

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE

on mutual acceptance of personnel licences
for the exercise of functions in civil aviation

(presented by the Commission)

PROPOSAL FOR A COUNCIL DIRECTIVE ON MUTUAL ACCEPTANCE OF
PERSONNEL LICENCES FOR THE EXERCISE OF FUNCTIONS IN CIVIL
AVIATION

EXPLANATORY MEMORANDUM

1. The Treaty of Rome stipulates that the action to be taken in pursuance of the objectives of the Community should include inter alia the abolition of obstacles to freedom of movement for persons, services and capital and the adoption of a common transport policy.

2. Air Transport, being an integral part of the Community's Transport System, is essential for the unhindered movements of persons at intra-Community and international level. Its further expansion depends i.a. also on the existence of appropriately qualified and licenced personnel in sufficient numbers to run present and future services.

3. However, demand and supply of personnel - especially for certain staff categories such as pilots and air traffic controllers - are not at present balanced throughout the Community. This results in significant and acute shortages of staff in some Member States. The need is therefore pressing for increased personnel mobility to remedy this situation. For the personnel itself this will mean the possibility of pursuing their profession in a Member State other than that in which they acquired their professional qualifications thereby enhancing their job prospects.

4. Article 8A of the Treaty requires that urgent measures are taken in order to realise the free movement of persons within the Community before the end of 1992.

5. At present personnel mobility in aviation is extremely limited due mainly to the existence of differences in licencing requirements and to the virtual absence of acceptance by Member States of licences issued by another Member State.

6. The Commission has for some time been considering this issue. In fact the mutual recognition of licences for aircrew and ground staff was included in the priority list for air transport approved by the Council in June 1978. The Commission had a first study carried out already in 1978 which i.a. examined the situation of the mobility of personnel in civil aviation in the Community. The study confirmed the existence of differences in licensing requirements and the resulting lack of exchange of personnel between European companies in this sector.

7. The Commission has successively underlined in its 2 Memoranda on civil aviation of 1979 and 1984 the need to find a solution to this problem.

8. Furthermore the adoption of the air transport policy package in December 1987 underlines the need for flexibility and the establishment of free movement for labour. Action in this field is intimately linked to the next step of the air transport policy to be undertaken in 1990.

9. Consultations have been conducted with various organisations in order to develop a proposal for a system for the mutual acceptance of personnel licences and qualifications for the exercise of functions in civil aviation. The consultations underlined the importance of moving towards harmonised rules and that in the meantime Member States should not be obliged to lower their requirements for licences.

10. The ICAO International minimum standards and recommended practices with regard to the licencing of personel in air transport are defined in Annex I to the Convention on International Civil Aviation. This annex has been substantially modified with effect from 16 November 1989. An initiative should be therefore taken as quickly as possible based on this new international set of rules.

11. Article 38 of the Convention on International Civil Aviation permits states to file a difference between their national regulations and practices and the ICAO International standards. It is therefore not sufficient to rely on the work of ICAO but Community action is necessary as quickly as possible to give legal backing to the ICAO rules.

12. The proposal for a Directive should therefore support the implementation of Annex I of the Convention on International Civil Aviation with as few differences within the Community as possible and lead to a European Licence which at least meets the requirements of Annex I.

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13. It is also necessary that there is full correspondence with the provisions of Council Directive 89/48/EEC (1) on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. Professional training and qualifications in civil aviation fall however mostly outside the field of application of this Directive as they are not generally obtained on the basis of higher-education courses of at least three years' duration.

14. The proposal also takes into account the case law of the Court. In the Choquet Case (2) relating to the mutual recognition of licences for car drivers, the Court of Justice has ruled that, given the diversity in statutory requirements in the Member States in this field, the Member States are entitled to demand that persons establishing themselves on their territory obtain a national licence even if they already possess a licence issued by their State of origin. However, the Member States have the obligation to accept experience and qualifications acquired in other Member States and are therefore not allowed to repeat unnecessarily exams that have already taken place in other Member States.

15. A second ruling followed in 1987 in the Heylens case (3), which confirmed that, in absence of a harmonisation of the conditions for the access to a profession, the Member States are entitled to establish what knowledge and qualifications are necessary for the exercise of that profession and to require a diploma proving that these required knowledge and qualifications exist. However, if the knowledge and qualifications obtained in another Member State are equivalent to that required, then the Member State is obliged to recognize them.

16. According to these rulings national legislative provisions would be incompatible with the EEC Treaty if their application were to cause a hindrance in the free exercise of the rights which Articles 48 and 52 of the Treaty guarantee in connection with the free movement of persons and freedom of establishment. Those hindrances could be e.g. the duplication of required experience and tests, linguistic difficulties or exorbitant charges.

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(1) OJ L 19 of 24.1.1989.

(2) ECR 1978, p. 2293, case 16/78 of 28 November 1978.

(3) ECR 198 , p. , case 222/86 of 15 October 1987.

17. The present proposal for a Directive therefore introduces procedures which will facilitate the obligation of mutual acceptance by Member States of equivalent licences and qualifications obtained in other Member States of the Community.

18. Considerable work has already been done at ECAC with a view to determine terms of equivalence for pilots licences. A recommendation in this respect was passed in June 1988. It would be useful to give this recommendation legal effect in the Community in view of the special situation for pilots (see paragraph 3). However, it has been necessary to modify the terms slightly in order to bring them in line with the above legal requirements of the Community.

19. The acceptance not only relates to licences but also to any aspects of qualifications, experience and training. This is important if a Member State cannot directly accept a licence issued by another Member State because the latter has no equivalent licence or no licence at all.

20. With a view to implementing the Directive it remains up to the Member States to choose the way and methods of acceptance of licences. However, to ensure the necessary respect of the rules a certain transparency is introduced. If a Member State decides not to accept a licence or qualifications needed for obtaining a licence it should inform in writing the person concerned, the Member State which had issued the licence and the Commission. It should also indicate the additional requirements and/or tests which are necessary for the licence to be accepted.

21. This is in line with the ruling in the Heylens Case (222/86 of 15.10.1987), where the Court of Justice has ruled on the obligation of national authorities to disclose the reasons which may lead them to decide not to accept the equivalence of a professional licence issued by another Member State.

22. All licences accepted in this way by a Member State will give right to the same privileges as those enjoyed by the holders of national licences issued directly by the Member State without discrimination and unnecessary formalities.

23. The obligation on Member States of mutual acceptance should not however apply in respect of licences issued by a non-Member State.

24. Nationals of other Member States shall be admitted without discrimination to training establishments and to all examinations in a Member State on the same conditions as the nationals of that Member State. Under the Treaty these obligations already apply to public undertakings but discrimination has occurred for private undertakings and it is therefore necessary to extend this obligation also to private undertakings.

25. In order to realise for civil aviation the objective of the Treaty of the free movement of labour it would, because of the specific characteristics in this sector be necessary to arrive at the full recognition of licences issued by Member States. Such recognition can only be achieved if requirements and training standards in all Member States are at the same high level since otherwise safety might be at risk. This will have to be achieved at the latest by 31.12.1992 to meet the date of the completion of the internal market.

26. Considering the very short time left till that date and the obligations the Commission has undertaken in order to realise the internal market it is appropriate that the necessary powers should be delegated to the Commission so that the required results could be achieved on time. In view of developing its proposals for measures establishing harmonised requirements the Commission should make use of all available knowledge in this field. More specifically the Commission intends to cooperate with ECAC - which has already made substantial progress in the matter - and to call on the expertise of Member States in this field."

COMMENTS ON THE VARIOUS ARTICLES

Article 1

This defines the scope of the Directive.

Article 2

This article lays down the definitions of terms used in the Directive.

Article 3

This article sets out the conditions under which Member States have to accept licences issued by other Member States.

It also provides for the automatic recognition of a licence respecting Community requirements when they have been adopted by virtue of Art. 9.

Special reference is made to private pilote licences. The intent is to enable holders of PPLs to fly aircraft registered in any Member State without the need to obtain licence validation from the State of registry. Consultations with national experts and a recommendation in ECAC indicate clearly that the automatic recognition of PPLs could be established already now.

Article 4

This article lays down the procedures to be followed by a Member State when a licence cannot be accepted because it is not equivalent. The candidate is provided the possibility in the case of non-acceptance to pass any additional tests within a reasonable time limit.

Article 5

This article lays down the obligations of Member States in respect of the validation of licences until Community requirements have been adopted and when certain conditions, as set out in the annex, are met.

Article 6

Besides the acceptance of licences, member States shall accept equivalent experience and qualifications obtained in other Member States. This provision will contribute to increased mobility and job prospects for aviation personnel and fulfil the requirements flowing from the Court ruling in the Choquet and Heylens cases.

Article 7

This article provides that nationals of all Member States shall be admitted to the public and private training establishments and examinations in a Member State on the same basis as its own nationals.

Article 8

This Article stipulates that Member States shall not be obliged to accept licences issued by a Member State on the basis of a licence issued by a third country. This principle is already recognised in the Directive concerning drivers licences.

Article 9

In order to be able to realize the long term objective of the Directive, namely to come to an automatic recognition of licences in civil aviation issued by Member States, it is necessary that harmonised requirements for licences and training programmes should be adopted. This article sets the date, 31.12.1992, by which this work must be completed. It also provides that in the meantime Member States' licensing requirements should at least meet the level of those in the 8th edition of Annex 1 to the Convention on International Civil Aviation.

Article 10

The Commission is of the opinion that the aims of Article 9 can only be achieved in time with the assistance of a regulatory Committee.

This article describes the composition, the tasks and the working procedures of such a Committee.

Articles 11 and 12

Procedural articles.

PROPOSAL FOR A COUNCIL DIRECTIVE ON MUTUAL ACCEPTANCE OF
PERSONNEL LICENCES FOR THE EXERCISE OF FUNCTIONS IN CIVIL
AVIATION

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 the existence in sufficient numbers of appropriately
qualified and licensed personnel is vital for the smooth and
safe running of air transport services;

Whereas air transport is a highly dynamic and rapidly
developing sector of a particularly international character;
whereas therefore the balance between supply and demand in
personnel can be maintained more efficiently at the Community
rather than the national level;

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(1)

(2)

Whereas therefore it is essential that the Common Transport Policy in the field of civil aviation is extended to ensure the free movement of personnel within the Community;

Whereas furthermore the completion of the internal market by the end of 1992 requires the existence of an efficient air transport system to ensure the unhindered movement of people within the Community;

Whereas the exercise of essential functions in civil aviation is in most Member States possible only to persons who possess a licence;

Whereas the requirements for such licences differ between Member States to the extent that in many instances it is difficult for a national of a Member State to exercise a similar function in another Member State;

Whereas, the qualifications required for licences are not at present laid down by the Community; whereas Member States therefore retain the option of fixing the level of such qualifications with a view to guaranteeing the safety of services provided in their territory; whereas they may not, without infringing their obligations laid down in the Treaty, require a national of a Member State to obtain those qualifications, which in general they determine only by reference to their own national education and training systems, where the person concerned has already acquired all or part of those qualifications in another Member State;

Whereas, therefore any host Member State in which a function in civil aviation is regulated, is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which it requires;

Whereas a Community procedure for the acceptance of licences and qualifications for the personnel exercising functions in civil aviation is appropriate in order to facilitate compliance with Treaty obligations and to ensure unhindered personnel mobility; whereas the acceptance of licences would be further facilitated by the obligation of Member States to respect the minimum requirements for licences in conformity with the eighth edition - July 1988 of Annex 1 to the Convention on International Civil Aviation;

Whereas regarding private pilots the recognition of their licences in all Member States can already be established;

Whereas in order to be permitted to operate aircraft in a Member State other than that where they obtained their licence professional pilots are normally subjected to additional tests; whereas this practice constitutes an obstacle to the free movement of air services and should be rectified; whereas urgent action is therefore required for professional pilots;

Whereas the elimination of the present air congestion problems necessitates the urgent training of a large number of additional air traffic controllers, whose function is vital to the smooth and safe running of air transport services;

Whereas training facilities are not always available in Member States commensurate with demand;

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Whereas in conformity with Article 7 of the Treaty Member States shall admit nationals of other Member States to public and private training establishments and professional examinations on a non-discriminatory basis;

Whereas in order to achieve full mutual recognition of licences it is essential to specify common requirements for licences and training programmes;

Whereas it is appropriate to delegate the power to specify such requirements to the Commission assisted by a regulatory committee;

HAS ADOPTED THIS DIRECTIVE

Article 1

1. This Directive shall apply to licensing procedures and requirements of Member States in the field of civil aviation with respect to flying crew, and personnel employed in aircraft maintenance, air traffic control, flight operations and aeronautical station operations.
2. The provisions of this Directive shall apply only to nationals of a Member State.

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Article 2

For the purpose of this directive

- a) licence means any valid document, issued by a Member State, authorising personnel to exercise functions in civil aviation. This definition also includes ratings forming part of the licence;
- b) rating means an authorization entered on or associated with a licence, stating special conditions, privileges or limitations pertaining to such licence;
- c) acceptance of licences means any act of recognition or validation by a Member State of a licence or aspect of a licence issued by another Member State. The acceptance may be effected through the issue of a licence of its own;
- d) recognition means the permission to use in one Member State a licence issued in another Member State for the purpose specified on the licence;
- e) validation means the express indication by a Member State in a licence issued by another Member State that this licence can be used as one of its own for the purpose specified on the licence.

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Article 3

1. Where a Member State requires personnel to be licensed in order to engage in functions in civil aviation, it shall accept, without undue delay or additional tests, any licence or aspect of a licence issued by another Member State and concerning the same functions.

2. A Member State shall recognise a licence respecting the standards as set out in Community requirements adopted pursuant to Article 9;

3. Without prejudice to Article 8, any person holding a private pilot licence issued by a Member State shall be permitted to fly aircraft registered in another Member State. This recognition shall be limited to the exercise of the privileges of the holder of a private pilot licence and of associated aircraft ratings under Visual Flying Rules (VFR) by day only in an aircraft certificated for single-pilot operations;

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Article 4

1. By derogation from the principles set out in Article 3(1), if a licence or any aspect of a licence issued by a Member State is based on requirements which are not equivalent to those of the Member State to which the licence is presented for acceptance the latter shall so inform the holder of the licence in writing and indicate the specific additional requirements and/or tests which are necessary for the licence to be accepted.

This information shall at the same time be communicated to the Member State which has issued the licence and to the Commission.

2. An opportunity to pass any additional test shall on request be given to the applicant without delay and in any case before 3 months have elapsed from the date of the request.
3. When the applicant can show that he meets the additional requirements and/or has passed the required test(s) the Member State concerned shall forthwith accept the licence or aspect of the licence in question.

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Article 5

Notwithstanding Article 4, a Member State shall, until Community requirements have been adopted under Article 9 and when the special validation requirements as set out in the Annex are fulfilled by the holder of the licence :

- (a) validate a licence complying with at least the standards as set out in the eighth edition - July 1988 of Annex 1 to the Convention on International Civil Aviation
- (b) at most, demand an aptitude test as set out in the Annex with respect to licences which do not meet the minimum requirements established by the eighth edition - July 1988 of Annex 1 of the Convention on International Civil Aviation.

Article 6

Without prejudice to Article 3, each Member State shall, for licensing purposes, accept any aspects of the qualifications, experience and training in civil aviation obtained in other Member States which are equivalent to its own requirements.

Article 7

Member States shall ensure that nationals of other Member States are admitted to public and private training establishments and to examinations and procedures for the licensing of civil aviation personnel on the same basis as applies to their own nationals.

Article 8

1. When a Member State issues a licence on the basis of a licence or aspect of a licence issued by a third country this shall be recorded in the licence. Other Member States shall not be obliged to accept any such licence or aspect of a licence.
2. By derogation from paragraph 1 Member States, shall accept licences issued by the Federal Republic of Germany on the basis of a licence issued by the German Democratic Republic.

Article 9

1. The Commission shall at the latest by 31 December 1992 and in accordance with the procedure laid down in Article 10, adopt measures establishing harmonised requirements for licences and training programmes. In preparing the draft of those measures the Commission shall consult with representatives of the professions covered by this Directive.
2. Until such requirements for licences are adopted, the licensing requirements of the Member States must at least meet the level of those requirements laid down in the eighth edition - July 1988 of Annex 1 to the Convention on International Civil Aviation.
3. Without prejudice to Article 5, Member States may decide that licences issued by them before 1 July 1990 remain valid.

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Article 10

1. For the purpose of the tasks defined in Article 9 the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

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

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- c) If on the expiry of a period of 3 months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 11

- 1. The Member States shall, after consultation with the Commission, take the necessary steps to bring into force the laws, regulations and administrative provisions necessary to comply with this directive not later than 1 July 1990. They shall immediately inform the Commission thereof.

The measures adopted pursuant to the first subparagraph shall make express reference to this Directive.

- 2. The Member States shall communicate to the Commission all subsequent laws, regulations and administrative provisions adopted in the field governed by this Directive.

Article 12

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

SPECIAL VALIDATION PROCEDURE

ROLE	SPECIAL VALIDATION REQUIREMENTS				APTITUDE TEST FOR VALIDATION
	LICENCE	MEDICAL	AGE	EXPERIENCE	
1. Commercial air transportation in FAR 25/JAR 25 aeroplanes a) PIC b) Co-pilot	a) ATPL-A b) ATPL-A	a) Class 1 medical certificate without waiver b) Class 1 medical certificate without waiver	a) 21-60 b) 21-60	a) 1 500 hrs as PIC on FAR 25/JAR 25 aeroplanes. b) 1 500 hrs on FAR 25/JAR 25 aeroplanes.	a) A flight test including IR test in flight or simulator. b) A flight test including IR test in flight or simulator.
2. Commercial air transportation in non-FAR 25/JAR 25 aeroplanes a) PIC	a) CPL-A (with IR)	a) Class 1 medical certificate without waiver	a) 21-60	a) 1 000 hrs as PIC in commercial air transportation since gaining an IR.	a) A flight test including IR test in flight or simulator.

 IR = Instrument rating.

ROLE	SPECIAL VALIDATION REQUIREMENTS				APTITUDE TEST FOR VALIDATION
	LICENCE	MEDICAL	AGE	EXPERIENCE	
b) Co-pilot	b) CPL-A (with IR)	b) Class 1 medical certificate without waiver	b) 21-60	b) 1 000 hrs in commercial air transportation.	b) A flight test including IR test in flight or simulator.
3a) Aerial work in aeroplanes (excluding flying instruction)	a) CPL-A	a) Class 1 medical certificate without waiver	a) 21-60	700 hrs as PIC on conventional aeroplanes including 200 hrs in the kind of aerial work for which validation is sought, including 50 hrs in the role in the last twelve months.	a) Flight check in role.
3b) Aerial work in helicopters (excluding flying instruction and off-shore operations)	b) CPL-H	b) Class 1 medical certificate without waiver	b) 21-60	700 hrs as PIC on helicopters including 200 hrs in the kind of aerial work for which validation is sought, including 50 hrs in the role in the last twelve months.	b) Flight check in role.

Conventional aeroplanes shall mean aeroplanes other than those certificated under JAR 22 and ultralights.

ROLE	SPECIAL VALIDATION REQUIREMENTS				APTITUDE TEST FOR VALIDATION
	LICENCE	MEDICAL	AGE	EXPERIENCE	
4. Commercial air transportation or off-shore operations in helicopters					
a) PIC	a) ATPL-H (with IR, if IFR flights required)	a) Class 1 medical certificate without waiver	a) 21-60	a) 1 500 hrs as PIC flying related to the kind of operation for which validation is being sought. If IR flight required, have gained 500 hrs flying experience since gaining an IR.	a) A flight test, including IR test, if appropriate, in flight or simulator.
b) Co-pilot	b) CPL-H (with IR, if IFR flights required)	b) Class 1 medical certificate without waiver	b) 21-60	b) 1 500 hrs flying related to the kind of operation for which validation is being sought. If IR flight required have gained 500 hours flying experience since gaining an IR.	b) A flight test, including IR test, if appropriate, in flight or simulator.

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