

COUNCIL REGULATION (EEC) No 2409/92
of 23 July 1992
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;

Whereas Council Decision 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States ⁽⁴⁾ and Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services ⁽⁵⁾ constitute the first steps towards achieving the internal market in respect of air fares;

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

Whereas it is appropriate to complement price freedom with adequate safeguards for the interests of consumers and industry;

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

Whereas this Regulation replaces Regulation (EEC) No 2342/90 and partially replaces Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States ⁽⁶⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns the criteria and procedures to be applied for the establishment of fares and rates on air services for carriage wholly within the Community.
2. Without prejudice to paragraph 3, this Regulation shall not apply:
 - (a) to fares and rates charged by air carriers other than Community air carriers;
 - (b) to fares and rates established by public service obligation, in accordance with Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ⁽⁷⁾.
3. Only Community air carriers shall be entitled to introduce new products or lower fares than the ones existing for identical products.

Article 2

For the purposes of this Regulation:

- (a) 'air fares' means the prices expressed in ecus or in local currency to be paid by passengers to air carriers or their agents for the carriage of them and for the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (b) 'seat rates' means the prices expressed in ecus or in local currency to be paid by charterers to air carriers for the carriage on air services of the charterer or its customers and their baggage and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (c) 'charter fares' means the prices expressed in ecus or in local currency to be paid by passengers to charterers for services which constitute or include their carriage and the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency or other auxiliary services;

⁽¹⁾ OJ No C 258, 4. 10. 1991, p. 2.

⁽²⁾ OJ No C 125, 18. 5. 1992, p. 150.

⁽³⁾ OJ No C 169, 6. 7. 1992, p. 15.

⁽⁴⁾ OJ No L 374, 31. 12. 1987, p. 12.

⁽⁵⁾ OJ No L 217, 11. 8. 1990, p. 1.

⁽⁶⁾ OJ No L 36, 8. 2. 1991, p. 1.

⁽⁷⁾ See page 8 of this Official Journal.

- (d) 'cargo rates' means the prices expressed in ecus or in local currency to be paid for the carriage of cargo and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (e) 'standard cargo rates' means the rates which the air carrier would normally quote including the availability of normal discounts;
- (f) 'air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
- (g) 'air carrier' means an air transport undertaking with a valid operating licence.
- (h) 'Community air carrier' means an air carrier with a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers ⁽¹⁾;
- (i) 'Member State(s) concerned' means the Member State(s) between or within which the fare or rate is applied;
- (j) 'Member State(s) involved' means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;
- (k) 'basic fare' means the lowest fully flexible fare, available on a one way and return basis, which is offered for sale at least to the same extent as that of any other fully flexible fare offered on the same air service.

Article 3

Charter fares and seat and cargo rates charged by Community air carriers shall be set by free agreement between the parties to the contract of carriage.

Article 4

Air carriers operating within the Community shall inform the general public, on request, of all air fares and standard cargo rates.

Article 5

1. Without prejudice to this Regulation, Community air carriers shall freely set air fares.
2. Member State(s) concerned may, without discrimination on grounds of nationality or identity of air carriers, require air fares to be filed with them in the form prescribed by them. Such filing shall not be required to be submitted more than 24 hours (including a working day)

before the air fares come into effect, except in the case of matching of an existent fare for which no more than prior notification is required.

3. Before 1 April 1997, a Member State may require that air fares on domestic routes where no more than one carrier licensed by it, or two carriers licensed by it under a joint operation, operate have to be filed more than one working day but no more than one month before the air fares come into effect.

4. An air fare may be available for sale and carriage as long as it is not withdrawn in accordance with Article 6 or Article 7.

Article 6

1. Subject to the procedures of this Article, a Member State concerned may decide, at any moment:

- (a) to withdraw a basic fare which, taking into account the whole fare structure for the route in question and other relevant factors including the competitive market situation, is excessively high to the disadvantage of users in relation to the long term fully-allocated relevant costs of the air carrier including a satisfactory return on capital;
- (b) to stop, in a non-discriminatory way, further fare decreases in a market, whether on a route or a group of routes, when market forces have led to sustained downward development of air fares deviating significantly from ordinary seasonal pricing movements and resulting in widespread losses among all air carriers concerned for the air services concerned, taking into account the long term fully-allocated relevant costs of the air carriers.

2. A decision taken pursuant to paragraph 1 shall be notified with reasons to the Commission and to all other Member State(s) involved, as well as to the air carrier(s) concerned.

3. If within fourteen days of the date of receiving notification no other Member State concerned or the Commission has notified disagreement stating its reasons on the basis of paragraph 1, the Member State which has taken the decision pursuant to paragraph 1 may instruct the air carrier(s) concerned to withdraw the basic fare or to abstain from further fare decreases, as appropriate.

4. In the case of disagreement, any Member State involved may require consultations to review the situation. The consultations shall take place within 14 days of being requested, unless otherwise agreed.

⁽¹⁾ See page 1 of this Official Journal.

Article 7

1. At the request of a Member State involved the Commission shall examine whether a decision to act or not to act pursuant to Article 6 complies with the criteria of Article 6 (1). The Member State shall at the same time inform the other Member State(s) concerned and the air carrier(s) concerned. The Commission shall forthwith publish in the *Official Journal of the European Communities* that the air fare(s) have been submitted for examination.

2. Notwithstanding paragraph 1, the Commission may, on the basis of a complaint made by a party with a legitimate interest, investigate whether air fares comply with the criteria of Article 6 (1). The Commission shall forthwith publish in the *Official Journal of the European Communities* that the air fare(s) have been submitted for examination.

3. An air fare in force at the time of its submission for examination in accordance with paragraph 1 shall remain in force during the examination. However, where the Commission, or the Council in accordance with paragraph 8, has decided within the previous six months that a similar or lower level of the basic fare on the city-pair concerned does not comply with the criteria of Article 6 (1) (a), the air fare shall not remain in force during the examination.

Furthermore, where paragraph 6 has been applied, the air carrier concerned may not, during the examination by the Commission, apply a higher basic fare than the one which was applicable immediately before the basic fare under examination.

4. Following consultations with the Member States concerned, the Commission shall take a decision as soon as possible and in any event not later than twenty working days after having received sufficient information from the air carrier(s) concerned. The Commission shall take into account all information received from interested parties.

5. When an air carrier does not supply the information requested within the time limit fixed by the Commission, or supplies it in incomplete form, the Commission shall be decision require the information to be supplied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.

6. The Commission may, by decision, decide that an air fare in force shall be withdrawn pending its final

determination where an air carrier supplies incorrect information or produces it in incomplete form or does not supply it within the time limit fixed by decision under paragraph 5.

7. The Commission shall without delay communicate its reasoned decision under paragraphs 4 and 6 to the Member State(s) concerned and to the air carrier(s) concerned.

8. A Member State concerned may refer the Commission's decision under paragraph 4 to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

9. The Member States concerned shall ensure that the Commission's decision is enforced, unless the decision is under examination by the Council or the Council has taken a different decision in accordance with paragraph 8.

Article 8

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

Article 9

The Commission shall publish a report on the application of this Regulation by 1 April 1994 and periodically thereafter.

Article 10

1. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in Article 9.

2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 11

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

Article 12

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, 23 July 1992

For the Council

The President

J. COPE