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## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EEC) No 2407/92**

of 23 July 1992

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

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 that sector;

Whereas in Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States <sup>(4)</sup> the Council decided to adopt for implementation not later than 1 July 1992 common rules governing the licensing of air carriers;

Whereas, however, it is necessary to allow Member States a reasonable period, until 1 January 1993, for the application of this Regulation;

Whereas it is important to define non-discriminatory requirements in relation to the location and control of an undertaking applying for a licence;

Whereas in order to ensure dependable and adequate service it is necessary to ensure that an air carrier is at all times operating at sound economic and high safety levels;

Whereas for the protection of users and other parties concerned 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 use aircraft owned anywhere in the Community, without prejudice to the responsibilities of the licensing Member State with respect to the technical fitness of the carrier;

Whereas it should also be possible to lease aircraft registered outside the Community for a short term or in exceptional circumstances, providing safety standards are equivalent to those applicable within the Community;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

1. This Regulation concerns requirements for the granting and maintenance of operating licences by Member States in relation to air carriers established in the Community.

<sup>(1)</sup> OJ No C 258, 4. 10. 1991, p. 2.

<sup>(2)</sup> OJ No C 125, 18. 5. 1992, p. 140.

<sup>(3)</sup> OJ No C 169, 6. 7. 1992, p. 15.

<sup>(4)</sup> OJ No L 217, 11. 8. 1990, p. 8.

2. The carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultra-light power driven aircraft, as well as local flights not involving carriage between different airports, are not subject to this Regulation. In respect of these operations, national law concerning operating licences, if any, and Community and national law concerning the air operator's certificate (AOC) shall apply.

#### 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 not;
- (b) 'air carrier' means an air transport undertaking with a valid operating licence;
- (c) 'operating licence' means an authorization granted by the Member State responsible to an undertaking, permitting it to carry out carriage by air of passengers, mail and/or cargo, as stated in the operating licence, for remuneration and/or hire;
- (d) 'air operator's certificate (AOC)' means a document issued to an undertaking or a group of undertakings by the competent authorities of the Member States which affirms that the operator in question has the professional ability and organization to secure the safe operation of 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 development and investments to be carried out, including the financial and economic 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;
- (g) 'effective control' means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
  - (a) the right to use all or part of the assets of an undertaking;
  - (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking.

#### Article 3

- 1. Without prejudice to Article 5 (5), Member States shall not grant operating licences or maintain them in force where the requirements of this Regulation are not complied with.
- 2. An undertaking meeting the requirements of this Regulation shall be entitled to receive an operating licence. Such licence does not confer in itself any rights of access to specific routes or markets.
- 3. Without prejudice to Article 1 (2), no undertaking established in the Community 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.

#### Operating licence

#### Article 4

- 1. No undertaking shall be granted an operating licence by a Member State unless:
  - (a) its principal place of business and, if any, its registered office are located in that Member State; and
  - (b) its main occupation is air transport in isolation or combined with any other commercial operation of aircraft or repair and maintenance of aircraft.
- 2. Without prejudice to agreements and conventions to which the Community is a contracting party, the undertaking shall be owned and continue to be owned directly or through majority ownership by Member States and/or nationals of Member States. It shall at all times be effectively controlled by such States or such nationals.
- 3. (a) Notwithstanding paragraphs 2 and 4, air carriers which have already been recognized in Annex I to Council Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States <sup>(1)</sup> shall retain their rights under this and associated Regulations as long as they meet the other obligations in this Regulation and they continue to be controlled directly or indirectly by the same third countries and/or by nationals of the same third country as those exercising such control at the time of adoption of this Regulation. Such control may, however, be transferred to Member States and/or to Member State nationals at any time.

<sup>(1)</sup> OJ No L 36, 8. 2. 1991, p. 1.

- (b) The possibility of buying and selling shares under subparagraph (a) does not cover nationals who have a significant interest in an air carrier of a third country.

4. Any undertaking which directly or indirectly participates in a controlling shareholding in an air carrier shall meet the requirements of paragraph 2.

5. An air carrier shall at all times be able on request to demonstrate to the Member State responsible for the operating licence that it meets the requirements of this Article. The Commission acting at the request of a Member State shall examine compliance with the requirements of this Article and take a decision if necessary.

#### Article 5

1. An applicant air transport undertaking to which an operating licence is granted for the first time must be able to demonstrate to the reasonable satisfaction of the competent authorities of the licensing Member State that:

- (a) it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations; and
- (b) it can meet its fixed and operational costs incurred from operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.

2. For the purpose of paragraph 1, each applicant shall submit a business plan for, at least, the first two years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. The applicant shall also provide all relevant information, in particular the data referred to in part A of the Annex.

3. An air carrier shall notify in advance to its licensing authority plans for: operation of a new scheduled service or a non-scheduled service to a continent or world region not previously served, changes in the type or number of aircraft used or a substantial change in the scale of its activities. It shall also notify in advance any intended mergers or acquisitions and shall notify its licensing authority within fourteen days of any change in the ownership of any single shareholding which represents 10 % or more of the total shareholding of the air carrier or of its parent or ultimate holding company. The submission of a 12-month business

plan two months in advance of the period to which it refers shall constitute sufficient notice under this paragraph for the purpose of changes to current operations and/or circumstances which are included in that business plan.

4. If the licensing authority deems the changes notified under paragraph 3 to have a significant bearing on the finances of the air carrier, it shall require the submission of a revised business plan incorporating the changes in question and covering, at least, a period of 12 months from its date of implementation, as well as all the relevant information, including the data referred to in part B of the Annex, to assess whether the air carrier can meet its existing and potential obligations during that period of 12 months. The licensing authority shall take a decision on the revised business plan not later than three months after all the necessary information has been submitted to it.

5. Licensing authorities may, at any time and in any event whenever there are clear indications that financial problems exist with an air carrier licensed by them, assess its financial performance and may suspend or revoke the licence if they are no longer satisfied that the air carrier can meet its actual and potential obligations for a 12-month period. Licensing authorities may also grant a temporary licence pending financial reorganization of the air carrier provided safety is not at risk.

6. An air carrier shall provide to its licensing authority every financial year without undue delay the audited accounts relating to the previous financial year. At any time upon request of the licensing authority an air carrier shall provide the information relevant for the purposes of paragraph 5 and, in particular, the data referred to in part C of the Annex.

7. (a) Paragraphs 1, 2, 3, 4 and 6 of this Article shall not apply to air carriers exclusively engaged in operations with aircraft of less than 10 tonnes mto w (maximum take off weight) and/or less than 20 seats. Such air carriers shall at all times be able to demonstrate that their net capital is at least ECU 80 000 or to provide when required by the licensing authority the information relevant for the purposes of paragraph 5. A Member State may nevertheless apply paragraphs 1, 2, 3, 4 and 6 to air carriers licensed by it that operate scheduled services or whose turnover exceeds ECU 3 million per year.

- (b) The Commission may, after consulting the Member States, increase as appropriate the values referred to in subparagraph (a) if economic developments indicate the necessity of such a decision. Such change shall be published in the *Official Journal of the European Communities*.
- (c) 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 6

1. Where the competent authorities of a Member State require, for the purpose of issuing an operating licence, proof that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt, or suspend or revoke the licence in the event of serious professional misconduct or a criminal offence, that Member State shall accept as sufficient evidence in respect of nationals of other Member States the production of documents issued by competent authorities in the Member State of origin or the Member State from which the foreign national comes showing that those requirements are met.

Where the competent authorities of the Member State of origin or of the Member State from which the foreign national comes do not issue the documents referred to in the first subparagraph, such documents shall be replaced by a declaration on oath — or, in Member States where there is no provision for declaration on oath, by a solemn declaration — made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State from which the person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

2. The competent authorities of Member States may require that the documents and certificates referred to in paragraph 1 be presented no more than three months after their date of issue.

#### Article 7

An air carrier shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties.

#### Article 8

1. Ownership of aircraft shall not be a condition for granting or maintaining an operating licence but a Member State shall require, in relation to air carriers licensed by it that they have one or more aircraft at their disposal, through ownership or any form of lease agreement.

2. (a) Without prejudice to paragraph 3, aircraft used by an air carrier shall be registered, at the option of the Member State issuing the operating licence, in its national register or within the Community.

(b) If a lease agreement for an aircraft registered within the Community has been deemed acceptable under Article 10, a Member State shall not require the registration of that aircraft on its own register if this would require structural changes to the aircraft.

3. In the case of short-term lease agreements to meet temporary needs of the air carrier or otherwise in exceptional circumstances, a Member State may grant waivers to the requirement of paragraph 2 (a).

4. When applying paragraph 2 (a) a Member State shall, subject to applicable laws and regulations, including those relating to airworthiness certification, accept on its national register, without any discriminatory fee and without delay, aircraft owned by nationals of other Member States and transfers from aircraft registers of other Member States. No fee shall be applied to transfer of aircraft in addition to the normal registration fee.

#### Air operator's certificates (AOC)

#### Article 9

1. The granting and validity at any time of an operating licence shall be dependent upon the possession of a valid AOC specifying the activities covered by the operating licence and complying with the criteria established in the relevant Council Regulation.

2. Until such time as the Council Regulation referred to in paragraph 1 is applicable, national regulations concerning the AOC, or equivalent title concerning the certification of air transport operators, shall apply.

#### Article 10

1. For the purposes of ensuring safety and liability standards an air carrier using an aircraft from another undertaking 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.

2. A Member State shall not approve agreements leasing aircraft with crew to an air carrier to which it has granted an operating licence unless safety standards equivalent to those imposed under Article 9 are met.

## General provisions

### Article 11

1. An operating licence shall be valid as long as the air carrier meets the obligations of this Regulation. However, a Member State may make provision for a review one year after a new operating licence has been granted and every five years thereafter.

2. When an air carrier has ceased operations for six months or has not started operations for six months after the granting of an operating licence, the Member State responsible shall decide whether the operating licence shall be resubmitted for approval.

3. In relation to air carriers licensed by them, Member States shall decide whether the operating licence shall be resubmitted for approval in case of change in one or more elements affecting the legal situation of the undertaking and, in particular, in the case of mergers or takeovers. The air carrier(s) in question may continue its (their) operations unless the licensing authority decides that safety is at risk, stating the reasons.

### Article 12

An air carrier against which insolvency or similar proceedings are opened shall not be permitted by a Member State to retain its operating licence if the competent body in that Member State is convinced that there is no realistic prospect of a satisfactory financial reconstruction within a reasonable time.

### Article 13

1. Procedures for the granting of operating licences shall be made public by the Member State concerned and the Commission shall be informed.

2. The Member State concerned shall take a decision on an application as soon as possible, and not later than three months after all the necessary information has been submitted, taking into account all available evidence. The decision shall be communicated to the applicant air transport undertaking. A refusal shall indicate the reasons therefor.

3. An undertaking whose application for an operating licence has been refused may refer the question to the Commission. If the Commission finds that the requirements of this Regulation have not been fulfilled it shall state its views on the correct interpretation of the Regulation without prejudice to Article 169 of the Treaty.

4. Decisions by Member States to grant or revoke operating licences shall be published in the *Official Journal of the European Communities*.

### Article 14

1. In order to carry out its duties under Article 4 the Commission may obtain all necessary information from the Member States concerned, which shall also ensure the provision of information by air carriers licensed by them.

2. When the information requested is not supplied within the time limit fixed by the Commission, or is supplied in incomplete form, the Commission shall by decision addressed to the Member State concerned 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.

3. If the information required under paragraph 2 is not provided by the time limit set or the air carrier has not otherwise demonstrated that it meets the requirements of Article 4, the Commission shall, except where special circumstances exist, forthwith inform all Member States of the situation. Member States may, until notified by the Commission that documentation has been provided to demonstrate the fulfilment of the requirements in question, suspend any market access rights to which the air carrier is entitled under Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes <sup>(1)</sup>.

### Article 15

In addition to the rules of this Regulation the air carrier shall also respect the requirements of national law compatible with Community law.

### Article 16

Notwithstanding Article 3 (1), operating licences in force in a Member State at the date of entry into force of the Regulation shall remain valid, subject to the laws on the basis of which they were granted, for a maximum period of one year except in the case of Article 4 (1) (b) for which a maximum period of three years shall apply, during which periods the air carriers holding such licences shall make the necessary arrangements to conform with all the requirements of this Regulation. For the purposes of this Article, carriers holding operating licences shall be deemed

<sup>(1)</sup> See page 8 of this Official Journal.

to include carriers legitimately operating with a valid AOC at the date of entry into force of this Regulation but without holding such licences.

This Article shall be without prejudice to Article 4 (2) (3) (4) and (5) and Article 9, except that air carriers which operated by virtue of exemptions prior to the entry into force of this Regulation may continue to do so, for a period not exceeding the maximum periods specified above, pending enquiries by Member States as to their compliance with Article 4.

*Article 17*

Member States shall consult the Commission before adopting laws, regulations or administrative provisions in implementation of this Regulation. They shall

communicate any such measures to the Commission when adopted.

*Article 18*

1. Member States and the Commission shall cooperate in implementing this Regulation.
2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

*Article 19*

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

## ANNEX

**Information for use in association with Article 5 of financial fitness of air carriers****A. Information to be provided by a first-time applicant from a financial fitness point of view**

1. The most recent internal management accounts and, if available, audited accounts for the previous financial year.
2. A projected balance sheet, including profit and loss account, for the following two years.
3. The basis for projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.
4. Details of the start-up costs incurred in the period from submission of application to commencement of operations and an explanation of how it is proposed to finance these costs.
5. Details of existing and projected sources of finance.
6. Details of shareholders, including nationality and type of shares to be held, and the Articles of Association. If part of a group of undertakings, information on the relationship between them.
7. Projected cash-flow statements and liquidity plans for the first two years of operation.
8. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

**B. Information to be provided for assessment of the continuing financial fitness of existing licence holders planning a change in their structures or in their activities with a significant bearing on their finances**

1. If necessary, the most recent internal management balance sheet and audited accounts for the previous financial year.
2. Precise details of all proposed changes e.g. change of type of service, proposed takeover or merger, modifications in share capital, changes in shareholders, etc.
3. A projected balance sheet, with a profit and loss account, for the current financial year, including all proposed changes in structure or activities with a significant bearing on finances.
4. Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.
5. Cash-flow statements and liquidity plans for the following year, including all proposed changes in structure or activities with a significant bearing on finances.
6. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

**C. Information to be provided for assessment of the continuing financial fitness of existing licence holders**

1. Audited accounts not later than six months after the end of the relevant period and, if necessary, the most recent internal management balance sheet.
2. A projected balance sheet, including profit and loss account, for the forthcoming year.
3. Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.
4. Cash-flow statements and liquidity plans for the following year.

## COUNCIL REGULATION (EEC) No 2408/92

of 23 July 1992

on access for Community 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;

Whereas Council Decision 87/602/EEC of 14 December 1987 on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air service routes between Member States (4) and Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States (5) constitute the first steps towards achieving the internal market in respect of access for Community air carriers to scheduled intra-Community air routes;

Whereas Regulation (EEC) No 2343/90 provides that the Council shall decide on the revision of that 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;

Whereas it is necessary to abolish restrictions concerning multiple designation and fifth-freedom traffic rights and phase in 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 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 operational rules relating to safety, protection of the environment and conditions concerning airport access and has to be treated without discrimination;

Whereas, taking into account problems of congestion or environmental problems, it is necessary to include the possibility of imposing certain limitations on the exercise of traffic rights;

(1) OJ No C 258, 4. 10. 1991, p. 2.

(2) OJ No C 125, 18. 5. 1992, p. 146.

(3) OJ No C 169, 6. 7. 1992, p. 15.

(4) OJ No L 374, 31. 12. 1987, p. 19.

(5) OJ No L 217, 11. 8. 1990, p. 8.

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 purposes 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 Regulation;

Whereas this Regulation partially replaces Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States <sup>(1)</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

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

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 on 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 from 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 granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 of licensing of air carriers <sup>(2)</sup>;

(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 authorized agents);

(ii) it is operated so as to serve traffic between the same two or more airports, either:

1. according to a published timetable; or
2. with flights so regular or frequent that they constitute a recognizably 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 authorized agent or a charterer;

(h) 'Member State(s) concerned' means the Member State(s) between or within which an air service is operated;

(i) '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;

(j) 'State of registration' means the Member State in which the licence referred to in (b) is granted;

(k) 'airport' means any area in a Member State which is open for commercial air transport operations;

(l) 'regional airport' means any airport other than one listed in Annex I as a category 1 airport;

(m) 'airport system' means two or more airports grouped together as serving the same city or conurbation, as indicated in Annex II;

<sup>(1)</sup> OJ No L 36, 8. 2. 1991, p. 1.

<sup>(2)</sup> See page 1 of this Official Journal.

- (n) 'capacity' means the number of seats offered to the general public on a scheduled air service over a given period;
- (o) 'public service obligation' means any obligation imposed upon an air carrier 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, capacity and pricing, which standards the air carrier would not assume if it were solely considering its commercial interest.

#### Article 3

1. Subject to this Regulation, Community air carriers shall be permitted by the Member State(s) concerned to exercise traffic rights on routes within the Community.

2. Notwithstanding paragraph 1, before 1 April 1997 a Member State shall not be required to authorize cabotage traffic rights within its territory by Community air carriers licensed by another Member State, unless:

- (i) the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as a preliminary of a service to, the State or registration of the carrier;
- (ii) the air carrier does not use, for the cabotage service, more than 50 % of its seasonal capacity on the same service of which the cabotage service constitutes the extension or the preliminary.

3. An air carrier operating cabotage services in accordance with paragraph 2 shall furnish on request to the Member State(s) involved all information necessary for the implementation of the provisions of that paragraph.

4. Notwithstanding paragraph 1, before 1 April 1997 a Member State may, without discrimination on grounds of nationality of ownership and air carrier identity, whether incumbent or applicant on the routes concerned, regulate access to routes within its territory for air carriers licensed by it in accordance with Regulation (EEC) No 2407/92 while otherwise not prejudging Community law and, in particular, competition rules.

#### Article 4

1. (a) A Member State, following consultations with the other Member States concerned and after having informed the Commission and air carriers operating on the route, may impose a public service obligation in respect of scheduled air services to an airport serving a peripheral or development region in its territory or on a thin route to any regional airport

in its territory, any such route being 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, which standards air carriers would not assume if they were solely considering their commercial interest. The Commission shall publish the existence of this public service obligation in the *Official Journal of the European Communities*.

- (b) The adequacy of scheduled air services shall be assessed by the Member States having regard to:

- (i) the public interest;
- (ii) the possibility, in particular for island regions, 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) In instances where other forms of transport cannot ensure an adequate and uninterrupted service, the Member States concerned may include in the public service obligation the requirement that any air carrier intending to operate the route gives a guarantee that it will operate the route for a certain period, to be specified, in accordance with the other terms of the public service obligation.

- (d) If no air carrier has commenced or is about to commence scheduled air services on a route in accordance with the public service obligation which has been imposed on that route, then the Member State may limit access to that route to only one air carrier for a period of up to three years, after which the situation shall be reviewed. The right to operate such services shall be offered by public tender either singly or for a group of such routes to any Community air carrier entitled to operate such air services. The invitation to tender shall be published in the *Official Journal of the European Communities* and the deadline for submission of tenders not be earlier than one month after the day of publication. The submissions made by air carriers shall forthwith be communicated to the other Member States concerned and to the Commission.

- (e) The invitation to tender and subsequent contract shall cover, *inter alia*, the following points:
- (i) the standards required by the public service obligation;
  - (ii) rules concerning amendment and termination of the contract, in particular to take account of unforeseeable changes;
  - (iii) the period of validity of the contract;
  - (iv) penalties in the event of failure to comply with the contract.
- (f) The selection among the submissions shall be made as soon as possible taking into consideration the adequacy of the service, including the prices and conditions which can be quoted to users, and the cost of the compensation required from the Member State(s) concerned, if any.
- (g) Notwithstanding subparagraph (f), a period of two months shall elapse after the deadline for submission of tenders before any selection is made, in order to permit other Member States to submit comments.
- (h) A Member State may reimburse an air carrier, which has been selected under subparagraph (f), for satisfying standards required by a public service obligation imposed under this paragraph; such reimbursement shall take into account the costs and revenue generated by the service.
- (i) Member States shall take the measures necessary to ensure that any decision taken under this Article can 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.
- (j) When a public service obligation has been imposed in accordance with subparagraphs (a) and (c) 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.
- (k) Subparagraph (d) 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. Paragraph 1 (d) shall not apply to routes where other forms of transport can ensure an adequate and uninterrupted service when the capacity offered exceeds 30 000 seats per year.

3. At the request of a Member State which considers that the development of a route is being unduly restricted by the terms of paragraph 1, or on its own initiative, 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 shall continue to apply in respect of the route concerned.

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 take a different decision within a period of one month.

#### Article 5

On domestic routes for which at the time of entry into force of this Regulation an exclusive concession has been granted by law or contract, and where other forms of transport cannot ensure an adequate and uninterrupted service, such a concession may continue until its expiry date or for three years, whichever deadline comes first.

#### Article 6

1. Notwithstanding Article 3, a Member State may, where one of the air carriers licensed by it has started to operate a scheduled passenger air service with aircraft of no more than 80 seats on a new route between regional airports where the capacity does not exceed 30 000 seats per year, refuse a scheduled air service by another air carrier for a period of two years, unless it is operated with aircraft of not 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.

2. Article 4 (3) and (4) shall apply in relation to paragraph 1 of this Article.

#### Article 7

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

#### Article 8

1. 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.

2. The exercise of traffic rights shall be subject to published Community, national, regional or local operational rules relating to safety, the protection of the environment and the allocation of slots.

3. At the request of a Member State or on its own initiative the Commission shall examine the application of paragraphs 1 and 2 and, within one month of receipt of a request and after consulting the Committee referred to in Article 11, decide whether the Member State may continue to apply the measure. The Commission shall communicate its decision to the Council and to the Member States.

4. 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.

5. When a Member State decides to constitute a new airport system or modify an existing one it shall inform the other Member States and the Commission. After having verified that the airports are grouped together as serving the same city or conurbation the Commission shall publish a revised Annex II in the *Official Journal of the European Communities*.

#### Article 9

1. When serious congestion and/or environmental problems exist the Member State responsible may, subject to this Article, impose conditions on, limit or refuse the exercise of traffic rights, in particular when other modes of transport can provide satisfactory levels of service.

2. Action taken by a Member State in accordance with paragraph 1 shall:

- be non-discriminatory on grounds of nationality or identity of air carriers,
- have a limited period of validity, not exceeding three years, after which it shall be reviewed,
- not unduly affect the objectives of this Regulation,
- not unduly distort competition between air carriers,
- not be more restrictive than necessary in order to relieve the problems.

3. When a Member State considers that action under paragraph 1 is necessary it shall, at least three months before the entry into force of the action, inform the other Member States and the Commission, providing adequate justification for the action. The action may be implemented unless within one month or receipt of the information a Member State concerned contests the action or the Commission, in accordance with paragraph 4, takes it up for further examination.

4. At the request of a Member State or on its own initiative the Commission shall examine action referred to in paragraph 1. When the Commission, within one month of having been informed under paragraph 3, takes the action up for examination it shall at the same time indicate

whether the action may be implemented, wholly or partially, during the examination taking into account in particular the possibility of irreversible effects. After consulting the Committee referred to in Article 11 the Commission shall, one month after having received all necessary information, decide whether the action is appropriate and in conformity with this Regulation and not in any other way contrary to Community law. The Commission shall communicate its decision to the Council and the Member States. Pending such decision the Commission may decide on interim measures including the suspension, in whole or in part, of the action, taking into account in particular the possibility of irreversible effects.

5. Notwithstanding paragraphs 3 and 4, a Member State may take the necessary action to deal with sudden problems of short duration provided that such action is consistent with paragraph 2. The Commission and the Member State(s) shall be informed without delay of such action with its adequate justification. If the problems necessitating such action continue to exist for more than 14 days the Member State shall inform the Commission and the other Member States accordingly and may, with the agreement of the Commission, prolong the action for further periods of up to 14 days. At the request of the Member State(s) involved or on its own initiative the Commission may suspend this action if it does not meet the requirements of paragraphs 1 and 2 or is otherwise contrary to Community law.

6. Any Member State may refer the Commission's decision under paragraph 4 or 5 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.

7. When a decision taken by a Member State in accordance with this Article limits the activity of a Community air carrier on an intra-Community route, the same conditions or limitation shall apply to all Community air carriers on the same route. When the decision involves the refusal of new or additional services, the same treatment shall be given to all requests by Community air carriers for new or additional services on that route.

8. Without prejudice to Article 8 (1) and except with the agreement of the Member State(s) involved, a Member State shall not authorize an air carrier:

- (a) to establish a new service, or
- (b) to increase the frequency of an existing service,

between a specific airport in its territory and another Member State for such time as an air carrier licensed by that other Member State is not permitted, on the basis of slot-allocation rules as provided for in Article 8 (2), to establish a new service or to increase frequencies on an

existing service to the airport in question, pending the adoption by the Council and the coming into force of a Regulation on a code of conduct on slot allocation based on the general principle of non-discrimination on the grounds of nationality.

#### *Article 10*

1. Capacity limitations shall not apply to air services covered by this Regulation except as set out in Articles 8 and 9 and in this Article.

2. Where the application of paragraph 1 has led to serious financial damage for the scheduled air carrier(s) licensed by a Member State, the Commission shall carry out a review at the request of that Member State 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 utilization 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 11*

1. The Commission shall be assisted by an Advisory Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The Committee shall advise the Commission on the application of Articles 9 and 10.

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

Done at Brussels, 23 July 1992

3. Furthermore, the Committee may be consulted by the Commission on any other question concerning the application of this Regulation.

4. The Committee shall draw up its rules of procedure.

#### *Article 12*

1. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from the Member States concerned, which shall also ensure the provision of information by air carriers licensed by them.

2. When the information requested is not supplied within the time limit fixed by the Commission, or is supplied in incomplete form, the Commission shall by decision addressed to the Member State concerned require the information to be applied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.

#### *Article 13*

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

#### *Article 14*

1. Member States and the Commission shall cooperate in implementing this Regulation.

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

#### *Article 15*

Regulation (EEC) No 2343/90 and 294/91 are hereby replaced with the exceptions of Article 2 (e) (ii) and of Annex I to Regulation (EEC) No 2343/90, as interpreted by Annex II to this Regulation, and Article 2 (b) of and the Annex to Regulation (EEC) No 294/91.

#### *Article 16*

This Regulation shall enter into force on 1 January 1993.

*For the Council*

*The President*

J. COPE

**ANNEX I****List of category 1 airports**

|                        |  |
|------------------------|--|
| <b>BELGIUM:</b>        | Brussels-Zaventem  |
| <b>DENMARK:</b>        | Copenhagen airport system  |
| <b>GERMANY:</b>        | Frankfurt-Rhein/Main<br>Düsseldorf-Lohausen<br>Munich<br>Berlin airport system |
| <b>SPAIN:</b>          | Palma-Mallorca<br>Madrid-Barajas<br>Malaga<br>Las Palmas                       |
| <b>GREECE:</b>         | Athens-Hellinikon<br>Thessalonika-Macedonia                                    |
| <b>FRANCE:</b>         | Paris airport system   |
| <b>IRELAND:</b>        | Dublin   |
| <b>ITALY:</b>          | Rome airport system<br>Milan airport system                                    |
| <b>NETHERLANDS:</b>    | Amsterdam-Schiphol   |
| <b>PORTUGAL:</b>       | Lisbon<br>Faro   |
| <b>UNITED KINGDOM:</b> | London airport system<br>Luton   |

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**ANNEX II****List of airport systems**

|                        |  |
|------------------------|--|
| <b>DENMARK:</b>        | Copenhagen-Kastrup/Roskilde  |
| <b>GERMANY:</b>        | Berlin-Tegel/Schönefeld/Tempelhof  |
| <b>FRANCE:</b>         | Paris-Charles De Gaulle/Orly/Le Bourget<br>Lyon-Bron-Satolas                                       |
| <b>ITALY:</b>          | Rome-Fiumicino/Ciampino<br>Milan-Linate/Malpensa/Bergamo (Orio al Serio)<br>Venice-Tessera/Treviso |
| <b>UNITED KINGDOM:</b> | London-Heathrow/Gatwick/Stansted   |

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**ANNEX III****Interpretation referred to in Article 15**

Under the terms of Annex I to Regulation (EEC) No 2343/90 the air carrier Scanair, which is structured and organized exactly as Scandinavian Airlines System, is to be considered in the same way as the air carrier Scandinavian Airlines System.

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**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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

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 <sup>(4)</sup> and Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services <sup>(5)</sup> 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 <sup>(6)</sup>,

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 <sup>(7)</sup>.
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;

<sup>(1)</sup> OJ No C 258, 4. 10. 1991, p. 2.

<sup>(2)</sup> OJ No C 125, 18. 5. 1992, p. 150.

<sup>(3)</sup> OJ No C 169, 6. 7. 1992, p. 15.

<sup>(4)</sup> OJ No L 374, 31. 12. 1987, p. 12.

<sup>(5)</sup> OJ No L 217, 11. 8. 1990, p. 1.

<sup>(6)</sup> OJ No L 36, 8. 2. 1991, p. 1.

<sup>(7)</sup> 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 <sup>(1)</sup>;
- (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.

<sup>(1)</sup> 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

## COUNCIL REGULATION (EEC) No 2410/92

of 23 July 1992

amending Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas Regulation (EEC) No 3975/87 <sup>(4)</sup> formed part of a package of interrelated measures adopted by the Council as a first step towards completing the internal market in transport; whereas its scope was accordingly limited to international air transport between Community airports;

Whereas, therefore, the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 of the Treaty and lacks the powers to take decisions or impose such penalties as are necessary for it to authorize agreements under Article 85 (3) and to bring to an end infringements established by it in relation to transport within a Member State;

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

Done at Brussels, 23 July 1992

Whereas air transport entirely within a Member State is now also subject to Community liberalization measures; whereas it is therefore desirable for rules to be laid down under which the Commission, action in close and constant liaison with the competent authorities of the Member States, may take the requisite measures for the application of Articles 85 and 86 of the Treaty to this area of air transport, in situations where trade between Member States may be affected;

Whereas there is a need to establish a secure and clear legal framework for air transport within a Member State, while ensuring consistent application of the competition rules; whereas, therefore, the scope of Regulation (EEC) No 2975/87 should be extended to this area of air transport,

HAS ADOPTED THIS REGULATION:

*Article 1*

The word 'international' is hereby deleted from Article 1 (2) of Regulation (EEC) No 3975/87.

*Article 2*

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

*For the Council*

*The President*

J. COPE

(1) OJ No C 255, 30. 8. 1991, p. 9.

(2) OJ No C 125, 18. 5. 1992, p. 130.

(3) OJ No C 169, 6. 7. 1992, p. 13.

(4) OJ No L 374, 31. 12. 1987, p. 1.

## COUNCIL REGULATION (EEC) No 2411/92

of 23 July 1992

amending Regulation (EEC) No 3976/87 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas, in accordance with Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules of competition to undertakings in the air transport sector <sup>(4)</sup>, the Commission now has power to implement the competition rules in respect of air transport within a Member State; whereas it is therefore desirable to provide for the possibility of adopting block exemptions applicable to that area of transport;

Whereas Regulation (EEC) No 3976/87 <sup>(5)</sup> empowers the Commission to declare by way of Regulation that the provisions of Article 85 (1) do not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices;

Whereas the power to adopt these block exemptions was granted for a limited period, expiring on 31 December 1992, to allow air carriers to adapt to the more competitive environment resulting from changes in the regulatory systems applicable to intra-Community international air transport;

Whereas a continuation of block exemptions after that date is justified by the further measures to liberalize the air transport sector adopted by the Community; whereas the

scope of these block exemptions and the conditions attached to them should be defined by the Commission, in close liaison with the Member States, taking into account changes to the competitive environment achieved since the entry into force of Regulation (EEC) No 3976/87,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 3976/87 is hereby amended as follows:

1. The word 'international' shall be deleted in Article 1.
2. Article 2 (2) shall be replaced by the following:
 

'2. The Commission may, in particular, adopt such Regulations in respect of agreements, decisions or concerted practices which have as their object any of the following:

  - joint planning and coordination of airline schedules,
  - consultations on tariffs for the carriage of passengers and baggage and of freight on scheduled air services,
  - joint operations on new less busy scheduled air services,
  - slot allocation at airports and airport scheduling; the Commission shall take care to ensure consistency with the Code of Conduct adopted by the Council,
  - common purchase, development and operation of computer reservation systems relating to timetabling, reservations and ticketing by air transport undertakings; the Commission shall take care to ensure consistency with the Code of Conduct adopted by the Council.'
3. Article 3 shall be replaced by the following:

*'Article 3*

Any Regulation adopted pursuant to Article 2 shall be for a specified period.

<sup>(1)</sup> OJ No C 255, 30. 8. 1991, p. 10.

<sup>(2)</sup> Opinion delivered on 10 July 1992 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 169, 6. 7. 1992, p. 13.

<sup>(4)</sup> OJ No L 374, 31. 12. 1987, p. 1. Last amended by Regulation (EEC) No 2410/92 (See page 18 of this Official Journal)

<sup>(5)</sup> OJ No L 374, 31. 12. 1987, p. 9. Amended by Regulation (EEC) No 2344/90 (OJ No L 217, 11. 8. 1990, p. 15).

It may be repealed or amended where circumstances have changed with respect to any of the factors which prompted its adoption; in such case, a period shall be fixed for amendment of the agreements and concerted practices to which the earlier Regulation applied before repeal or amendment.'

4. Article 8 shall be deleted.

*Article 2*

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

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

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