

COMMON POSITION (EC) No 42/97

adopted by the Council on 9 October 1997

with a view to adopting Council Directive 97/.../EC amending Directive 92/14/EEC on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, Second Edition (1988)

(97/C 375/02)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission⁽¹⁾,

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

Acting in accordance with the procedure laid down in Article 189c of the Treaty⁽³⁾,

- (1) Whereas the main purpose of the provisions pursuant to Directive 92/14/EEC⁽⁴⁾ is to restrict the operation of certain types of civil subsonic jet aeroplanes;
- (2) Whereas a definition of the key elements of the Directive should prevent any ambiguity as to the objective and the scope of the Directive;
- (3) Whereas this Directive does not deprive an individual Member State of the possibility of having recourse to the relevant provisions of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes⁽⁵⁾ in accordance with their terms;
- (4) Whereas, due to the exceptional historical situation of the airports serving the Berlin conurbation and the location of the airports of Berlin Tegel and Berlin Tempelhof close to the city centre, it is justified to exempt temporarily these two airports from the application of certain provisions of Directive 92/14/EEC;
- (5) Whereas it is necessary to respect the initial intention of the exemption for aeroplanes on the

registers of developing nations; whereas the relevant provisions of the said Directive should therefore be clarified to that effect;

- (6) Whereas an exemption granted for an aeroplane from a developing nation should benefit only that nation;
- (7) Whereas it is necessary to clarify the scope for exemptions granted on economic grounds;
- (8) Whereas it should be made clear that a Member State can only establish a timetable for the gradual withdrawal of non-compliant aeroplanes in respect of aeroplanes which are on the register of that Member State;
- (9) Whereas some Member States have agreements with third country carriers allowing them an exemption for phasing out Chapter 2 aeroplanes similar to that granted to Community air carriers; whereas it is appropriate that these agreements should not be revoked;
- (10) Whereas it is essential that the Annex to Directive 92/14/EEC be kept up to date and amended in a timely manner; whereas, therefore, amendments should be drawn up by the Commission assisted by a committee of a regulatory nature;
- (11) Whereas Article 3 of Directive 92/14/EEC provides for exemptions for aeroplanes on the registers of developing nations and whereas the aeroplanes so exempted were listed in the Annex to that Directive;
- (12) Whereas it is necessary to amend the Annex to Directive 92/14/EEC so as to add certain aeroplanes which qualify for an exemption and were not included when that Directive was adopted; whereas it is also necessary to delete all mention of certain aeroplanes that have been withdrawn from service, destroyed or otherwise no longer qualify for the exemption;
- (13) Whereas it is essential to prevent wrong usage of registrations; whereas the Annex to this Directive contains, for each aeroplane, reference to the manufacturers' serial number for the individual aeroplane;

⁽¹⁾ OJ C 309, 18. 10. 1996, p. 9.

⁽²⁾ OJ C 66, 3. 3. 1997, p. 4.

⁽³⁾ Opinion of the European Parliament of 11 March 1997 (OJ C 115, 14. 4. 1997, p. 2), Council Common Position of 9 October 1997 and Decision of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 76, 23. 3. 1992, p. 21.

⁽⁵⁾ OJ L 240, 24. 8. 1992, p. 8. Regulation as amended by the 1994 Act of Accession.

- (14) Whereas it is important to ensure that infringements of Community law are penalized under conditions which make the penalty effective, proportionate and dissuasive;
- (15) Whereas under the 1994 Act of Accession Austria has to comply with the provisions of Directive 92/14/EEC as from 1 April 2002,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 92/14/EEC is hereby amended as follows:

1. The following paragraph shall be added to Article 1:

‘3. For the purposes of this Directive:

“Air carrier” means an air transport undertaking with a valid operating licence.

“Operating licence” means an authorization granted to an undertaking permitting it to carry out carriage by air of passengers, mail and/or cargo for remuneration and/or hire.

“Community air carrier” means an air carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (*).

“Total civil subsonic jet fleet” means the total aircraft fleet of civil subsonic jet aeroplanes at the disposal of the air carrier, through ownership or any form of lease agreement of not less than one year.

(*) OJ L 240, 24. 8. 1992, p. 1.’

2. The following paragraph shall be added to Article 2:

‘4. Before the date referred to in paragraph 2, the operation of civil subsonic jet aeroplanes which do not comply with the provision of paragraph 1 (a) may be restricted or excluded at the airports of Berlin Tegel and Berlin Tempelhof.’

3. Article 3 (b) shall be replaced by the following:

‘(b) these aeroplanes were on the register of the developing nation shown for that aeroplane in the Annex in the reference year and continue to be used either directly or under any form of lease agreement by natural or legal persons established in that nation.’

4. The following subparagraph shall be added to Article 3:

‘The exemption referred to in the preceding subparagraph shall not apply where the aeroplane is leased to a natural or legal person established in a country other than the one mentioned for that aeroplane in the Annex.’

5. In Articles 4, 5 (c) and (d) and 6 ‘airline’ shall be replaced by ‘air carrier’.

6. Article 7 shall be replaced by the following:

‘Article 7

1. Member States may limit deletion from their registers of all mention of aeroplanes which do not comply with the standards of Chapter 3 of Annex 16 to an equivalent annual rate of up to 10% of the total civil subsonic jet fleet of a Community air carrier.

2. Member States shall not apply the provisions of Article 2 (1) in respect of aeroplanes retained on the register of a Member State in accordance with paragraph 1.

3. Where a Member State has applied an equivalent exemption to that described in paragraphs 1 and 2 to aeroplanes on the register of a third country and operating into that Member State before this Directive enters into force, the exemption may continue to be recognized subject to compliance by the air carrier with the conditions.’

7. The following Articles shall be inserted:

‘Article 9a

Amendments to the Annex which may prove necessary in order to ensure full conformity with the criteria set out in Article 3 shall be effected according to the procedure defined in Article 9b (2).

Article 9b

1. The Commission shall be assisted by the committee provided for in Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation (*), which shall act in accordance with the procedure outlined in paragraph 2.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down

in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.
- b) If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If the Council has not acted within 3 months of the date of the referral to it, the Commission shall adopt the measures proposed.

(*) OJ L 373, 31. 12. 1991, p. 4. Regulation as amended by Regulation (EC) No 2176/96 (OJ L 291, 14. 11. 1996, p. 15).'

8. The Annex shall be replaced by the Annex hereto.

Article 2

System of penalties

Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the relevant provisions to the Commission not later than 1 March 1999 and shall notify any subsequent changes as soon as possible.

Article 3

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 March 1999. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. In accordance with Article 168 of the 1994 Act of Accession and Annex XIX (III) thereto, Austria shall put into effect the measures necessary to comply with this Directive by 1 April 2002.

Article 4

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at ...

For the Council
The President

ANNEX

'ANNEX

LIST OF AEROPLANES EXEMPTED IN ACCORDANCE WITH ARTICLE 3

Note: Exemptions for aeroplanes in this Annex are granted within the general framework of the United Nations policies and decisions (e.g. sanctions, embargo, etc.)

ALGERIA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20955	B727-2D6	7T-VEH	Air Algérie
21053	B727-2D6	7T-VEI	Air Algérie
21210	B727-2D6	7T-VEM	Air Algérie
21284	B727-2D6	7T-VEP	Air Algérie
20884	B737-2D6	7T-VEG	Air Algérie
21063	B737-2D6	7T-VEJ	Air Algérie
21064	B737-2D6	7T-VEK	Air Algérie
21065	B737-2D6	7T-VEL	Air Algérie
21211	B737-2D6	7T-VEN	Air Algérie
20650	B737-2D6	7T-VED	Air Algérie
21285	B737-2D6	7T-VEQ	Air Algérie

CONGO, DEMOCRATIC REPUBLIC OF

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20200	B707-329C	9Q-CBW	Scibe Airlift

DOMINICAN REPUBLIC

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
19767	B707-399C	HI-442CT	Dominicana de Aviacion

EGYPT

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
19843	B707-336-C	SU-PBA	Air Memphis
19916	B707-328-C	SU-PBB	Air Memphis
21194	B737-266	SU-AYK	Egypt Air
21195	B737-266	SU-AYL	Egypt Air
21227	B737-266	SU-AYO	Egypt Air

IRAQ

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20889	B707-370C	YI-AGE	Iraqi Airways
20892	B737-270C	YI-AGH	Iraqi Airways
20893	B737-270C	YI-AGI	Iraqi Airways

LEBANON

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20259	B707-3B4C	OD-AFD	MEA
20260	B707-3B4C	OD-AFE	MEA
19966	B707-347C	OD-AGU	MEA
19967	B707-347C	OD-AGV	MEA

19589	B707-323C	OD-AHC	MEA
19515	B707-323C	OD-AHD	MEA
20170	B707-323B	OD-AHF	MEA
19516	B707-323C	OD-AHE	MEA
19104	B707-327C	OD-AGX	TMA
19105	B707-327C	OD-AGY	TMA
18939	B707-323C	OD-AGD	TMA
19214	B707-331C	OD-AGS	TMA
19269	B707-321C	OD-AGO	TMA
19274	B707-321C	OD-AGP	TMA

LIBERIA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
45683	DC8F-55	EL-AJO	Liberia World Airlines
45686	DC8F-55	EL-AJQ	Liberia World Airlines

LIBYA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20245	B727-224	5A-DAI	Libyan Arab Airlines
21051	B727-2L5	5A-DIB	Libyan Arab Airlines
21052	B727-2L5	5A-DIC	Libyan Arab Airlines
21229	B727-2L5	5A-DID	Libyan Arab Airlines
21230	B727-2L5	5A-DIE	Libyan Arab Airlines

MAURITANIA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
11093	F28-4000	5T-CLG	Air Mauritanie

MOROCCO

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20471	B727-2B6	CN-CCG	Royal Air Maroc
21214	B737-2B6	CN-RMI	Royal Air Maroc
21215	B737-2B6	CN-RMJ	Royal Air Maroc
21216	B737-2B6	CN-RMK	Royal Air Maroc

NIGERIA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
18809	B707-338C	5N-ARQ	DAS Air Cargo
19664	B707-355C	5N-VRG	Air Tours

SAUDI ARABIA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20574	B737-268C	HZ-AGA	Saudia
20575	B737-268C	HZ-AGB	Saudia
20576	B737-268	HZ-AGC	Saudia
20577	B737-268	HZ-AGD	Saudia
20578	B737-268	HZ-AGE	Saudia
20882	B737-268	HZ-AGF	Saudia
20883	B737-268	HZ-AGG	Saudia

SWAZILAND

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
45802	DC8F-54	3D-AFR	African International Airways
46012	DC8F-54	3D-ADV	African International Airways

TUNISIA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
20545	B727-2H3	TS-JHN	Tunis Air
20948	B727-2H3	TS-JHQ	Tunis Air
21179	B727-2H3	TS-JHR	Tunis Air
21235	B727-2H3	TS-JHT	Tunis Air

UGANDA

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
19821	B707-379C	5X-JEF	Dairo Air Services

ZIMBABWE

<i>Serial No</i>	<i>Type</i>	<i>Registration</i>	<i>Operator</i>
18930	B707-330B	Z-WKU	Air Zimbabwe
45821	DC8F-55	Z-WMJ	Affretair
