

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

**DECISION No 1/2011 OF THE JOINT COMMUNITY/SWITZERLAND AIR TRANSPORT
COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY
AND THE SWISS CONFEDERATION ON AIR TRANSPORT**

of 4 July 2011

**replacing the Annex to the Agreement between the European Community and the Swiss
Confederation on Air Transport**

(2011/419/EU)

THE COMMUNITY/SWITZERLAND AIR TRANSPORT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport, hereinafter referred to as 'the Agreement', and in particular Article 23(4) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The Annex to this Decision replaces the Annex to the Agreement, as from 1 August 2011.

Done at Brussels, 4 July 2011.

For the Joint Committee

The Head of the European Union Delegation
Matthew BALDWIN

The Head of the Swiss Delegation
Peter MÜLLER

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ANNEX

For the purposes of this Agreement:

- by virtue of the Treaty of Lisbon, entered into force on 1 December 2009, the European Union shall replace and succeed the European Community,
- wherever acts specified in this Annex contain references to Member States of the European Community, as replaced by the European Union, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland,
- the references to Council Regulations (EEC) No 2407/92 and (EEC) No 2408/92 made in the Articles 4, 15, 18, 27 and 35 of the Agreement, shall be understood as references to Regulation (EC) No 1008/2008 of the European Parliament and of the Council,
- without prejudice to Article 15 of this Agreement, the term ‘Community air carrier’ referred to in the following Community directives and regulations shall include an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland in accordance with the provisions of Regulation (EC) No 1008/2008. Any reference to Regulation (EEC) No 2407/92 shall be understood as reference to Regulation (EC) No 1008/2008,
- Any reference in the following texts to Articles 81 and 82 of the Treaty or to Articles 101 and 102 of the Treaty on the Functioning of the European Union shall be understood to mean Articles 8 and 9 of this Agreement.

1. Aviation liberalisation and other civil aviation rules

No 1008/2008

Regulation of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

No 2000/79

Council Directive of 27 November 2000 concerning the implementation of the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers’ Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)

No 93/104

Council Directive of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by:

- Directive 2000/34/EC

No 437/2003

Regulation of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air

No 1358/2003

Commission Regulation of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto

No 785/2004

Regulation of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators, as amended by:

- Commission Regulation (EU) No 285/2010

No 95/93

Council Regulation of 18 January 1993 on common rules for the allocation of slots at Community airports (Articles 1–12), as amended by:

— Regulation (EC) No 793/2004

No 2009/12

Directive of the European Parliament and of the Council of 11 March 2009 on airport charges (to be applied by Switzerland as from 1 July 2011)

No 96/67

Council Directive of 15 October 1996 on access to the groundhandling market at Community airports

(Articles 1–9, 11–23, and 25)

No 80/2009

Regulation of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89

2. Competition rules

No 3975/87

Council Regulation of 14 December 1987 laying down the procedures for the application of the rules on competition to undertakings in the air transport sector (Article 6(3)), as last amended by:

— Council Regulation (EC) No 1/2003 (Articles 1–13, 15–45)

No 1/2003

Council Regulation of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Articles 1–13, 15–45)

(To the extent that this Regulation is relevant for the application of this agreement. The insertion of this Regulation does not affect the division of tasks according to this Agreement)

Regulation (EEC) No 17/62 has been repealed by Regulation (EC) No 1/2003 with the exception of Article 8(3) which continues to apply to decisions adopted pursuant to Article 81(3) of the Treaty prior to the date of application of this Regulation until the date of expiration of those decisions.

No 773/2004

Commission Regulation of 7 April 2004 relating to proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, as amended by:

— Commission Regulation (EC) No 1792/2006

No 139/2004

Council Regulation of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)

(Article 1–18, 19(1)–(2), and 20–23)

With respect to Article 4(5) of the Merger Regulation the following shall apply between the European Community and Switzerland:

- (1) with regard to a concentration as defined in Article 3 of Regulation (EC) No 139/2004 which does not have a Community dimension within the meaning of Article 1 of that Regulation and which is capable of being reviewed under the national competition laws of at least three EC Member States and the Swiss Confederation, the persons or undertakings referred to in Article 4(2) of that Regulation may, before any notification to the competent authorities, inform the EC Commission by means of a reasoned submission that the concentration should be examined by the Commission;

- (2) the European Commission shall transmit all submissions pursuant to Article 4(5) of Regulation (EC) No 139/2004 and the previous paragraph to the Swiss Confederation without delay;
- (3) where the Swiss Confederation has expressed its disagreement as regards the request to refer the case, the competent Swiss competition authority shall retain its competence, and the case shall not be referred from the Swiss Confederation pursuant to this paragraph.

With respect to time limits referred to in Article 4(4) and (5), Article 9(2) and (6), and Article 22(2) of the Merger Regulation:

- (1) the European Commission shall transmit all the relevant documents pursuant to Article 4(4) and (5), Article 9(2) and (6) and Article 22(2) to the competent Swiss competition authority without delay;
- (2) the calculation of the time limits referred to in Article 4(4) and (5), Article 9(2) and (6), and Article 22(2) of Regulation (EC) No 139/2004 shall start, for the Swiss Confederation, upon receipt of the relevant documents by the competent Swiss competition authority.

No 802/2004

Commission Regulation of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (Articles 1–24), as amended by:

— Commission Regulation (EC) No 1792/2006

No 2006/111

Commission Directive of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings

No 487/2009

Council Regulation (EC) No 487/2009 of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

3. Aviation safety

No 216/2008

Regulation of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC, as amended by:

— Commission Regulation (EC) No 690/2009,

— Regulation (EC) No 1108/2009

The Agency shall enjoy also in Switzerland the powers granted to it under the provisions of the Regulation.

The Commission shall enjoy also in Switzerland the powers granted to it for decisions pursuant to Article 11(2), Article 14(5) and (7), Article 24(5), Article 25(1), Article 38(3)(i), Article 39(1), Article 40(3), Article 41(3) and (5), Article 42(4), Article 54(1) and Article 61(3).

Notwithstanding the horizontal adaptation provided for in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 65 of the Regulation or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

Nothing in this Regulation shall be construed so as to transfer to the EASA authority to act on behalf of Switzerland under international agreements for other purposes than to assist in the performance of its obligations pursuant to such agreements.

The text of the Regulation shall, for the purposes of the Agreement, be read with the following adaptations:

(a) Article 12 is amended as follows:

- (i) in paragraph 1, the words 'or Switzerland' shall be inserted after the words 'the Community';
- (ii) in paragraph 2(a), the words 'or Switzerland' shall be inserted after the words 'the Community';
- (iii) in paragraph 2 points (b) and (c) are deleted;
- (iv) the following paragraph is added:

'3. Whenever the Community negotiates with a third country in order to conclude an agreement providing that a Member State or the Agency may issue certificates on the basis of certificates issued by the aeronautical authorities of that third country, it shall endeavour to obtain for Switzerland an offer of a similar agreement with the third country in question.

Switzerland shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Community.;

(b) in Article 29, the following paragraph shall be added:

'4. By way of derogation from Article 12(2)(a) of the Conditions of Employment of Other Servants of the European Communities, Swiss nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.;

(c) in Article 30, the following paragraph is added:

'Switzerland shall apply to the Agency the Protocol on the Privileges and Immunities of the European Union, which is set out as Annex A to the present Annex, in accordance with the Appendix to Annex A.;

(d) in Article 37, the following paragraph is added:

'Switzerland shall participate fully in the Management Board and shall within it have the same rights and obligations as European Union Member States, except for the right to vote.;

(e) In Article 59, the following paragraph shall be added:

'12. Switzerland shall participate in the financial contribution referred to in paragraph 1(b), according to the following formula:

$$S \frac{0,2}{100} + S [1 - (a + b) \frac{0,2}{100}] \frac{c}{C}$$

where:

S = the part of the budget of the Agency not covered by the fees and charges mentioned in paragraph 1 (c) and (d)

a = the number of Associated States

b = the number of EU Member States

c = the contribution of Switzerland to the ICAO budget

C = the total contribution of the EU Member States and of the Associated States to the ICAO budget.;

(f) in Article 61, the following paragraph is added:

The provisions relating to financial control by the Community in Switzerland concerning the participants in the activities of the Agency are set out in Annex B to the present Annex.;

(g) Annex II to the Regulation shall be extended to include the following aircraft as products covered by Article 2(3)(a)(ii) of Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations ⁽¹⁾:

A/c - [HB-ID]] – type CL600-2B19

A/c - [HB-IKR, HB-IMY, HB-IWY] – type Gulfstream G-IV

A/c - [HB-IMJ, HB-IVZ, HB-JES] – type Gulfstream G-V

A/c - [HB-XJF, HB-ZCW, HB-ZDF] – type MD900.

No 1108/2009

Regulation of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC

No 91/670

Council Directive of 16 December 1991 on mutual acceptance of personnel licences for the exercise of functions in civil aviation

(Articles 1–8)

No 3922/91

Council Regulation of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (Articles 1–3, 4(2), (5–11, and 13), as amended by:

— Regulation (EC) No 1899/2006,

— Regulation (EC) No 1900/2006,

— Commission Regulation (EC) No 8/2008,

— Commission Regulation (EC) No 859/2008

No 94/56

Council Directive of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents

(Articles 1–13)

No 2004/36

Directive of the Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports (Articles 1–9, and 11–14), as last amended by:

— Commission Directive 2008/49/EC

No 351/2008

Commission Regulation of 16 April 2008 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards the prioritisation of ramp inspections on aircraft using Community airports

No 768/2006

Commission Regulation of 19 May 2006 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards the collection and exchange of information on the safety of aircraft using Community airports and the management of the information system

⁽¹⁾ OJ L 243, 27.9.2003, p. 6.

No 2003/42

Directive of the European Parliament and the Council of 13 June 2003 on occurrence reporting in civil aviation (Articles 1–12)

No 1321/2007

Commission Regulation of 12 November 2007 laying down implementing rules for the integration into a central repository of information on civil aviation occurrences exchanged in accordance with Directive 2003/42/EC of the European Parliament and of the Council

No 1330/2007

Commission Regulation of 24 September 2007 laying down implementing rules for the dissemination to interested parties of information on civil aviation occurrences referred to in Article 7(2) of Directive 2003/42/EC of the European Parliament and of the Council

No 736/2006

Commission Regulation of 16 May 2006 on working methods of the European Aviation Safety Agency for conducting standardisation inspections

No 1702/2003

Regulation of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, as amended by:

- Commission Regulation (EC) No 335/2007,
- Commission Regulation (EC) No 381/2005,
- Commission Regulation (EC) No 375/2007,
- Commission Regulation (EC) No 706/2006,
- Commission Regulation (EC) No 287/2008,
- Commission Regulation (EC) No 1057/2008,
- Commission Regulation (EC) No 1194/2009

For the purposes of the Agreement, the provisions of the Regulation shall be read subject to the following adjustment:

Article 2 is amended as follows:

In paragraphs 3, 4, 6, 8, 10, 11, 13 and 14, the date '28 September 2003' shall be replaced by 'the date of entry into force of the Decision of the Community/Switzerland Air Transport Committee which incorporates Regulation (EC) No 216/2008 into the Annex to the Regulation.'

No 2042/2003

Commission Regulation of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, as amended by:

- Commission Regulation (EC) No 707/2006,
- Commission Regulation (EC) No 376/2007,
- Commission Regulation (EC) No 1056/2008,
- Commission Regulation (EU) No 127/2010,
- Commission Regulation (EU) No 962/2010

No 104/2004

Commission Regulation of 22 January 2004 laying down rules on the organisation and composition of the Board of Appeal of the European Aviation Safety Agency

No 593/2007

Commission Regulation of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency, as last amended by:

— Commission Regulation (EC) No 1356/2008

No 2111/2005

Regulation of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC

No 473/2006

Commission Regulation of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council

No 474/2006

Commission Regulation of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council, as last amended by:

— Commission Implementing Regulation (EU) No 390/2011 ⁽¹⁾

4. Aviation Security

No 300/2008

Regulation of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002

No 272/2009

Commission Regulation of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council, as last amended by:

— Commission Regulation (EU) No 297/2010

No 1254/2009

Commission Regulation (EU) of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures

No 18/2010

Commission Regulation (EU) of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned

No 72/2010

Commission Regulation (EU) of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security

⁽¹⁾ This Regulation shall apply in Switzerland as long as it is in force in the EU.

No 185/2010

Commission Regulation (EU) of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security, as amended by:

- Commission Regulation (EU) No 357/2010,
- Commission Regulation (EU) No 358/2010,
- Commission Regulation (EU) No 573/2010,
- Commission Regulation (EU) No 983/2010,
- Commission Regulation (EU) No 334/2011

No 2010/774

Commission Decision (EU) of 13 April 2010 laying down detailed measures for the implementation of the common basic standards on aviation security containing information as referred to in Point (a) of Article 18 of Regulation (EC) No 300/2008, as amended by:

- Commission Decision 2010/2604/EU,
- Commission Decision 2010/3572/EU,
- Commission Decision 2010/9139/EU.

5. Air traffic management*No 549/2004*

Regulation of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation), as amended by:

- Regulation (EC) No 1070/2009

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 6, 8, 10, 11 and 12.

Article 10 shall be amended as follows:

In paragraph 2, the words 'at Community level' should be replaced by words 'at Community level, involving Switzerland'.

Notwithstanding the horizontal adjustment referred to in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 5 of Regulation (EC) No 549/2004 or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

No 550/2004

Regulation of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation), as amended by:

- Regulation (EC) No 1070/2009

The Commission shall enjoy towards Switzerland the powers granted to it pursuant to Articles 9a, 9b, 15a, 16 and 17.

The provisions of the Regulation shall, for the purposes of the Agreement, be amended as follows:

(a) Article 3 shall be amended as follows:

in paragraph 2, the words 'and Switzerland' shall be inserted after the words 'the Community';

(b) Article 7 is amended as follows:

in paragraph 1 and paragraph 6, the words 'and Switzerland' shall be inserted after the words 'the Community';

(c) Article 8 is amended as follows:

in paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community';

(d) Article 10 is amended as follows:

in paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community';

(e) Article 16(3) is replaced by the following:

'3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally concerned.'

No 551/2004

Regulation of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation), as amended by:

— Regulation (EC) No 1070/2009

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 3a, 6 and 10.

No 552/2004

Regulation of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation), as amended by:

— Regulation (EC) No 1070/2009

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 4, 7 and 10(3).

The provisions of the Regulation shall, for the purposes of the Agreement, be amended as follows:

(a) Article 5 is amended as follows:

in paragraph 2, the words 'or Switzerland' shall be inserted after the words 'the Community';

(b) Article 7 is amended as follows:

in paragraph 4, the words 'or Switzerland' shall be inserted after the words 'the Community';

(c) Annex III shall be amended as follows:

in Section 3, second and last indents, the words 'or Switzerland' shall be inserted after the words 'the Community'.

No 2096/2005

Commission Regulation of 20 December 2005 laying down common requirements for the provision of air navigation services, as amended by:

— Commission Regulation (EC) No 1315/2007,

— Commission Regulation (EC) No 482/2008,

— Commission Regulation (EC) No 668/2008,

— Commission Regulation (EU) No 691/2010.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Article 9.

No 2150/2005

Commission Regulation of 23 December 2005 laying down common rules for the flexible use of airspace

No 1033/2006

Commission Regulation of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the Single European Sky, as last amended by:

— Commission Regulation (EU) No 929/2010

No 1032/2006

Commission Regulation of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units, as last amended by:

— Commission Regulation (EC) No 30/2009

No 1794/2006

Commission Regulation of 6 December 2006 laying down a common charging scheme for air navigation services (to be applied by Switzerland as from the entry into force of the relevant Swiss legislation but at the latest as from 1 January 2012), as last amended by:

— Commission Regulation (EU) No 1191/2010

No 2006/23

Directive of the European Parliament and of the Council of 5 April 2006 on a Community air traffic controller licence

No 730/2006

Commission Regulation of 11 May 2006 on airspace classification and access of flights operated under visual flight rules above flight level 195

No 219/2007

Council Regulation of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), as last amended by:

— Council Regulation (EC) No 1361/2008

No 633/2007

Commission Regulation of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units

No 1265/2007

Commission Regulation of 26 October 2007 laying down requirements on air-ground voice channel spacing for the Single European Sky

No 29/2009

Commission Regulation of 16 January 2009 laying down requirements on data link services for the Single European Sky

No 262/2009

Commission Regulation of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the Single European Sky

No 73/2010

Commission Regulation of 26 January 2010 laying down requirements on the quality of aeronautical data and aeronautical information for the Single European Sky

No 255/2010

Commission Regulation of 25 March 2010 laying down common rules on air traffic flow management

No 691/2010

Commission Regulation of 29 July 2010 laying down a performance scheme for air navigation services and network functions and amending Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services

Corrective measures adopted by the Commission under Article 14 paragraph 3 of the Regulation are mandatory for Switzerland after having been adopted by a decision of the Joint Committee

No 2010/5134

Commission Decision of 29 July 2010 on the designation of the Performance Review Body of the Single European Sky

No 2010/5110

Commission Decision of 12 August 2010 on the designation of a functional airspace blocks system coordinator in the context of the Single European Sky

No 2011/121

Commission Decision 2011/121/EU of 21 February 2011 setting the European Union-wide performance targets and alert thresholds for the provision of air navigation services for the years 2012 to 2014

6. Environment and noise

No 2002/30

Directive of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (Articles 1–12, and 14–18)

(The amendments to Annex I, arising from Annex II, Chapter 8 (Transport policy), Section G (Air transport), point 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, shall apply).

No 89/629

Council Directive of 4 December 1989 on the limitation of noise emissions from civil subsonic jet aeroplanes

(Articles 1–8)

No 2006/93/EC

Directive of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988)

7. Consumer protection

No 90/314

Council Directive of 13 June 1990 on package travel, package holidays and package tours

(Articles 1–10)

No 93/13

Council Directive of 5 April 1993 on unfair terms in consumer contracts

(Articles 1–11)

No 2027/97

Council Regulation of 9 October 1997 on air carrier liability in the event of accidents (Articles 1–8), as amended by:

— Regulation (EC) No 889/2002

No 261/2004

Regulation of the Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

(Articles 1–18)

No 1107/2006

Regulation of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air

8. Miscellaneous

No 2003/96

Council Directive of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity

(Article 14(1)(b), and Article 14(2))

9. Annexes

A: Protocol on the Privileges and Immunities of the European Union

B: Provisions on financial control by the European Union as regards Swiss participants in activities of the EASA

ANNEX A

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community (EAEC), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION*Article 1*

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Union shall be inviolable.

Article 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II

COMMUNICATIONS AND LAISSEZ-PASSER*Article 5*

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

Article 6

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 7

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN UNION

Article 10

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

Article 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;

- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 12

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

Article 13

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 14

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

Article 15

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN UNION

Article 16

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

CHAPTER VII

GENERAL PROVISIONS*Article 17*

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

Article 18

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 19

Articles 11 to 14 and Article 17 shall apply to Members of the Commission.

Article 20

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article 21

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 22

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

*Appendix to Annex A***PROCEDURES FOR THE APPLICATION IN SWITZERLAND OF THE PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION**

1. Extension of application to Switzerland

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter called 'the Protocol') contains references to Member States, the references are to be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Agency from indirect taxation (including VAT)

Goods and services exported from Switzerland are not to be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT is by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund is to be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications must be processed within the 3 months following the date on which they were lodged together with the necessary supporting documents.

3. Procedures for the application of the rules relating to the Agency's staff

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 ⁽¹⁾ from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the European Union and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 13 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the European Union are not obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to the application of Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽²⁾ and the other provisions of the European Union law laying down working conditions.

⁽¹⁾ Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 74, 27.3.1969, p. 1). Regulation last amended by Commission Regulation (EC) No 1749/2002 (OJ L 264, 2.10.2002, p. 13).

⁽²⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Conditions of Employment of Other Servants) (OJ L 56, 4.3.1968, p. 1). Regulation last amended by Commission Regulation (EC) No 2104/2005 (OJ L 337, 22.12.2005, p. 7).

ANNEX B

FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE EUROPEAN AVIATION AGREEMENT*Article 1***Direct communication**

The Agency and the Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Agency, as contractors, participants in Agency programmes, recipients of payments from the Agency or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Agency all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Decision and of contracts or agreements concluded and any decisions taken pursuant to them.

*Article 2***Checks**

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ and the Financial Regulation adopted by the Management Board of the Agency on 26 March 2003, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ and with the other instruments referred to in this Decision, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Agency and Commission officials or by other persons mandated by the Agency and the Commission.

2. Agency and Commission officials and other persons mandated by the Agency and the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Decision.

3. The European Court of Auditors is to have the same rights as the Commission.

4. The audits may take place until 5 years after the expiry of this Decision or under the terms of the contracts or agreements concluded and the decisions taken.

5. The Swiss Federal Audit Office is to be informed in advance of audits conducted on Swiss territory. This information will not be a legal condition for carrying out such audits.

*Article 3***On-the-spot checks**

1. Under this Agreement, the Commission (OLAF) is authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽³⁾.

2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss competent authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Swiss competent authorities.

4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 357, 31.12.2002, p. 72.

⁽³⁾ OJ L 292, 15.11.1996, p. 2.

5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

Article 4

Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall exchange information regularly and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Agency and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Decision.

Article 5

Confidentiality

Information communicated or acquired in any form whatsoever pursuant to this Annex will be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of Switzerland and by the corresponding provisions applicable to the Community institutions. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

Article 6

Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Agency or the Commission in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽¹⁾.

Article 7

Recovery and enforcement

Decisions taken by the Agency or the Commission within the scope of this Decision which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland.

The enforcement order must be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which must inform the Agency or the Commission thereof. Enforcement must take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision is subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause are enforceable on the same terms.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.