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MARKET ACCESS IN CIVIL AVIATION

PROPOSAL FOR A COUNCIL DIRECTIVE

amending for the second time Council Directive 83/416/EEC  
concerning the authorization of scheduled interregional  
air services for the transport of passengers, mail and cargo  
between Member States

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(presented by the Commission to the Council)

## MARKET ACCESS IN CIVIL AVIATION

### Introduction

1. The Council confirmed on 30 June 1986 the need for a coherent air transport system based on a balanced set of instruments promoting increased competition in intra-Community air services as regards tariffs, capacity and market entry, in conformity with the competition rules of the Treaty. The Commission has already forwarded to the Council proposals on fares, capacity and competition. This Communication deals with the question of market access - the right of an airline to operate services.
2. The issue of market access was tackled in the directive on inter-regional air services, which came into operation in October 1984. The Commission submitted to the Council in June 1986 a report on the Directive's first year of operation. This Communication is intended to carry a stage further the discussion on market access in so far as it relates to scheduled passenger and freight services within the Community. Charter operations and freight only services are excluded. It is accompanied by a Commission proposal revising the inter-regional air service directive.
3. Considerations of air safety must be taken into account in the debate on easier access to the market for air transport services. The possibility of airlines operating on the market should only be accepted if government controls of economic and technical fitness are adequate. The Commission's proposal to revise the inter-regional air service directive includes a reinforced safety provision.

### Right of Establishment and Licensing

4. Article 52 of the Treaty applies fully to air transport. There is, therefore, no need to take any initiative with respect to right of establishment.
5. Restrictions on licensing may lead to difficulties in providing air services in a satisfactory and economical way. In its original proposal on inter-regional air services the Commission tried to tackle this problem by giving airlines the right to obtain from their own State the authorisation to operate inter-regional air services on certain conditions. This aspect of the proposal was however, deleted by the Council. A more modest measure might be to adopt a principle which would allow an airline which has been granted special or exclusive rights by a Member State, first refusal on traffic rights on a new route. In cases where that airline did not take up the traffic rights, other airlines would have the right of access to that route.

### Route Entry

6. Relations between governments and foreign carriers are covered by the question of route entry which encompasses both traffic rights and acceptance by the receiving state of more than one airline operating to it from another state (multiple designation).
7. Traffic rights on trunk routes are governed by bilateral agreements between Member States ranging from simple understandings to formal agreements with or without confidential memoranda. They cover mainly rights between category 1 airports. Traffic rights on regional routes are also governed by bilateral agreements as well as by the Community Directive on inter-regional air services. They cover traffic rights between category 2/3 airports.
8. The first year's operation of the 1983 Directive on inter-regional air services shows a demand for connections between regional airports and category 1 airports. The Commission proposes therefore that the scope of the inter-regional air services directive should be widened to authorise services between category 1 and category 2/3 airports. This represents an important step towards the completion of the internal market and is significant for the development of the economics of peripheral regions as well as small and medium sized airlines.

### Multiple Designation

9. The Council guidelines of December 1984 on the development of a common air transport policy states that "the principle of multiple designation should be more generally applied within the Community on a country-pair basis and, where it is justified by the level of traffic, on a city-pair basis, without prejudice to the right of any Member State to decide whether or not multiple designation should apply in relation to its own airlines". The advantages that multiple designation might bring in terms of greater choice and better services have been offset in the mind of Member States by fears that the volume of traffic on a route might not be sufficient, leading to longer term financial instability which would work to the disadvantage of the passenger and the industry. In the light of discussion in the Council, the Commission will at a later stage make appropriate proposals on the question of multiple designation.

### Fifth Freedom Rights

10. Present bilateral agreements (based on third and fourth freedom traffic rights) have created a network of point-to-point routes. This does not necessarily lead to the most efficient route structure. The Commission is aware

that the potential traffic on some inter-regional routes in the Community could be increased and economics of operation could be created on multi-stage as opposed to point-to-point journeys. Some Member States are of the opinion that the present network of scheduled trunk routes in the Community should not be distorted.

11. The Commission therefore proposes to enlarge the inter-regional air services directive so as to allow an air carrier to apply for an air service between two or more States, other than its home State, provided such a service represents an extension of an existing or applied for service and provided that no indirect service between category 1 airports would be created. In the light of discussions in the Council, the Commission will at a later stage consider introducing more general fifth freedom provisions into the civil aviation sector in order to complete the internal market.

#### CONCLUSIONS

12. In the Commission's view, an immediate step in improving the existing Community arrangements for market access require the amendment of the 1983 inter-regional air services directive. The Commission, therefore, proposes that the Council adopt the annexed proposal to extend Council Directive 83/416/EEC.

Proposal for a  
COUNCIL DIRECTIVE

amending for the second time Council Directive 83/416/EEC  
concerning the authorization of scheduled interregional air services  
for the transport of passengers, mail and cargo between Member States

(Presented by the Commission to the Council)

I.

EXPLANATORY MEMORANDUM

1. The Council Directive of 25 July 1983 concerning the authorization of scheduled interregional air services for the transport of passengers, mail and cargo between Member States (83/416/EEC) (1) provides for the Commission to present an annual report to the Council on the operation of the Directive, and for the Council to review the operation of the Directive on the basis of the Commission reports before 1 July 1986.
2. In its Civil Aviation Memorandum No 2 in March 1984, the Commission put forward the suggestion that services run by Community operators with small aircraft should be granted more liberal treatment. The High Level Group on Air Transport, which the Council set up in May 1984, took up this suggestion and the guidelines from this Group stated that "the possibility of less restricted access to the market for small aircraft should be considered in the light of experience of the Directive on Interregional Air Services". In December 1984 the Council endorsed these guidelines and noted that "the question of access to the market could be considered in the context of the review by the Council before 1 July 1986 of the Directive on interregional air services." At the meeting of the European Council the 26/27 June 1986 and of the Council the 30 June the importance of decisions concerning market access was underlined.
3. In September 1985, the European Parliament, in its resolution on the Commission's Civil Aviation Memorandum No 2, considered it "an urgent concern in transport policy to improve air connections between various regions within the Community across internal borders", and called on the Commission to draft a proposal for a Community Directive without delay.
4. It is in the light of this background, and of the Commission's study of the first year of operation of the Directive that the Commission has drawn up the following proposal. As the Commission's report to the Council shows, the Directive to date has had only a limited impact.

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(1) O.J. No L 237/19.

Only a few new services have been authorised under its provisions. The Commission therefore considers it necessary to widen the scope of the Directive in order to encourage further the provision of new economically viable and safe inter-regional air services within the Community. It believes that its proposals would meet these aims, thereby providing a better air transport system for Community consumers and a boost to Community employment.

5. As the Commission's report on the operation of the Directive shows, several new inter-regional air services have been authorised outside the scope of the existing Directive. In particular there is a strong demand within the Community for services from regional airports to the major Community centres of population (category 1 airports) and vice-versa. This demand is easily explained since category 1 airports normally serve the major commercial and administrative centres in each Member State, as well as enabling connections with international carriers. On the other hand, services in the Community between category 1 airports - i.e. the main trunk routes - are normally already provided. The Commission therefore proposes that the existing Community procedure for authorizing interregional air services should be extended to include services to and from, but not between, category 1 airports.
6. At the same time the Commission recognises that the main demand from air travellers in the Community is for direct rather than indirect air services. It notes that certain Member States are concerned to limit any diversion of traffic from its national carrier on existing trunk routes. The Commission proposes to delete the grounds for refusal contained in Article 3(2) of the Directive relating to existing indirect services.

For the same reasons of encouraging direct air services the Commission proposes to delete the minimum stage length requirement of 400 km.

7. As indicated in its 1980 proposal, the Commission is also aware that the potential traffic on some inter-regional routes in the Community is small, and that air carriers could benefit from the greater potential demand that would flow from multi-stage as opposed to point to point journeys. Some Member States are of the opinion that the present network of scheduled trunk services in the Community should not be distorted. The Commission therefore proposes to allow an air carrier to apply for an air service between 2 or more States other than its Home State provided such a service represents an extension of an existing or applied for service, and provided that no indirect service between category 1 airports would be created. The limited fifth freedom rights thereby given would represent a small evolutionary step in the direction of completing the Community's internal market by 1992, and enable carriers to improve fleet utilisation with consequent energy and cost savings.
8. In addition to the changes proposed above, the Commission has noted the considerable interest in its suggestion in its Civil Aviation Memorandum No 2 of removing restrictions, other than necessary safety and fitness regulations, on services by any Community operator on any route within the Community with small aircraft. As indicated in the Commission's report on the operation of the Directive, there are already a considerable number of interregional services operated with small aircraft. Given the size of aircraft involved and their cost structure such services have no significant impact on the services run by the major operators. However they stimulate aviation activity and employment, encourage the development of thin routes to and from areas which have few, if any, air connections, and also provide supplementary services for air travellers during off-peak hours, where the volume of traffic is low. A move to encourage the entry to the market of such services would also be a further evolutionary step in the completion of the Community's internal market by 1992.



9. The Commission believes that there are major benefits to be achieved by widening airlines' scope to introduce direct interregional air services within the Community. However, at the same time Member States must continue to take seriously their responsibility for maintaining high standards of air safety. In particular, as the number of services provided, and the number of undertakings involved, increases, Member States must ensure the provision of the necessary staff and other resources adequate to supervise safety standards.
  
10. It is against this background that the Commission has drawn up the following proposal to amend Directive 83/416/EEC. Its early adoption by the Council would contribute to the growth of Community air transport, to the development of the regions within the Community and to the completion of the Community's internal market.

## II. REMARKS CONCERNING SPECIFIC ARTICLES

### ARTICLE 1

Article 1 in the proposal contains amendments to be made to articles 1, 3, 4, 5, 6, 9 and 13 and Annex A of Directive 83/416/EEC of 25 July 1983.

#### Paragraph 1 : Amendment to Article 1

This amendment extends the scope of the Directive :

- it removes the minimum stage length requirement of 400 km;
- to include services between category 2 and category 1 airports (and vice-versa). \*(The Directive at present excludes category 1 airports; services between category 1 airports continue to be excluded).

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\* The revision to the classification of airports is discussed in para 8 below.

Paragraph 2 : Amendment to Article 3

This amendment limits the grounds in the Directive on which a State affected may refuse to authorise a service. It deletes paragraph 2 relating to existing indirect air services and to "neighbouring airports". In other words, a State may only refuse an application for a service conforming to the Directive's provisions on the grounds in Article 6.

Paragraph 3 : Amendment to Article 4

This amendment describes the circumstances in which an inter-regional air service between more than 2 Member States may be authorised under the Directive. The general principle remains that an inter-regional air service under the Directive must originate in the Home State of the applicant air carrier. However the second sentence in the amended Article 4 extends this general principle to include an air service between 2 or more Member States, other than the air carrier's Home State, provided that such a service constitutes an extension of an existing or applied for service from the carrier's Home State, and provided that no indirect service is being created between category 1 airports by the proposed service.

Paragraph 4 : Amendment to Article 5

This amendment extends the period of authorisation to 5 years taking into account a more realistic period for starting up a new service and subsequently recovering the costs in this respect.

Paragraph 5 : Amendment to Article 6

This amendment in effect introduces the principle of multiple designation but underlines, by way of making specific reference to article 7, that Member States can refuse a new service if it is not viable.

By the introduction of multiple designation paragraph 2 becomes redundant. However in order to create a certain stability a new paragraph 2 is introduced which gives the possibility to a state affected to ensure that a new service will operate for at least two seasons.

Paragraph 6 : Amendment to Article 9

As mentioned in paragraph 9 of the explanatory memorandum it is necessary to ensure, while relaxing regulations for access to the market, that rules for air safety continue to be respected. Article 9 has therefore been amended to take this into account.

Paragraph 7 : Amendment to Article 13

In view of the commitment to a free internal market in the Community for goods and services by 1992, and taking into account the need for an evolutionary approach for air transport, this Article suggests a further period of 3 years before the next review of the Directive's operation.

Paragraph 8 : Amendment to Annex A

There is no distinction in the present Directive between airports of category 2 and those of category 3. The proposed amendments likewise make no such distinction. In view of this, and since in practice the main difference in the Community lies between major (category 1) airports and the rest, the amendment to Annex A has the effect of creating only 2 airport categories for the Directive's purposes : category 1 and others. The amendment makes no other change to the categorisation of Community airports.

ARTICLES TWO AND THREE

Normal procedural articles.

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 83/416/EEC  
CONCERNING THE AUTHORIZATION OF SCHEDULED INTER-REGIONAL AIR SERVICES  
FOR THE TRANSPORT OF PASSENGERS, MAIL AND CARGO BETWEEN MEMBER STATES

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,

Having regard to the Opinion of the European Parliament (1),

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

Whereas Council Directive 83/416/EEC (3), as amended by Directive .../.../EEC (4), establishes a Community procedure for authorizing scheduled inter-regional air services between Member States;

Whereas this represents a significant step towards the completion of the internal market;

Whereas the system set up by the Directive is of an experimental nature and Article 13 of the Directive therefore provides for the Council to review the operation of the Directive before 1 July 1986 on the basis of reports furnished by the Commission;

Whereas experience has shown that only a few services have been authorised in accordance with the provisions of the Directive, and that it would therefore be desirable to give air carriers greater scope to develop markets and thereby contribute to the evolution of the intra-Community network;

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(1)

(2)

(3) O.J. N° L 237, 26.8.1983, p.19

(4)

Whereas it is particularly important to encourage the development of services between regional airports and major airports so that the Community network can grow;

Whereas restrictions on the minimum stage - length for an air journey deprive Community carriers of the opportunity to offer air services, and air travellers of the choice to use them;

Whereas common rules should promote the development of direct services between the various regions in the Community rather than indirect services;

Whereas a direct service between two airports should not be rejected when an air service between neighbouring airports exists;

Whereas it is desirable to extend the period of authorisations to 5 years in order to allow airlines to recuperate the costs of development of a new service;

Whereas the potential traffic from some regional airports is small but viable services can be operated from such airports when combined with services to other regional airports in the Community, with consequent energy and cost savings;

Whereas States affected should be empowered to ensure a certain stability in inter-regional air services;

Whereas airlines should be allowed to operate inter-regional air services only if government controls of economic and technical fitness are adequate;

Whereas Directive 83/416/EEC should be amended accordingly,

HAS ADOPTED THIS DIRECTIVE :

ARTICLE 1

Directive 83/416/EEC is hereby amended as follows :

1. Article 1 is amended as follows :

(i) point (a) is deleted;

(ii) point (c) is replaced by the following :

"(c) between airports in the Community of category 2 and 2 or of category 2 and 1 which are open to international scheduled traffic. The classification of airports is contained in Annex A."

2. Article 3 is replaced by the following :

"ARTICLE 3

1. The Home State of the air carrier concerned, if it gives its approval, shall forward the application for an inter-regional air service to the State(s) affected.
2. The State(s) affected shall authorize the air carrier concerned to operate such an inter-regional air service if it conforms to the provisions of this Directive.
3. When the Home State forwards an application for an inter-regional air service to the State(s) affected, the State(s) affected shall, within three months of receipt, reach a decision either authorizing the service applied for or refusing it on the grounds provided for in this Directive and notify the Home State and the Commission of the decision."



3. Article 4 is replaced by the following :

"ARTICLE 4

An inter-regional air service shall not be approved under the terms of this Directive unless the point of origin of the service is located in the Home State of the air carrier. An inter-regional air service between two or more Member States other than an air carrier's Home State shall however be approved in accordance with the provisions of this Directive where such a service constitutes an extension of a service to or from an air carrier's Home State, and where an indirect service between two category 1 airports is not established."

4. In Article 5(2) "three years" is replaced by "five years".

5. In Article 6, paragraphs 1(c) and 2 are replaced by the following :

"(c) the proposed tariffs do not meet the requirements of Article 7.

2. A State affected may impose as a condition of authorization that the applicant Community air carrier shall undertake to operate the service in question for 12 months, or for 2 seasons in the case of a purely seasonal service."

6. Article 9 is replaced by the following :

"ARTICLE 9

1. The provisions of this Directive shall not prejudice the laws and regulations of the Member States, applicable either nationally, regionally or locally, concerning the protection of the environment or social conditions, nor matters related to the location, operation or safety of airports or their facilities. Such laws and regulations shall not, however, discriminate against inter-regional air services.

2. The Home State shall ensure and regularly verify that an air carrier operating a service under this Directive is economically and technically fit and shall refuse or withdraw the authorization if it is dissatisfied with the results of this verification.
3. Member States shall without delay inform the Commission of incidents and accidents involving aircraft operating a service authorised under this Directive in a form corresponding to that of the accident/incident data reporting form drawn up by the International Civil Aviation Organization. The Commission shall include information in this respect in its annual report pursuant to Article 12."

7. In Article 13, "1986" is replaced by "1989".

8. Annex A is replaced by the Annex to this Directive.

#### ARTICLE 2

1. The Member States shall, after consultation of the Commission, take the necessary steps to amend their laws, regulations and administrative provisions to bring them into conformity with this Directive not later than 1 January 1987.
2. Member States shall communicate to the Commission all laws and administrative provisions made in furtherance of this Directive.

#### ARTICLE 3

This Directive is addressed to the Member States.

Done at .....

For the Council

CLASSIFICATION OF AIRPORTS  
OPEN TO SCHEDULED INTERNATIONAL TRAFFIC

Member State	Airport	Airport Category
<u>BELGIUM</u>	Bruxelles/Brussel-Zaventem	1
<u>DENMARK</u>	København-Kastrup/Roskilde	1
<u>GERMANY</u>	Frankfurt/Rhein-Main	1
	Düsseldorf-Lohausen	1
	München-Riem	1
<u>SPAIN</u>	Palma de Mallorca	1
	Madrid-Barajas	1
	Malaga	1
	Las Palmas	1
<u>GREECE</u>	Athina-Hellinikon	1
	Thessaloniki-Micra	1
<u>FRANCE</u>	Paris-Charles de Gaulle/Orly	1
<u>IRELAND</u>	Dublin	1
<u>ITALY</u>	Roma-Fiumicino/Ciampino	1
	Milano-Linate/Malpensa	1
<u>NETHERLANDS</u>	Amsterdam-Schiphol	1
<u>PORUGAL</u>	Lisboa	1
	Faro	1
<u>UNITED KINGDOM</u>	London-Heathrow/Gatwick/Stansted	1
	Luton	1
<u>All other airports open to scheduled international traffic</u>		2