

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 671 final

Brussels, 17 December 1990

Amendment to the proposal for a

COUNCIL REGULATION (EEC)

on the operation of air cargo services

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

EXPLANATORY MEMORANDUM

1. On 8 March 1990 the Commission presented its proposals for a Council regulation on the operation of air cargo services⁽¹⁾.
2. At its Plenary Session of 26 October 1990 the European Parliament approved the Commission's proposal subject to certain amendments.
3. After careful examination the Commission has decided to agree with a large number of these amendments. Amendments numbers 1, 8 and 9 concern operating licences. The text suggested by the Parliament gives a more specific wording and creates a procedure to deal with potential problems.

The Commission can accept the deletion of the provision granting Community carriers the automatic right to fifth freedom air services between a Member State and a third country, in this draft Regulation and suggests consequently amendments numbers 2 and 10.

With respect to pricing the Parliament has suggested to modify the procedure envisaged in article 8 of the Commission proposal. The Commission can accept a further liberalisation of the rate setting mechanism and suggests therefore amendments 4, 16 and 17.

Amendments numbers 6, 7, 12, 13, 14 and 15 are proposed to bring the text of the draft regulation on the operation of air cargo services in line with the provisions of Council Regulation 2343/90 of 24 July 1990 on capacity and market access.

(1) COM(90) 63 final, 8 March 1990

Commission proposal for a Council regulation on the operation of air cargo services.

COMMISSION TEXT

AMENDMENTS

(Amendment N° 1)
10th recital

Whereas Member States shall apply their national rules concerning licensing until these common rules are implemented, provided that these national rules should not discriminate between air cargo carriers established within the Community, i.e. on the basis of nationality;

Whereas Member States shall apply their national rules concerning licensing until these common rules are implemented, provided that these national rules should not discriminate between air cargo carriers established within the Community, i.e. on the basis of nationality ; whereas Member States shall grant such licences giving all air cargo carriers equal opportunities and fair treatment ;

(Amendment N° 2)
11th recital

Whereas Member States should not oppose the operation of fifth freedom air services by Community air cargo carriers between the Community and a third country when these rights have been obtained in accordance with applicable rules and regulations ;

Delete

(Amendment N° 3)
13th recital

Whereas it is desirable to complement the existing regulations with a procedure to establish cargo rates not only on air services carrying only cargo and mail but also on air services for cargo in combination with passengers ;

Whereas it is desirable to complement the existing regulations with a procedure to establish cargo rates not only on air services carrying only cargo but also on air services for cargo in combination with passengers ;

(Amendment N° 4)
15th recital

Whereas air carriers need flexibility in setting cargo rates in accordance with their own commercial judgement in order to be better able to compete ; whereas it is also necessary, however, to ensure that cargo rates include a sufficient margin to guarantee satisfactory technical and safety standards ;

Whereas air carriers need flexibility in setting cargo rates in accordance with their own commercial judgement in order to be better able to compete ; whereas it is also necessary, however, that in case of excessively high or low cargo rates the Commission must be able to suspend a cargo rate ;

(Amendment N° 5)
New recital 15b

Whereas it is important to develop a code of conduct for computerized reservation systems (CRS) for cargo, taking into consideration all its specific requirements ;

(Amendment N° 6)
Article 2 a

a) "air cargo carrier" means an enterprise with a valid license to operate air cargo services carrying only cargo and mail ;

a) "air cargo carrier" means an enterprise with a valid operating licence from a Member State to operate air cargo services carrying only cargo and mail ;

(Amendment N° 7)
Article 2 e

e) "a third-freedom traffic right" means the right of an air carrier established in one State to put down, in the territory of another State, passengers, cargo and mail taken up in the State in which it is registered ;

"a fourth-freedom traffic right" means the right for an air carrier established in one State to take on, in the territory of another State, passengers, cargo and mail, for off-loading in the State in which it is registered ;

"a fifth-freedom traffic right" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail, between two States other than the State in which it is registered ;

"cabotage" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail between two points within a Member State other than the State in which it is registered ;

e) "a third-freedom traffic right" means the right for an air carrier licensed in one State to put down, in the territory of another State, passengers, cargo and mail taken up in the State in which it is licensed ;

"a fourth-freedom traffic right" means the right for an air carrier licensed in one State to take on, in the territory of another State, passengers, cargo and mail, for off-loading in the State in which it is licensed ;

"a fifth-freedom traffic right" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail, between two States other than the State in which it is licensed ;

"cabotage" means the right for an air carrier to undertake the commercial air transport of passengers, cargo and mail between two points within a Member State other than the State in which it is licensed ;

(Amendment N° 8)
Article 3 (2)

2. Until such common rules enter in force Member States shall, on a non-discriminatory basis, grant such licences and ensure that air cargo carriers established on their territory apply technical, operational and economic requirements. Member States shall publish such requirements and communicate them to the Commission.

2. Until such common rules enter in force Member States shall, on a non-discriminatory, equal opportunities and fair treatment basis, grant such licences to air cargo carriers established on their territory and ensure that they apply technical, operational, economic, social and safety requirements.

A Member State which has not defined such a set of requirements shall do so within three months from the entry into force of this Regulation. Member States shall publish such requirements and communicate them to the Commission.

(Amendment N° 9)
New Article 3 (2 a)

3. Any decision to refuse a licence or authorization or to attach conditions shall be accompanied by the reasons therefore in writing. Air carriers may appeal to the Commission against a decision adopted by a Member State. After hearing all the parties concerned the Commission shall take a decision within two months of receipt of the appeal. At the request of the Member State concerned the Council may decide by a qualified majority to amend the decision.

(Amendment N° 10)

Article 4 (4)

4. Member States shall not oppose the operation by Community air cargo carriers of fifth-freedom air services between an airport within the Community and an airport in a third country provided that the authorities of the third country concerned agree to the service in question.

Delete

(Amendment N° 11)

New Article 5 (3)

3. Without prejudice to the application of legislation governing surface or sea transport. Community air cargo carriers may use surface or sea transport instead of air transport on any part of the route from the point of origin to the point of final destination within the Community.

(Amendment N° 12)

Article 7 (1)

1. The exercise of traffic rights is subject to national, regional or local operational and technical published rules relating to the protection of the environment, social conditions, allocation of slots and safety and, in particular, to the following conditions.

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

(Amendment N° 13)
Article 7 (2)

2. When the conditions in paragraph 1 are not met, a Member State may, on a non-discriminatory basis, impose conditions on, limit or refuse the exercise of the traffic rights. Before taking such a measure it shall inform the Commission and provide it with all the necessary elements of information. The Commission shall examine the situation and within 2 months decide whether the Member State may take the measure.

2. When the conditions in paragraph 1 are not met, a Member State may, on a non-discriminatory basis, impose conditions on, limit or refuse the exercise of the traffic rights. Before taking such a measure it shall inform the Commission and provide it with all the necessary elements of information.

(Amendment N° 14)
New Article 7 (3)

3. The Commission shall examine the application of paragraph 2 in any particular case and within one month decide whether the Member State may take the measure.

(Amendment N° 15)
New Article 7 (4)

4. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission decision to the Council within a time limit of one month. The Council may take a different decision within a period of one month.

(Amendment N° 16)
Article 8 (1)

1. Community air carriers shall publish all available cargo rates.

1. Air carriers operating in the Community shall publish all available cargo rates.

(Amendment N° 17)
Article 8 (4)

4. The Commission may give notice of disapproval of cargo rates which have been notified to it until 7 days before the envisaged day of introduction. In the absence of such notice, cargo rates may be applied from that day onwards.

4. The Commission may give notice of disapproval of cargo rates which has been notified to it until 7 days before the envisaged day of introduction if a cargo rate is 20% higher or lower than the corresponding rate in force during the previous corresponding season. In the absence of such notice cargo rates may be applied from that day onwards.

(Amendment N° 18)
Article 9

This Regulation shall enter into force on 1 July 1990.

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

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DOCUMENTS

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