical basis.

The standards concern financial liquidity, monitoring of financial developments, the overall financial structure, insurance requirements and duration of the license.

ad 3 (see Article 5)

The Commission has very carefully examined the need for linking operating licences to different types or scopes of economic activity (i.e. scheduled, non-scheduled, regional, etc.)

These studies have led the Commission to the conclusion to abstain, apart from somewhat less strict rules for carriers operating with very small aircraft, from proposing specific rules for specific types of air carriers.

Apart from the more general objective to avoid too complex rules this conclusion is based on the need not to establish a regulatory segmentation between very often overlapping markets and thereby create barriers for air carriers to react quickly following rapidly changing business opportunities.

Secondly, however, the Commission feels that the requirement of a business plan to be provided by the applicant carriers allows in a flexible way to take into consideration the financial potential of a company in relation to the scope and type of the envisaged activities as well as the economic consequences of changes in the pattern of operation.

ad 4 :

Certain Member States and airline organizations feel that the impact of a newly licensed air carrier on the market in general and on the economics of already established carriers needs to be, in one way or another, explicitly taken into account when deciding on an individual application for an operating licence.

The Commission recognizes the potential importance of this argument and has, therefore, undertaken a thorough examination of all elements related to this problem. It has reached the conclusion that these aspects can to the degree necessary be taken into account by requesting the applicant carrier to present a business plan.

In their assessment of these business plans the authorities will have a reasonable possibility to evaluate the soundness of the underlying assumptions on market developments and to identify completely unrealistic plans.

The Commission, however, does not share the concerns of certain parties to provide, apart from checking to a reasonable extent the economic feasibility of a business plan for a new air carrier, for a specific protection of the interests of already established carriers. In view of a number of economic barriers to market entry which exist anyway such an additional protection would imply the risk of creating rigid market structures which, at the end, will work against the global competitiveness of the Community's airline industry.

Finally, the highly useful role which new operators can play for completing the network and for identifying unused market opportunities needs to be recognized by an appropriate regulatory framework on operating licences.

ad 5 : (see Article 9)

Technical standards cannot be compromised because of the safety objectives underlying the standards. Therefore, a license should not be granted or maintained for an air carrier (or applicant company) not meeting these standards.

In the long run technical standards should refer to JAA-requirements for air operators certificates (AOCs) currently under development. Until these rules come into effect Member States shall continue to decide on the basis of current national requirements.

b. Market access

3rd, 4th and 5th freedom traffic rights have been created by the second package between all airports in one Member State to all airports in another Member State. The 5th freedom traffic rights are somewhat limited at present. From the 1st of January 1993 the Council has agreed that 5th freedom will be fully implemented and cabotage will be introduced.

This opening of market access possibilities will naturally open the way for more competition. On the one hand this is positive but on the other hand it may make life more difficult for new entrants and it does not ensure the establishment of air services from some regions where they should exist for regional policy reasons.

In order to address these problems a possibility already exists to protect an airline on a new route for up to 2 years and to introduce a public service obligation for a limited period. These provisions should be retained and, where necessary, developed further.

5th freedom traffic rights are still limited but the restrictions should in accordance with Council commitments be removed for both passenger flights and air cargo.

In two other main areas the Commission has had to analyse basic policy options and alternatives when preparing its proposals on market access.

In addition to the rules concerning air carrier licences (see above) the Council has also asked the Commission to put forward proposals for rules on route licences. It would seem clear that any air carrier which has been licensed by a Member State must have an equal opportunity to be given a route licence and it would be illogical that multiple designation thresholds (if they are retained) would only be used for incoming air carriers and not also with respect to the country of origin as well.

It may be argued, however, that air carriers operating on routes not covered by public service requirements or rules on the protection of new services operated with small aircraft need to some extent to be protected against new entrants.

Such an approach would have, if any, some kind of justification only for "not so busy"-routes which would not justify the operation by more than 2 or 3 carriers. The Commission has carefully and without any pre-conceived ideas examined the need for some kind of a non-discriminatory selection procedure to be applied for thinner routes not falling within the scope of the public service requirements. It has reached the conclusion that further safeguards in addition to already protected areas would - at the end - most probably turn out to be counter-productive because it would stifle the normal competitive effects of market forces. This conclusion is based on the following considerations :

- new legal barriers to market access, in addition to existing factual barriers resulting from infrastructure bottlenecks and grandfather rights, could largely undermine the room for creating and maintaining the necessary degree of competition which is essential for efficiency improvements in the airline industry;
- additional selection procedures aiming for transparent and non-discriminatory decisions on the basis of objective criteria cannot be established without creating new administrative machinery. The direct and indirect costs related to such bureaucratic procedures outweigh possible benefits which would materialize only in very specific situations.

Instead of proposing separate rules to protect these services the Commission has decided to propose a redefinition of the rules related to public services requirements. It is proposed to use the threshold on traffic volume (i.e. 30.000 seats per year) only for the possibility of limiting access to one carrier and for the temporary protection for new services operated with smaller aircraft. It shall not apply, however, for the possibility to define more permanent public service requirements.

Cabotage

The second basic question refers to the introduction of cabotage rights. The Council of Transport Ministers already confirmed that these rights belong to the internal market concept. This would basically mean that it is necessary to introduce these rights to the full extent from 1 January 1993.

The Commission has carefully examined whether there is a need to introduce these rights gradually in order to prevent market disruptions. This examination has led to the conclusion that the exercise of cabotage rights would only be of limited economic interest for air carriers, in particular, if the operation would be unrelated to the air carrier's normal network i.e. "stand-alone"-cabotage.

The start up of a cabotage service will need a very careful preparation and there would clearly, at least for a time, exist a handicap in the competition with a "native" air carrier.

Under these circumstances the Commission does not see a case to establish specific rules delaying the full achievement of the internal market in this specific area.

The Commission also feels that specific situations can be dealt with by having recourse to public service requirements.

Therefore, the Commission has reached the conclusion, that it would not make much sense to establish transitional rules to be applied to the availability of these rights.

c. Air Fares and rates

Considerable pricing freedom has already been created in particular for non-fully flexible fares in the second package approved in 1990⁽¹⁾. However, it has been agreed by the Council of Ministers that from the 1st of January 1993 the Community system will be a fully developed system of double disapproval for all air fares.

However, the normal situation in the internal market is for the Undertakings to be able to conduct their business in a normal commercial environment. This means that where competition exists Undertakings should be able to set their pricing policy freely. This has so far not been the case in civil aviation except for certain promotional fares and it is not the case with the double disapproval system. The Commission therefore proposes that when normal competitive conditions have been established in civil aviation then pricing must be free. The present set of proposals needs a certain time to take effect but after three years this should be the case except where special conditions exist such as congestion and it is therefore proposed that free pricing should be introduced in 1996 for scheduled air services. The present situation of free pricing for non scheduled air services and air cargo should not be modified.

(1) Council Regulation No. 2342/90 of 24 July 1990; O.J. L 217 of 11.8.1990

The double disapproval system already exists in the second package and has been overtaken with only a few technical changes.

However, one question needs to be faced.

It concerns the existing system of safeguards which calls upon the Commission to examine fares if requested by a Member State. This can be quite cumbersome if not limited in one way or another.

A move to the double disapproval system where today automatic approval already exists may also be questioned.

The issue has been discussed with national experts and interested parties (airline industry, consumers) and to a great extent agreement was reached that :

- a) The principle of cost relatedness should be maintained.
- b) Safeguards should be maintained but limited to situations where consumer interests would be in particular at risk i.e. the most used fully flexible fares on routes where competition is limited.

On the basis of these principles the Commission proposes to redefine slightly the procedures to be applied in the case of a dispute whether air fares need to be disapproved or not (Article 7). It is proposed to restrict the possibility of submitting an air fare for examination by the Commission to fully flexible fares being charged on routes on which, for one reason or another, competition is limited. This will restrict the use of safeguards to be added to a double-disapproval system to situations where this system would not work well because of insufficient competition.

It is also proposed that an air fare which has been submitted for examination by the Commission shall not be suspended but will remain in force during the examination. This approach will avoid building a new complex fare examination machinery at Community level and undermining the philosophy of the double-disapproval system by moving back to an over-regulated approach.

The question remains as to whether the application of a double disapproval system would be a setback in areas where today automatic approval is given. The Commission, while recognizing that such a change could be seen as moving backwards to re-regulating liberalized areas has carefully studied, in close cooperation with experts from Member States, options aimed at avoiding useless re-regulatory developments. It has reached the conclusion that by setting aside certain fare-types from the use of complex safeguard procedures combined with an automatic approval regime for fares charged in conjunction with Inclusive Tour arrangements (IT fares) or group travels (Article 4) the risk of re-regulating by moving towards double-disapproval as the general principle would be avoided.

d. A specific issue - Non-scheduled air services

The massive presence of air services carried out by non-scheduled air carriers is one of the most specific features of the Intra-European transport market. In terms of passenger-km's non-scheduled airlines are carrying out 65 % of all transportation by air within the Community.

Community legislation has until now only dealt with scheduled air transport and not non-scheduled (except for air cargo). The scheduled airlines consequently have been complaining that they are subject to an increasing number of Community rules while the non-scheduled air carriers are not.

On the other hand market access liberalisation for scheduled air services is now to some extent more advanced than the possibilities open to non-scheduled air carriers so these air carriers are also beginning to complain. In addition, liberal rules on fares allow scheduled air carriers to compete directly with non-scheduled in the leisure travel market segment. At the same time, non-scheduled air carriers are increasingly competing directly with the scheduled air carriers by selling seat only without any accommodation.

The non-scheduled air services are very important for the tourism industry in many regions of the Community. A policy which would endanger these services would therefore be unwise. In this context it is important to recall the experience in the USA and on the North Atlantic when competition opened up. The result was a drastic reduction in the market share of non-scheduled services. The reason was to a large extent that air carriers could only offer certain types of air transport on non-scheduled air services while everything could be offered on the scheduled air services. There was also a certain preference among the travelling public to choose a scheduled air service, when it was available at the same price, over a non-scheduled.

In the Community the opportunities of scheduled air services have been substantially increased already and the present package will further increase these possibilities. The situation is therefore that scheduled air services can offer virtually anything in the market while non-scheduled air services are only allowed officially to offer certain products. It is difficult to say whether it is this difference in market opportunities or whether it is the effect of a certain recession but the fact is that the charter market has been suffering. There is basically it seems a danger that the non-scheduled air services are being given the same handicap as in the USA and on the North Atlantic market.

It has been suggested to the Commission that the best policy would be to protect the non-scheduled air services. This is, however, not a satisfactory long term solution.

One possible solution would be a specific set of Community rules for non-scheduled operations. These could parallel the market access rules for scheduled operations and stipulate, subject to competition rules, free pricing. However, if the rules should differ from those for the scheduled operations, the danger would exist for a number of difficult discussions and complaints. The risk through regulation of artificially creating new market fragmentation meeting no consumer needs at all should not be underestimated.

Therefore, a straightforward approach would be to propose that non-scheduled air carriers should meet exactly the same obligations as a scheduled air carrier in areas where they compete directly. But then, they should also have the same opportunities in terms of having access to routes.

The Commission has received mixed signals from Member States and airline organizations on this issue. It is obvious that opinions on how to deal with this problem differ even inside the relevant organizations. Under these circumstances the Commission's conclusions are mainly based on its own internal assessment of this problem.

The Commission has carefully analysed and compared the pros and cons of these two basic alternative options. This examination was carried out under the assumption that convincing and important reasons must be given if different rules for basically the same product be established.

The Commission is of the opinion that a strong case for establishing two sets of rules does not exist. It has therefore decided to propose to integrate the different air transport modes. This means in particular to attach basically the same rules on fares (with specific provisions for IT-fares), market access and operating licences to all air carriers.

This policy will allow air carriers to decide on commercial grounds whether a market should be served by non-scheduled or scheduled air services. It would also allow an air carrier to develop a market with non-scheduled services and then gradually introduce scheduled air services. This policy approach also fits logically with the new market opening represented by the proposal on licensing of air carriers.

The inclusion of charter services has been achieved by removing reference to scheduled air services in Regulations Nos 2342 and 2343/90 and only refer to air services. This has necessitated an article on prices for charter products as well as a definition in Regulation No. 2342/90. It would mean that market access provisions will apply to air carriers whether they operate in scheduled or charter mode. They would be able to offer "seat only" if they can comply with the Community rules on air fares and on allocation of route rights. However, "seat only" might also be allowed in general on routes open for multiple designation.

Proposal for a
COUNCIL REGULATION (EEC)

on licensing of air carriers

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⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas it is important to establish an air transport policy for 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 the application in the air transport sector of the principle of the freedom to provide services needs to take into account the specific characteristics of the sector;

(1)

(2)

(3)

Whereas in Regulation (EEC) No 2343/90⁽¹⁾ the Council decided to adopt for implementation not later than 1 July 1992 rules governing the requirements in relation to the licensing of air carriers;

Whereas it is important to define non-discriminatory requirements in relation to the location and the control of the undertaking applying for a licence; whereas it is also necessary to take into account the need to provide flexibility in relation to third countries;

Whereas in order to ensure stability of service it is necessary to ensure that an air carrier is at all times operating at sound economical and high safety levels;

Whereas for consumer protection reasons it is important to ensure that air carriers are sufficiently insured in respect of liability risks;

Whereas within the internal market air carriers should be able to lease aircraft registered anywhere in the Community;

Whereas a sound and effective management structure, where individuals appointed to senior posts have suitable experience and proven competency in aviation, is essential for ensuring the safe conduct of air operations;

Whereas procedures for the granting of licences to air carriers should be transparent and non-discriminatory,

(1) OJ No L 217, 11.8.1990, p.8.

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns the economic and technical competency requirements for the grant and retention of operational licences and air operators' certificates.
2. An air carrier must at all times operate at sound economical and high safety levels.

Article 2

For the purposes of this Regulation:

- (a) "undertaking" means any natural person, any legal person, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality;
- (b) "air carrier" means an air transport undertaking with a valid operating licence;
- (c) "operating licence" means an authorisation granted by the State responsible to an undertaking permitting it to carry out carriage by air of passengers, mail and/or cargo, as stated in the licence, for remuneration and/or hire;

- (d) "air operator's certificate (AOC)" means a document issued by the competent authorities of a State which affirms that the operator in question is competent to secure the safe operation of his aircraft for the aviation activities specified in the certificate;
- (e) "business plan" means a detailed description of the air carrier's intended commercial activities for the period in question, in particular in relation to the market developments and investments to be carried out, including the financial and economical implications of these activities;
- (f) "management account" means a detailed statement of income and costs for the period in question including a breakdown between air transport-related and other activities as well as between pecuniary and non-pecuniary elements.

Article 3

1. No undertaking shall be permitted within the territory of the Community to carry by air passengers, mail and/or cargo for remuneration and/or hire unless the undertaking has been granted the appropriate operating licence and AOC.
2. No operating licence shall be granted by a Member State unless the undertaking concerned has a valid AOC.
3. Member States shall not issue or maintain in force such licences or certificates when the requirements of this Regulation are not complied with.

4. An undertaking meeting the requirements of this Regulation shall be entitled to receive such a licence and certificate.

OPERATING LICENCE

Article 4

1. No undertaking shall be granted an operating licence by a Member State unless air transport is its main occupation and the registered office and principal place of business is located in that Member State.
2. The undertaking must be owned and continue to be owned directly or through a majority shareholding by Member States and/or nationals of Member States. It must at all times be effectively controlled by such States or nationals. The majority of the board must be representatives of such States or nationals.
3. Notwithstanding paragraph 2 air carriers which have already been recognised in Annex I to Council Regulations (EEC) Nos 2343/90 and 294/91⁽¹⁾ retain their rights under this and associated Regulations as long as they meet the other obligations in the present Regulation.
4. Derogation from paragraph 2 may be agreed bilaterally or multilaterally between third countries and the Community.
5. Any undertaking which has a controlling shareholding in an air carrier must meet the requirements of paragraph 2.
6. An air carrier must on request at any time be able to demonstrate to the State responsible for the operating licence and the Commission that it meets the requirements of this Article.

(1) OJ No L 36, 8.2.1991, p. 1.

7. Where a Member State is not convinced that an air carrier meets the requirements of this Article it may ask the Commission to verify the situation.

Article 5

1. An air carrier to which an operating licence is granted for the first time must:
 - (a) have a net start up capital of at least ECU 100 000,
 - (b) be able to meet normal costs for a period of three months according to its business plans and taking into account only income secured by contract,
 - (c) be able to demonstrate to the reasonable satisfaction of the competent authorities of the licensing Member State that it can meet its actual and potential obligations for a period of 24 months, and
 - (d) demonstrate to the reasonable satisfaction of the competent authorities that its debt and leasing liabilities will be at most twice the size of its equity capital at the end of the first year of operation.

Points (b), (c) and (d) shall not apply to air carriers which intend to operate aircraft with less than 20 seats and/or 10 tonnes MTOW.

2. (a) An air carrier operating aircraft with less than 20 seats and/or 10 tonnes MTOW shall at all times be able to demonstrate that its net capital is at least ECU 100 000.

- (b) Any other air carrier must at all times and in particular after 12 months of operation be able to demonstrate to the reasonable satisfaction of the licensing authorities that it can meet its actual and potential obligations for a period of 12 months.
3. For the purposes of this Article an air carrier shall provide all relevant information and, in particular for the purpose of paragraph 2(b), it shall, at the beginning of each financial year and when substantial changes in operation, such as the operation of a new scheduled service or a non-scheduled service to a new region, have been decided, submit:
- (a) audited accounts as soon as they are available and not later than 6 months after the expiry of the financial year in question,
 - (b) 3-year business plans including a 1-year budget,
 - (c) quarterly management accounts, unless the licensing authorities require monthly accounts, to be provided no more than 4 weeks after the period to which they refer, and
 - (d) documentation concerning insurance coverage.
4. The licensing authority shall review the financial and economic situation of any air carrier at least every 12 months.

5. The value of ECU 100 000 referred to in paragraphs 1(a) and 2(a) is based on the EEC consumer price index at the date of the entry into force of this Regulation. When the price index moves so that the value would increase or decrease by ECU 10 000 then the value referred to in paragraphs 1(a) and 2(a) shall be increased or decreased accordingly. In such a case the Commission shall inform the Member States and publish the new value in the Official Journal of the European Communities.

Article 6

An air carrier must be insured to cover statutory liability risks in case of accidents, in particular in respect of passengers, cargo and third parties.

Article 7

A condition to own aircraft shall not be required for granting or maintaining a licence but a Member State may require the aircraft to be used by an air carrier to be registered within the Community.

AIR OPERATOR'S CERTIFICATE

Article 8

An undertaking which carries out commercial aviation activities must be in possession of an AOC. The AOC or an accompanying document shall clearly set out the technical organisation and expertise required in order to ensure the safe operation of the specified aviation activities.

- (a) An undertaking shall not operate an aircraft for the purpose of commercial aviation activities otherwise than under and in accordance with the terms and conditions of an AOC. Annex 1 sets out the terms and format of an AOC.
- (b) An undertaking shall allow the licensing authority to examine all aspects of its intended or actual operations connected with an AOC.

Article 9

1. An AOC shall be issued or maintained only if the licensing authority is satisfied that the undertaking can ensure safe operations. If not, the AOC shall be varied, suspended or revoked as appropriate. For this purpose the undertaking shall demonstrate to the licensing authority:
 - (a) the ability to maintain an adequate organisation,
 - (b) an adequate method of control and supervision of the operation, including flight operations,
 - (c) the necessary training programmes, and
 - (d) adequate maintenance arrangements,

consistent with the nature and extent of the operations specified and as set out in paragraphs 2-10.

2. The undertaking shall have a management organisation which, as a whole, possesses the background and experience necessary for exercising satisfactory operational control and supervision of the kind of operations specified in the AOC.

3. The undertaking shall have appointed post holders, acceptable to the licensing authority, who are responsible for, at least, the following functions:
 - flight operations,
 - maintenance arrangements,
 - crew training,
 - ground operations.
4. The undertaking shall have an operations manual and all flights shall be conducted in accordance with it. The manual shall be provided for approval to the licensing authority.
5. The undertaking shall arrange for ground handling facilities, not necessarily its own, to ensure the safe handling of its flights.
6. The undertaking shall establish procedures for releasing its flights.
7. The undertaking shall ensure that its aircraft are equipped and its crews qualified as required for the area and type of operation.
8. The undertaking shall provide appropriate maintenance arrangements for all aircraft operated under the terms of its AOC.
9. The undertaking shall maintain accommodation and administrative support facilities at the main operating base, appropriate to the area and type of operation.

10. If the licensing authority is not satisfied with the demonstrated ability as required under this Article, it may require additional demonstration which may include the conduct of one or more demonstration flights operated as if these were commercial air transport flights.

Article 10

1. The application for the initial issue and variation of an AOC shall include the information specified in Annex 2.
2. The application shall be accompanied by the required fee, if any.
3. The application for a variation of an AOC shall be submitted at least 30 days, or, as otherwise agreed, before the date of intended operation.
4. Other than in exceptional circumstances, the undertaking shall give ten days prior notice to the licensing authority of proposed changes to appointed post holders.

Article 11

1. An undertaking providing an aircraft and complete crew to an air carrier and retaining the functions and responsibility for the operation of the aircraft shall itself be subject to the safety requirements of this Regulation.
2. Except in cases under paragraph 1, an air carrier utilizing an aircraft from or providing it to another undertaking shall obtain prior approval for the operation from the appropriate licensing authority. The conditions of the approval shall be part of the lease agreement between the parties.

GENERAL PROVISIONS

Article 12

1. An operating licence and an AOC shall be valid as long as the air carrier meets the obligations of this Regulation. That notwithstanding, a Member State may make provision for a review one year after a new licence or AOC has been issued and every five years thereafter.
2. An air carrier which ceases operations for any reason shall not resume operations until the licensing authorities have reaffirmed the financial and technical competency.
3. An operating licence or AOC which has not been used for 6 months shall be resubmitted for approval.
4. In case of a merger or a takeover the relevant licence and AOC shall be resubmitted for approval in accordance with Article 14. The air carrier in question may continue its operations unless the licensing authorities consider that safety is at risk.

Article 13

1. An air carrier which does not meet the requirements of this Regulation shall have its operational licence withdrawn.
2. Notwithstanding paragraph 1, a Member State may grant a temporary operating licence to an air carrier when safety is not at risk in order to avoid a cessation of business during a high season. However, an air carrier which has been declared insolvent shall not be granted a temporary licence except in situations where realistic financial reorganisation is underway.

Article 14

1. Any application by an undertaking to be granted an operating licence and/or an AOC shall forthwith be made public by the Member State concerned and the Commission shall be informed.
2. The Member State concerned shall take a decision on the application as soon as possible, and not later than one month after all the necessary information has been submitted, taking into account all available evidence. The decision shall be communicated to the applicant undertaking. A refusal shall indicate the reasons therefore.
3. Notwithstanding paragraph 2, a period of 3 months shall elapse after the day of publication before any decision is taken in order to permit interested parties to submit evidence.
4. An undertaking whose application for a licence has been refused may ask the Commission to review the case with respect to the requirements of this Regulation and decide whether a licence should have been granted.

Article 15

1. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from the Member States and air carriers concerned.

2. When an air carrier does not supply the information requested within the time limit fixed by the Commission or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in paragraph 4 as well as the right to have the decision reviewed by the Court of Justice.
3. At the same time the Commission shall send a copy of its decision to the competent authority of the Member State in the territory of which the registered office of the air carrier is situated.
4. The Commission may, by decision, impose fines on air carriers from ECU 1 000 to 50 000 where, intentionally or negligently:
 - (a) they supply incorrect information in response to a request made pursuant to paragraph 2 or do not supply information within the time limit fixed;
 - (b) they produce the required information in incomplete form.
5. Decisions taken pursuant to paragraph 4 shall not be of a penal nature.
6. The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has imposed a fine; it may cancel, reduce or increase the fine.

Article 16

In addition to the rules of this Regulation the air carrier must also respect the requirements of national corporate law.

Article 17

1. The Commission shall publish a report on the application of this Regulation by 1 January 1994 and every second year thereafter.
2. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in paragraph 1.
3. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 18

This Regulation shall enter into force on 1 July 1992.

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

Done at Brussels,

For the Council
The President

TERMS AND FORMAT OF THE AIR OPERATORS CERTIFICATE

An AOC will indicate the:

- (1) Name and location of the Undertaking;
- (2) Date of issue;
- (3) Description of the type of operations authorised;
- (4) Type(s) of aeroplane authorised for use;
- (5) Registration marks of the authorised aeroplanes except that an air carrier may obtain approval for an alternative system to inform the authority about the aeroplanes operated under its AOC;
- (6) Authorised areas of operation;
- (7) Names of post holders;
- (8) Special limitations;
- (9) Special authorisations/approvals.

The format of the AOC is in appendix A.

National heading

AIR OPERATOR CERTIFICATE

(Statement of Issuing Authority)

It is hereby certified that following an inspection of the operational and technical provisions, the undermentioned operator is competent to conduct commercial air transport safely in accordance with ICAO Annex 6 part 1 and (JAROPS 1) within the indicated limitations.

Name Operator
Location Operator

Type of operations

Type(s) of aeroplanes

This certificate consists of three parts

date of issue
.....

.....(Place)(date)

.....(signature)

.....(Authority)

Registration marks

Post Holders

Flight operations

Maintenance arrangements

Crew training

Ground operations

Area's of operations

Special limitations

(VFR only, etc)

Special authorisations/approvals

CAT II

CAT III

MNPS

ETOPS

etc + Carriage of dangerous goods

INFORMATION IN INITIAL APPLICATION FOR AN AOC

The following information shall be attached to the application for the initial issue of an AOC:

- (1) A description of the management organisation;
- (2) The names of the major post holders, including those responsible for flight operations, maintenance arrangements, crew training and ground operations together with their qualifications and experience;
- (3) Maintenance arrangements;
- (4) Procedures for the release of flights;
- (5) The operations manual, inclusive of the approval of the designated parts.

Proposal for a
COUNCIL REGULATION (EEC)

on access for air carriers to intra-Community air routes

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⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas it is important to establish an air transport policy for 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;

(1)

(2)

(3)

Whereas Council Decision 87/602/EEC⁽¹⁾ and Council Regulation (EEC) No 2343/90⁽²⁾ constitute the first steps in respect of access for air carriers to scheduled intra-Community air routes to ensure the internal market;

Whereas Regulation (EEC) No 2343/90 provides that the Council shall decide on the revision of the Regulation by 30 June 1992 at the latest;

Whereas in Regulation (EEC) No 2343/90 the Council decided to adopt rules governing route licensing for implementation not later than 1 July 1992;

Whereas in Regulation (EEC) No 2343/90 the Council decided to abolish capacity restrictions between Member States by 1 January 1993;

Whereas in Regulation (EEC) No 2343/90 the Council confirmed that cabotage traffic rights are an integral part of the internal market;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

Whereas the development of the air traffic system in the Greek Islands and in the Atlantic Islands comprising the autonomous region of the Azores is at present inadequate and for this reason airports situated on these islands should be temporarily exempted from the application of this Regulation;

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

(2) OJ No L 217, 11.8.1990, p. 8.

Whereas it is necessary to phase out restrictions concerning multiple designation, fifth-freedom and cabotage rights in order to stimulate the development of the Community air transport sector and improve services for users;

Whereas it is necessary to make special provision, under limited circumstances, for public service obligations necessary for the maintenance of adequate air services to national development regions;

Whereas it is necessary to make special provision for new air services between regional airports;

Whereas for air transport planning purposes it is necessary to give Member States the right to establish non-discriminatory rules for the distribution of air traffic between airports within the same airport system;

Whereas the exercise of traffic rights has to be consistent with rules relating to safety, protection of the environment and conditions concerning airport access and has to be treated without discrimination on grounds of nationality;

Whereas taking into account problems relating to airport infrastructure and navigational aids it is necessary to include the possibility of imposing certain limitations concerning the exercise of traffic rights;

Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers;

Whereas it is necessary to specify the duties of Member States and air carriers for the purpose of providing necessary information;

Whereas it is appropriate to ensure identical assessment and evaluation of market access for the same types of air services;

Whereas it is appropriate to deal with all matters of market access in the same Council regulation;

Whereas any possibility for an air carrier from a third country to exercise traffic rights between Community airports shall be settled in an agreement between the third country concerned and the Community;

Whereas this Regulation partially replaces Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns access to routes between airports within the Community for scheduled and non-scheduled air services.

(1) OJ No L 36, 8.2.1991, p. 1.

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.
3. Application of the provisions of this Regulation to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council of that date.
4. Airports in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores shall be exempted from the application of this Regulation until 30 June 1993. Unless otherwise decided by the Council, on a proposal of the Commission, this exemption shall apply for a further period of five years and may be continued for five years thereafter.

Article 2

For the purposes of this Regulation:

- (a) "air carrier" means an air transport undertaking with a valid operating licence;
- (b) "Community air carrier" means an air carrier with a valid operating licence issued by a Member State in accordance with Council Regulation (EEC)⁽¹⁾ [on licensing of air carriers];

(1) OJ No L

- (c) "air service" means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
- (d) "scheduled air service" means a series of flights possessing all the following characteristics:
 - (i) it is performed by aircraft for the transport of passengers, cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorised agents);
 - (ii) it is operated so as to serve traffic between the same two or more points, either:
 - 1. according to published timetable; or
 - 2. with flights so regular or frequent that they constitute a recognisably systematic series;
- (e) "flight" means a departure from a specified airport towards a specified destination airport;
- (f) "traffic right" means the right of an air carrier to carry passengers, cargo and/or mail on an air service between two Community airports;
- (g) "seat-only sales" means the sale of seats, without any other service bundled such as accommodation, directly to the public by the air carrier or its authorised agent;

- (h) "Member State(s) concerned" means the Member State(s) between or within which an air service is operated;
- (i) "State of registration" means the Member State in which the licence mentioned in paragraph (b) is issued;
- (j) "regional airport" means any airport other than one listed in the Annex as a category 1 airport;
- (k) "airport system" means two or more airports grouped together as serving the same city, as indicated in the Annex;
- (l) capacity shall be expressed as the number of seats offered to the general public on a scheduled air service over a given period;
- (m) "public service obligation" means any obligation imposed upon an aircarrier to take, in respect of any route which it is licensed to operate by a Member State, all necessary measures to ensure the provision of a service satisfying fixed standards of continuity, regularity and capacity which standards the air carrier would not assume if it were solely considering its economic interest.

Article 3

Subject to this Regulation, Community air carriers shall be permitted by the State(s) concerned to exercise traffic rights between airports or airport systems within the Community when they are open for civil air services.

Article 4

1. (a) A Member State, following consultations with other States concerned and after having informed the Commission, may impose a public service obligation in respect of scheduled air services to a regional airport in its territory on a route which is considered vital for the economic development of the region in which the airport is located, to the extent necessary to ensure on that route the adequate provision of scheduled air services satisfying fixed standards of continuity, regularity, capacity and pricing and which standards air carriers would not assume if they were solely considering their commercial interest.
- (b) The adequacy of scheduled air services shall be assessed by the Member States having regard to:
 - (i) the public interest;
 - (ii) the possibility of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;
 - (iii) the air fares and conditions which can be quoted to users;
 - (iv) the combined effect of all air carriers operating or intending to operate on the route.

- (c) If no air carrier has commenced or is about to commence scheduled air services on a route for which a public service obligation has been imposed then the Member State may limit access to that route to only one air carrier for a period of up to three years. The right to operate the service shall be offered by public tender to any Community air carrier entitled to operate such air services. The tender shall be published in the Official Journal of the European Communities and the date of submission for proposals cannot be earlier than one month after the day of publication. The submissions made by air carriers shall forthwith be communicated to other States concerned and to the Commission.
- (d) The selection among the submissions shall be made as soon as possible taking into consideration the quality of service offered and in particular the air fares and conditions which can be quoted to users.
- (e) Notwithstanding subparagraph (d), a period of two months shall elapse after the day of submission before any selection is made in order to permit other Member States to submit comments.
- (f) The Member States shall take the measures necessary to ensure that any decision taken under the provisions of this Article may be reviewed effectively and, in particular, as soon as possible on the grounds that such decisions have infringed Community law or national rules implementing that law.

(g) When a public service obligation has been imposed in accordance with subparagraph (a) then air carriers shall be able to offer seat-only sales only if the air service in question meets all the requirements of the public service obligation. Consequently that air service shall be considered as a scheduled air service.

(h) Subparagraph (c) shall not apply in any case in which another Member State concerned proposes a satisfactory alternative means of fulfilling the same public service obligation.

2. Notwithstanding Article 3, a Member State, in a case where one of the air carriers licensed by it has started to operate a scheduled passenger air service on a new route between regional airports with aircraft of no more than 80 seats, may refuse a scheduled air service by another air carrier for a period of two years, unless it is operated with aircraft of no more than 80 seats, or it is operated in such a way that not more than 80 seats are available for sale between the two airports in question, on each flight.
3. Paragraphs 1(c) and 2 shall not apply to routes when the capacity offered exceeds 30 000 seats per year.
4. At the request of a Member State with a legitimate interest which considers that the development of a route is being unduly restricted by the terms of paragraphs 1 or 2, or on its own initiative or where disagreement arises regarding the application of paragraph 2, the Commission shall carry out an investigation and within two months of receipt of the request shall take a decision on the basis of all relevant factors on whether paragraph 1 or 2 shall continue to apply in respect of the route concerned.

5. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

Article 5

In operating air services, a Community air carrier shall be permitted by the State(s) concerned to combine air services and use the same flight number.

Article 6

This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system.

Article 7

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

- (a) the airport or airport system concerned must have sufficient facilities to accommodate the air service;
 - (b) navigational aids must be sufficient to accommodate the air service.
2. When the conditions in paragraph 1 are not met, a Member State may, without discrimination on grounds of nationality or identity of the air carrier, impose conditions on, limit or refuse the exercise of those traffic rights. Before taking such a measure, a Member State shall inform the Commission and provide it with all the necessary elements of information.
 3. At the request of a Member State or on its own initiative the Commission shall examine the application of paragraph 2 in any particular case and within one month of the date of receipt of the request decide whether the Member State may continue to apply the measure.
 4. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

Article 8

1. Capacity limitations shall not apply to air services covered by this Regulation except as set out in Articles 6 and 7 and in this Article.

2. At the request of any Member State for which the application of paragraph 1 has led to serious financial damage for the scheduled air carrier(s) licensed by that Member State, the Commission shall carry out a review and, on the basis of all relevant factors, including the market situation and in particular whether a situation exists whereby the opportunities of air carriers of that Member State to effectively compete in the market are unduly affected, the financial position of the air carrier(s) concerned and the capacity utilisation achieved, shall take a decision on whether the capacity for scheduled air services to and from that State should be stabilized for a limited period.
3. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

Article 9

The periods referred to in Articles 4(4), 7(3) and 8(2) shall only start to run when all necessary information has been made available.

Article 10

1. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from the Member States and air carriers concerned.
2. When an air carrier does not supply the information requested within the time limit fixed by the Commission or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in paragraph 4 as well as the right to have the decision reviewed by the Court of Justice.
3. At the same time the Commission shall send a copy of its decision to the competent authority of the Member State in the territory of which the registered office of the air carrier is situated.
4. The Commission may, by decision, impose fines on air carriers from ECU 1 000 to 50 000 where, intentionally or negligently:
 - (a) they supply incorrect information in response to a request made pursuant to paragraph 2 or do not supply information within the time limit fixed;
 - (b) they produce the required information in incomplete form.
5. Decisions taken pursuant to paragraph 4 shall not be of a penal nature.

6. The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has imposed a fine; it may cancel, reduce or increase the fine.

Article 11

1. The Commission shall publish a report on the application of this Regulation by 1 January 1994 and every second year thereafter.
2. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in paragraph 1.
3. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 12

Regulations (EEC) Nos 2343/90 and 294/91 are hereby revoked with the exceptions of point (e) of Article 2 and Annex I of Regulation (EEC) No 2343/90, and of point (b) of Article 2 and the Annex of Regulation (EEC) No 294/91.

Article 13

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels,

For the Council
The President

LIST OF GATEGORY 1 AIRPORTS

BELGIUM :	Brussels-Zaventem
DENMARK :	Copenhagen-Kastrup/Roskilde
FEDERAL REPUBLIC OF GERMANY :	Frankfurt-Rhein-Main Düsseldorf-Lohausen Munich
SPAIN :	Palma-Mallorca Madrid-Barajas Malaga Las Palmas
GREECE :	Athens-Hellinikon Salonica-Micra
FRANCE :	Paris-Charles De Gaulle/Orly
IRELAND :	Dublin
ITALY :	Rome-Fiumicino/Ciampino Milan-Linate/Malpensa
THE NETHERLANDS :	Amsterdam-Schiphol
PORTUGAL :	Lisbon Faro
UNITED KINGDOM :	London- Heathrow/Gatwick/Stansted Luton

Proposal for a
COUNCIL REGULATION (EEC)

on fares and rates for air 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⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas it is important to establish an air transport policy for 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;

(1)

(2)

(3)

Whereas Council Directive 87/601/EEC⁽¹⁾ and Council Regulation (EEC) No 2342/90⁽²⁾ constitute the first steps in respect of air fares to ensure the internal market;

Whereas in Regulation (EEC) No 2342/90 the Council decided to introduce a system of double disapproval for all air fares by 1 January 1993;

Whereas air fares normally should be determined freely by market forces where competition exists;

Whereas until the free access to the market takes full effect it is necessary to provide for a transitional period;

Whereas it is necessary to establish clear criteria for the assessment of air fares;

Whereas it is appropriate to ensure identical assessment and evaluation of air fares for the same types of air services;

Whereas in situations where competition is limited it is appropriate to provide for a transparent and objective procedure according to which Member States may ask the Commission to examine and decide on whether a proposed air fare conforms with the criteria laid down;

Whereas it is necessary to specify the duties of Member States and air carriers for the purpose of providing necessary information;

Whereas it is appropriate to deal with all matters of pricing in the same Council Regulation;

(1) OJ No L 374, 31.12.1987, p. 12.

(2) OJ No L 217, 11.8.1990, p. 1.

Whereas possibilities for third country air carriers to charge air fares on routes within the Community should be settled in an agreement between the Community and the third country concerned; whereas in order for third country air carriers to participate normally in the market they should be able to charge the normal economy fare or its equivalent;

Whereas this Regulation replaces Regulation (EEC) No 2342/90 and partially replaces Council Regulation (EEC) No 294/91⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to the criteria and procedures to be applied for the establishment of air fares and rates charged by air carriers on air services within the Community.

Article 2

For the purposes of this Regulation:

- (a) "air fares" means the prices to be paid in ECU for the carriage of passengers and baggage on air services and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

(1) OJ No L 36, 8.2.1991, p.1.

- (b) "rates" means the prices to be paid in ECU for the carriage of air cargo and/or mail on air services and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (c) "standard rates" means the rates which the air carrier would normally quote including the availability of normal discounts;
- (d) "seat-only sales" means the sale of seats, without any other service bundled such as accomodation, directly to the public by the air carrier or its authorised agent;
- (e) "air service" means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
- (f) "scheduled air service" means a series of flights possessing all the following characteristics:
 - (i) it is performed by aircraft for the transport of passengers, cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorised agents);
 - (ii) it is operated so as to serve traffic between the same two or more points, either:
 1. according to published timetable; or
 2. with flights so regular or frequent that they constitute a recognisably systematic series;

- (g) "flight" means a departure from a specified airport towards a specified destination airport;
- (h) "air carrier" means an air transport enterprise with a valid operating license;
- (i) "Community air carrier" means an air carrier with a valid operating license issued by a Member State in accordance with Council Regulation (EEC) No⁽¹⁾ [on licensing of air carriers];
- (j) "Member State(s) concerned" means the Member State(s) between or within which an air service is operated;
- (k) "reference fare" means the lowest one way or return, as appropriate, fully flexible fare charged by a Community air carrier on the route in question; if more than one such fare exists, the arithmetic average of all such fares shall be taken, taking into account the number of seats offered at the fare by each Community air carrier on the route.

Article 3

- 1. (a) Member States shall not disapprove air fares and rates of Community air carriers if they are reasonably related to the applicant air carrier's long-term fully-allocated relevant costs, while taking into account the need for a satisfactory return on capital and for an adequate cost margin to ensure a satisfactory safety standard.

(1) OJ No L

- (b) In disapproving air fares pursuant to subparagraph (a), Member States shall also take into account other relevant factors, the needs of consumers and the competitive market situation, including the fares of other air carriers operating on the route and the need to prevent dumping.
- (c) The fact that a proposed air fare is lower than that offered by another Community air carrier operating on the route shall not be sufficient reason for withholding approval.
2. Air carriers shall not charge air fares or rates that are, in relation to the criteria defined in paragraph 1(a) and (b), excessively high to the disadvantage of users or unjustifiably low in view of the competitive market situation.
3. Only Community air carriers shall be entitled to introduce lower fares than the existing ones.

Article 4

1. Air fares offered to tour operators or offered to the public specifically combined with accommodation arrangements for the duration of the trip and air fares for groups larger than 6 persons shall be approved automatically.

2. Air fares referred to in paragraph 1 shall be communicated to the authorities at the latest the day before the flight.
3. Seat-only air fares on non-scheduled air services are to be treated in accordance with Articles 3, 6 and 7.

Article 5

1. Rates charged by Community air carriers shall be set by free agreement between the parties to the contract of carriage.
2. Air carriers operating within the Community shall make available on request all standard rates to the general public.

Article 6

1. An air carrier shall submit its proposed air fares for scheduled air services in the form prescribed by the Member States concerned.
2. Aeronautical authorities shall not require air carriers to submit air fares in respect of scheduled air services more than 45 days before they come into effect.
3. An air fare for a scheduled air service shall be considered as approved unless, within 30 days of the day of submission, the Member State(s) concerned has(have) notified its(their) disapproval

to the applicant air carrier and to any other Member State concerned, stating its(their) reasons or unless the procedure in Article 7 has been initiated. At the request of either Member State, consultations shall take place between the States concerned within the 30-day period.

4. On the basis of the experience acquired since the entry into force of this Regulation and after consultation with the Member States the Commission may, when submitting on 1 January 1996 the report provided for in Article 11, decide that air fares which are not covered by Article 7 shall be approved automatically.
5. A Member State may refer the Commission's decision to the Council within a time limit of one month. The Council acting by qualified majority may in exceptional circumstances take a different decision within a period of two months.
6. A Member State shall permit a Community air carrier to match an air fare already approved for a scheduled air service between the same city-pair on the basis that this provision shall not apply to indirect air services which exceed the length of the shortest direct service, measured by the normal flight routing, by more than 40%. Member States may also permit a Community air carrier operating a direct scheduled air service to match prices already accepted or published for a non-scheduled air service operated on the same route provided that both products are equivalent in terms of quality and conditions.
7. Member States concerned may not limit their approval to less than a season unless requested by the applicant air carrier.

8. An air fare for a scheduled air service, once approved, shall remain in force until it expires or is replaced. It may, however, subject to Article 3(1), be prolonged by the air carrier concerned after its original date of expiry for a period not exceeding 12 months.

Article 7

1. A Member State concerned may, for a scheduled air service on a route where competition is limited, request the Commission to examine whether an air fare, which is not covered by the Annex, complies with Article 3(1). The Member State shall at the same time inform the other Member State(s) concerned and the air carrier concerned. The Commission shall forthwith publish in the Official Journal of the European Communities that the air fares have been submitted for examination.
2. For the purposes of this Regulation limited competition is said to exist on a route:
 - where significant barriers to market entry are in force, e.g. at coordinated airports, and where there are not at least three air carriers with pricing freedom exercising traffic rights, each at least once per day, between the airports concerned, or
 - where public service obligations exist, or
 - where at most 30 000 seats offered for sale yearly by only one air carrier or two air carriers under a joint operation agreement.

3. An air fare which has been submitted for examination in accordance with paragraph 1 within 21 days of its submission to the aeronautical authorities concerned shall not, unless the Commission within 21 days decides otherwise, enter into force during the examination by the Commission.
4. The Commission shall give a decision on whether the air fare complies with Article 3(1) as soon as possible and in any event not later than two months after having received sufficient information from the air carrier concerned. The Commission shall take into account all information received from interested parties.
5. Notwithstanding paragraph 1, the Commission may on its own initiative investigate whether an air fare conforms to the provisions of this Regulation.
6. The Commission shall communicate its decision to the Member States concerned and to the air carrier concerned.
7. A Member State concerned may refer the Commission's decision to the Council within a time limit of one month. The Council acting by qualified majority may in exceptional circumstances take a different decision within a period of one month.

Article 8

At least once a year the Commission shall consult on air fares for scheduled air fares and related matters with representatives of air transport user organisations in the Community, for which purpose the Commission shall supply appropriate information to participants.

Article 9

Air carriers from third countries with traffic rights between Community airports shall be able to match the normal economy air fare or its closest equivalent unless otherwise provided for in an agreement between the Community and a third country.

Article 10

1. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from the Member States and air carriers concerned.
2. When an air carrier does not supply the information requested within the time limit fixed by the Commission or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in paragraph 4 as well as the right to have the decision reviewed by the Court of Justice.
3. At the same time the Commission shall send a copy of its decision to the competent authority of the Member State in the territory of which the registered office of the air carrier is situated.

4. The Commission may, by decision, impose fines on air carriers from ECU 1 000 to 50 000 where, intentionally or negligently:
 - (a) they supply incorrect information in response to a request made pursuant to paragraph 2 or do not supply information within the time limit fixed;
 - (b) they produce the required information in incomplete form.
5. The Commission may, by decision, impose fines on air carriers for infringements of this Regulation up to a maximum of 10% of the annual turnover for the relevant activity of the air carrier concerned.

In fixing the amount of the fine, regard shall be had both to the seriousness and to the duration of the infringement.

6. Decisions taken pursuant to paragraphs 4 and 5 shall not be of a penal nature.
7. The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has imposed a fine; it may cancel, reduce or increase the fine.

Article 11

1. The Commission shall publish a report on the application of this Regulation by 1 January 1994 and every second year thereafter.

2. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in paragraph 1.
3. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 12

Regulation (EEC) No 2342/90 is hereby revoked.

Article 13

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels,

For the Council
The President

The Commission shall not be obliged to investigate air fares for which any of the following conditions apply:

- Minimum stay of at least six days;
- Sunday rule;
- Reservation for the entire trip, ticketing and payment to be made at the same time, except that reservation for the return trip may be made at a later time; cancellation only permissible prior to departure of outbound travel and at a fee of at least 20% of the price of the ticket; change of reservation only permissible at a fee;
- Passenger to be aged not more than 25 years or not less than 60 years or father and/or mother with children aged not more than 25 years travelling together (minimum three persons);
- specific combination with accommodation for the duration of the trip;
- off-peak;
- Any equivalent or more stringent condition.

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