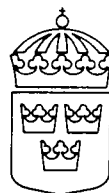


Regeringens proposition

1992/93:202



om ändring av avtal mellan Sverige, Norge och
EEG om civil luftfart

Prop.
1992/93:202

Regeringen föreslår riksdagen att anta de förslag som har tagits upp i
bifogade utdrag ur regeringsprotokollet den 22 april 1993.

På regeringens vägnar

Carl Bildt

Inger Davidson

Propositionens huvudsakliga innehåll

Regeringen föreslår att vissa tillägg till och en ändring av avtalet mellan Sverige, Norge och EEG om civil luftfart godkänns. Genom tilläggen kommer Sverige och Norge att omfattas av de regler som gäller inom EG från den 1 januari 1993 på den civila luftfartens område, det s.k. tredje luftfartspaketet. Tilläggen och ändringen har förhandlats fram bl.a. med tanke på att EES-avtalet inte kom att träda i kraft som planerat och med beaktande av behovet av att samma regler bör gälla i de skandinaviska länderna med tanke på det skandinaviska luftfartssamarbetet inom främst Scandinavian Airlines System, SAS.

Tilläggen föranleder ändringar i bl.a. lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart och luftfartslagen (1957:297).

Lag om ändring i lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart

Härigenom föreskrivs att 2 § och bilagan till lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart skall ha följande lydelse.

Nuvarande lydelse

Föreslagen lydelse

2 § Följande bestämmelser i de i bilagan till avtalet upptagna rättsakterna nr 4, 5, 11, 12 och 17 skall gälla som lag här i landet.

1. Artiklarna 1-4, 8, 9, 11, 12, 14, 15 utom punkt 3, 16 utom punkt 3 samt 17-20 i rådets första förordning 62/17/EEG om tillämpning av fördragets artiklar 85 och 86, med vidtagna ändringar (nr 4).

2. Artiklarna 1-7, 9, 11, 12 utom punkt 3, 13 utom punkt 3 samt 14-17 i rådets förordning 87/3975/EEG om förfarandet för tillämpning av konkurrensreglerna på företag inom luftfartssektorn (nr 5).

2. Artiklarna 1-7, 9, 11, 12 utom punkt 3, 13 utom punkt 3 samt 14-17 i rådets förordning 87/3975/EEG om förfarandet för tillämpning av konkurrensreglerna på företag inom luftfartssektorn, med vidtagna ändringar (nr 5).

3. Artiklarna 1-9 i rådets förordning 91/295/EEG om införande av gemensamma regler om kompensation till passagerare som nekas ombordstigning på luftfartyg i regelbunden lufttrafik (nr 11).

4. Artiklarna 1-19 och 22 i rådets förordning 89/2299/EEG om en uppförandekod för datoriserade bokningssystem (nr 12).

5. Artiklarna 1-8, 11, 13, 14-18 och 21 i rådets förordning 89/4064/EEG om kontroll av företagskoncentrationer (nr 17).

De angivna rättsakterna finns intagna som *bilaga* till denna lag.

I fråga om fullgörande i Sverige av skyldigheter enligt denna paragraf tillämpas 13 samt 15-19 §§.

FÖRORDNING nr 17

Rättsakt nr 5

RÅDETS FÖRORDNING (EEG) nr 3975/87

BILAGA

Förteckning som avses i artikel 2

- k) avräkning och utjämning av konton mellan lufttrafikföretag genom en clearingcentral inklusive sådana tjänster som kan vara nödvändiga eller förknippade med detta; avräkning och utjämning av konton mellan lufttrafikföretag och de agenter de utnämnt genom ett centraliserat och automatiserat betalningssystem inklusive sådana tjänster som kan vara nödvändiga eller förknippade med detta.

RÅDETS FÖRORDNING (EEG) nr 1284/91

Prop. 1992/93:202

av den 14 maj 1991

med ändring av förordningen (EEG) nr 3975/87 om förfarandet för tillämpning av konkurrensreglerna på företag inom luftfartssektorn

EUROPEISKA GEMENSKAPERNA RÅD HAR ANTAGIT DENNA FÖRORDNING

med beaktande av Fördraget om upprättandet av Europeiska ekonomiska gemenskapen, särskilt artikel 87 i detta,

med beaktande av kommissionens förslag¹,

med beaktande av Europaparlamentets yttrande²,

med beaktande av Ekonomiska och sociala kommitténs yttrande³, och

med beaktande av följande:

Rådets förordning (EEG) nr 2342/90 av den 24 juli 1990 om biljettpriser för regelbunden luftfart⁴ och rådets förordning (EEG) nr 2343/90⁵ om lufttrafikföretags tillträde till flyglinjer i regelbunden lufttrafik inom gemenskapen och om delning av passagerarkapaciteten mellan lufttrafikföretag i regelbunden lufttrafik mellan medlemsstaterna förutsätter ytterligare liberalisering av tariffsystemet inom gemenskapen.

Eftersom gemenskapens lufttransportpolitik kommer att göra det möjligt för lufttrafikföretag att konkurrera på grund av deras egna förtjänster och därigenom bidra till en mer dynamisk lufttransportsektor till förmån för konsumenterna, skall kommissionen ges möjlighet att omedelbart vidta åtgärder när lufttrafikföretag i strid med konkurrensreglerna vidtar åtgärder som kan hota livskraften hos de tjänster som utförs av en konkurrent eller till och med ett lufttrafikföretags existens och sålunda orsakar oåterkallelig skada på det på konkurrens uppbyggda systemet.

Det är lämpligt att införa en speciell ordning enligt vilken kommissionen snabbare kan använda konkurrensreglerna i fall när det föreligger ett angeläget behov av att förhindra, eller agera mot, sådana överträdelser av dessa regler.

Denna ordning bör erbjuda de berörda företagen tillfälle att yttra sig skriftligen över de förfaranden mot vilka invändningarna har gjorts.

Det är därför nödvändigt att ändra förordning (EEG) nr 3975/87⁶.

¹EGT nr C 155, 26.6.1990, s. 7 och EGT nr C 101, 18.4.1991, s. 19.

²EGT nr C 48, 25.2.1991, s. 166.

³EGT nr C 41, 18.2.1991, s. 44.

⁴EGT nr L 217, 11.8.1990, s. 1.

⁵EGT nr L 217, 11.8.1990, s. 8.

⁶EGT nr L 374, 31.12.1987, s. 1.

Artikel 1

Förordning (EEG) nr 3975/87 ändras härigenom på följande sätt:

1. Följande artikel skall tillkomma :

"Artikel 4 a

Interimsåtgärder mot konkurrensbegränsande förfaranden

1. Om inte annat följer av tillämpningen av artikel 4.1 kan kommissionen, om den förfogar över klara *prima facie-bevis* för att vissa förfaranden strider mot artikel 85 eller 86 i fördraget och har till syfte eller resultat att direkt hota en flygförbindelses existens och om begagnandet av det normala förfarandet kan vara otillräckligt för att skydda flygförbindelsen eller det berörda flygbolaget, genom beslut vidta interimsåtgärder för att säkerställa att dessa förfaranden inte vidtas eller att de upphör samt lämna sådana anvisningar som behövs för att hindra förekomsten av dessa förfaranden till dess att ett beslut fattas enligt artikel 4.1.
2. Ett beslut som fattas i enlighet med punkt 1 skall gälla i högst sex månader. Artikel 8.5 är inte tillämplig."
2. Följande tillägg skall göras i artikel 13.1:
"e) att vidta varje åtgärd som har beslutats enligt artikel 4 a."
3. I artikel 16.1 skall "4 a," läggas till efter "4,".

Artikel 2

Denna förordning träder i kraft dagen efter det att den offentliggjorts i *Europeiska gemenskapernas officiella tidning*.

Denna förordning är till alla delar bindande och direkt tillämplig i alla medlemsstater.

Utfärdad i Bryssel den 14 maj 1991.

På rådets vägnar

J.F. POOS
Ordförande

RÅDETS FÖRORDNING (EEG) nr 2410/92

av den 23 juli 1992

om ändring av förordning (EEG) nr 3975/87 om förfarandet för tillämpning av
konkurrensreglerna på företag inom luftfartssektorn

EUROPEISKA GEMENSKAPERNAS RÅD HAR ANTAGIT
DENNA FÖRORDNING

med beaktande av Fördraget om upprättandet av Europeiska
ekonomiska gemenskapen, särskilt artikel 87 i detta,

med beaktande av kommissionens förslag¹,

med beaktande av Europaparlamentets yttrande²,

med beaktande av Ekonomiska och sociala kommitténs
yttrande³,

och med beaktande av följande:

Förordning (EEG) nr 3975/87⁴ utgjorde del av ett paket av
samordnade åtgärder, vidtagna av rådet som ett första steg
mot genomförandet av den inre marknaden på transportom-
rådet; dess räckvidd begränsades därför till internationell
luftfart mellan gemenskapens flygplatser.

Kommissionen har följaktligen för närvarande inga möjligheter
att direkt undersöka fall av misstänkt överträdelse av artikel
85 och 86 i fördraget. Kommissionen saknar vidare befo-
genheter att fatta beslut eller införa sanktioner som är nöd-
vändiga för att godkänna avtal enligt artikel 85.3 och för att
få konstaterade överträdelser i samband med transport inom en
medlemsstat att upphöra.

Även luftfart som utövas uteslutande inom en medlemsstat är
nu föremål för gemenskapens liberaliseringsåtgärder. Det är
därför önskvärt att regler fastställs enligt vilka kommissionen
i nära och ständig kontakt med behöriga myndigheter i
medlemsstaterna kan vidta nödvändiga åtgärder för att tillämpa
artikel 85 och 86 i fördraget på detta område inom luftfarten,
i sådana fall när handeln mellan medlemsstaterna kan på-
verkas.

Det är nödvändigt att skapa en säker och klar rättslig ram för
luftfarten inom en medlemsstat och samtidigt säkra en konse-
kvent tillämpning av konkurrensreglerna. Räckvidden för
förordning (EEG) nr 3975/87 bör därför utvidgas till att om-
fatta inrikes lufttrafik.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

Artikel 1

Ordet "internationella" skall utgå i artikel 1 2 i förordning
(EEG) nr 3975/87.

Artikel 2

Denna förordning träder i kraft dagen efter det att den har
offentliggjorts i *Europeiska gemenskapernas officiella tid-
ning*.

Denna förordning är till alla delar bindande och direkt tillämplig i alla medlemsstater.

Utfärdad i Bryssel den 23 juli 1992

På rådets vägnar

J. COPE

Ordförande

¹ EGT nr C 255, 30.8.1991, s. 9.

² EGT nr C 125, 18.5.1992, s. 130

³ EGT nr C 169, 6.7.1992, s. 13.

⁴ EGT nr L 374, 31.12.1987, s. 1

Denna lag träder i kraft den dag regeringen bestämmer.

Lag om ändring i luftfartslagen (1957:297)

Härigenom föreskrivs att det i luftfartslagen (1957:297) skall införas två nya paragrafer, 2 kap. 2 a § och 7 kap. 3 a §, av följande lydelse.

Föreslagen lydelse

2 kap.

2 a § Utan hinder av 2 § får ett luftfartyg registreras i Sverige om det ägs av ett lufttrafikföretag som har sin centrala administration och sitt huvudkontor i Norge eller i en stat inom Europeiska ekonomiska gemenskapen om företaget till mer än hälften ägs och kontrolleras av en sådan stat eller av en medborgare i en sådan stat. Detta gäller dock bara så länge lagen (1992:1317) om ett europeiskt ekonomiskt samarbetsområde (EES) inte har trätt i kraft.

7 kap.

3 a § Utan hinder av 3 § får regeringen eller den myndighet regeringen bestämmer även ge tillstånd till luftfart i inrikes trafik till ett lufttrafikföretag som har sin centrala administration och sitt huvudkontor i Norge eller i en stat inom Europeiska ekonomiska gemenskapen om företaget till mer än hälften ägs och kontrolleras av en sådan stat eller av en medborgare i en sådan stat.

Denna lag träder i kraft den dag regeringen bestämmer.

Lag om ändring i lagen (1992:1317) om ett europeiskt ekonomiskt samarbetsområde (EES)

Härigenom föreskrivs att ikraftträdandebestämmelserna till lagen (1992:1317) om ett europeiskt ekonomiskt samarbetsområde (EES) skall ha följande lydelse.

Lydelse enligt prop. 1992/93:225

Föreslagen lydelse

1. Denna lag träder i kraft den dag regeringen bestämmer. Följande bestämmelser i bilaga 1 får dock inte sättas i kraft före den 1 januari 1994:

- artikel 81 a, b, d, e och f,
- artikel 82.

2. Regeringen får sätta lagen i kraft i förhållande till Liechtenstein vid en senare tidpunkt än i förhållande till andra avtalsslutande parter.

3. *Genom lagen upphävs lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart.*

1. Denna lag träder i kraft den dag regeringen bestämmer. Följande bestämmelser i bilaga 1 får dock inte sättas i kraft före den 1 januari 1994:

- artikel 81 a, b, d, e och f,
- artikel 82.

2. Regeringen får sätta lagen i kraft i förhållande till Liechtenstein vid en senare tidpunkt än i förhållande till andra avtalsslutande parter.

Utdrag ur protokoll vid regeringssammanträde den 22 april 1993

Närvarande: statsministern Bildt, ordförande, och statsråden B. Westerberg, Friggebo, Johansson, Laurén, Hörnlund, Svensson, Dinkelspiel, Hellsvik, Björck, Davidson, Könberg, Unckel, P. Westerberg, Ask

Föredragande: statsrådet Davidson

Proposition om ändring av avtal mellan Sverige, Norge och EEG om civil luftfart

1 Inledning

I regeringens proposition 1992/93:93 om vissa luftfartsfrågor med anledning av avtalet om Europeiska ekonomiska samarbetsområdet (EES) lämnades en kortfattad redogörelse om EG:s åtgärder för att avreglera den civila luftfarten inom gemenskapen. Den 1 januari 1993 trädde det s.k. tredje luftfartspaketet i kraft inom EG. Det tredje luftfartspaketet innebär bl.a. att luftfarten inom EG avregleras ytterligare och att lufttrafikföretag inom EG ges rätt att fritt trafikera de linjer de önskar mellan orter inom gemenskapen. Vidare innehåller paketet, tillsammans med de övriga rättsakter som tillkommit på området under senare tid, regler om tillståndskrav för lufttrafikföretag, prissättning, harmonisering av tekniska krav och administrativa procedurer, erkännande av certifikat för flygpersonal samt om fördelning av ankomst- och avgångstider vid större flygplatser. Slutligen ger paketet möjlighet till en utvidgad och förstärkt kontroll av konkurrensförhållandena inom den civila luftfarten.

Den viktigaste nyheten är möjligheten till inrikes luftfart på annat lands territorium, s.k. cabotage. Under en övergångstid fram till den 1 april 1997 får sådan inrikes luftfart begränsas till att ske endast i form av förlängning av en internationell flygsträcka; exempelvis skall ett brittiskt lufttrafikföretag få öppna en linje London-München-Berlin och ta upp passagerare för inrikes befordran mellan München och Berlin. Under övergångstiden får vidare endast en begränsad del av lufttrafikföretagets kapacitet användas för sådan inrikes trafik. Genom det tredje luftfartspaketet släpps prissättningen för luftfarten i princip fri och de traditionella gränserna mellan reguljärflyg och charterflyg suddas ut. Fördelningen av ankomst- och avgångstider på de stora flygplatserna skall ske på ett konkurrensneutralt sätt. Kommissionen får också rätt att granska inrikestrafiken och ingripa vid missförhållanden.

I nämnda proposition redovisades också kort innehållet i det avtal

mellan Sverige, Norge och EEG om civil luftfart, i det följande benämnt luftfartsavtalet, som trädde i kraft den 6 juli 1992. Från början var avsikten att luftfartsavtalet, som bygger på det s.k. andra luftfartspaketet, skulle upphöra att gälla den dag EES-avtalet träder i kraft. Därefter skulle det tredje luftfartspaketet införlivas i EES-avtalet när parterna förhandlat fram ett tilläggsavtal avseende de rättsakter som tillkommit inom EG på de områden som omfattas av EES-avtalet.

Sedan Schweiz efter folkomröstning sagt nej till EES-avtalet har tidtabellen för EES-avtalet förändrats. Siktet är nu inställt på att det justerade EES-avtalet skall kunna träda i kraft senare under 1993, vilket innebär att de tillkommande rättsakterna blir införlivade ännu något senare.

På grund av det etablerade samarbetet mellan de skandinaviska länderna på luftfartens område har i denna situation tanken väckts att låta luftfartsavtalet leva vidare en tid och att med avtalet snarast möjligt införliva de rättsakter som ingår i det tredje luftfartspaketet.

Enligt de ursprungliga tankarna bakom EES-avtalet skulle även ett sålunda utvidgat luftfartsavtal upphöra att gälla när EES-avtalet träder i kraft, och Sverige och Norge skulle då även i förhållande till EG återgå till det andra luftfartspaketet enligt EES-avtalet. Denna återgång till ett tidigare rättsläge framstår i dag varken som en praktisk eller rättsligt tillfredsställande lösning.

Den blandade kommitté, som har upprättats med stöd av bestämmelserna i luftfartsavtalet, har därför under våren 1993 *dels* fattat ett beslut den 26 mars 1993 om att komplettera luftfartsavtalet med nio nya rättsakter, *dels* utarbetat ett förslag till ett tilläggsavtal med innebörden att luftfartsavtalet skall fortsätta att tillämpas för en begränsad tid även sedan EES-avtalet trätt i kraft. Blandade kommitténs beslut på engelska och i preliminär svensk översättning bör fogas till protokollet i detta ärende som *bilaga 1*. Förslaget till tilläggsavtalet på engelska och i preliminär svensk översättning bör fogas till protokollet i detta ärende som *bilaga 2*. De nya rättsakterna bör, i sin engelska lydelse fogas till protokollet i detta ärende som *bilaga 3*. Översättning till svenska av rättsakterna pågår, men några slutliga versioner föreligger ännu inte. Inom Kommunikationsdepartementet har preliminära svenska versioner tillsammans med de danska texterna sammanställts i en särskild promemoria (dnr K93/1125/2).

Enligt EES-avtalets artikel 120 skall bestämmelserna i EES-avtalet ha företräde framför vid tidpunkten för EES-avtalets ingående gällande bilaterala och multilaterala avtal som binder EEG, å ena sidan, och en eller flera EFTA-stater, å andra sidan, i den utsträckning samma fråga regleras i EES-avtalet. Det var med hänsyn till denna bestämmelse logiskt att låta luftfartsavtalet upphöra att gälla i och med att EES-avtalet träder i kraft. När man nu vill åstadkomma en överlappning får man motivera detta med att de ytterligare friheter som nu införs inte regleras i EES-avtalet. Detta kan ske genom en tolkning av artikel 120 i EES-avtalet som innebär att de frågor som inte lösts i EES-avtalet, men som regleras i luftfartsavtalet, inte anses reglerade av EES-avtalet enligt artikel 120. Därigenom kan luftfartsavtalet leva kvar i dessa delar tills

motsvarande regler kunnat införlivas med EES-avtalet. Den överenskomelse varigenom luftfartsavtalets giltighet förlängts innebär också att luftfartsavtalet skall upphöra att gälla två år efter det EES-avtalet trätt i kraft om inte den blandade kommittén beslutar annat och att EES-avtalet skall gälla framför luftfartsavtalet om de står i strid mot varandra.

Inom den blandade kommittén har man varit väl medveten om innehållet i artikel 120 i EES-avtalet när förslaget till tilläggsavtal utarbetades. De övriga EFTA-staterna har orienterats om att Sverige, Norge och EEG önskar att gå vidare med luftfartssamarbetet inom ramen för luftfartsavtalet. Enligt uppgift har inga allvarigare invändningar förts fram. Kommissionens rättsavdelning har vidare gjort den bedömningen att förslaget till tilläggsavtal med hänsyn till omständigheterna inte kan anses oförenligt med artikel 120. Detta kommer till uttryck i förslagets ingress.

Mot bakgrund av vad som nu sagts torde den förhållandevis snäva tolkning av artikel 120 i EES-avtalet som ligger till grund för förlängningen av luftfartsavtalet kunna godtas. Härvid bör också beaktas att de fördragsslutande parterna i en gemensam deklaration till EES-avtalet har uttalat sig för att situationer av det slag som kan uppstå om luftfartsavtalet inte förlängs bör undvikas.

Mot bakgrund av vad som nu sagts kan förlängningen av luftfartsavtalet för tiden efter det att EES-avtalet trätt i kraft vad gäller det tredje luftfartspaketet inte heller i övrigt anses stå i strid med Sveriges åtaganden enligt EES-avtalet. Luftfartsavtalet kommer därmed att fortsätta att gälla även efter det att EES-avtalet trätt i kraft till dess sistnämnda avtal hunnit anpassas till det tredje luftfartspaketet om detta sker inom rimlig tid. Därefter kan luftfartsavtalet upphöra att gälla.

I den blandade kommittén har man arbetat med ambitionen att de nya reglerna skall kunna träda i kraft den 1 juli 1993. De berörda avtalsparternas interna regler om godkännande och ratifikation kan dock medföra att ikraftträdandedagen kan komma att förskjutas.

I samband med förhandlingarna har kommissionen på Norges begäran avgivit en förklaring angående tillämpningen av förordningen (EEG) nr 2408/92 på de regionala flygtjänsterna i Norge. De flyglinjer som berörs är det flygnät (STOL-network, Short Take-Off and Landing) som trafikeras med speciella flygplan som klarar av de korta start- och landningsbanor som finns framför allt i norra Norge.

I denna förklaring redovisar kommissionen förordningens huvudprinciper samt möjligheterna att under och efter en övergångstid om tre år från det att den aktuella förordningen träder i kraft i Norge tillförsäkra en operatör fortsatt ensamrätt till trafiken på detta nät.

Kommissionen drar i korthet följande slutsatser. Nuvarande operatör kan ensam fortsätta trafiken i tre år räknat från den dag den aktuella förordningen träder i kraft i Norge. Även efter den dagen medför övergångsbestämmelserna angående rätten till cabotage att det i praktiken är omöjligt för ett annat EG-lufttrafikföretag att etablera konkurrerande trafik före den 1 april 1997. Norge kan också upphandla samhällsviktig trafik på flyglinjerna innan treårsperioden löper ut. Om detta sker efter ett offentligt anbudsförfarande har man rätt att ge koncessionären

ensamrätt på linjerna för ytterligare en treårsperiod framåt. Kommis-
sionens tolkning är naturligtvis även relevant för flygtrafiken inom
Sverige.

Prop. 1992/93:202

2 Närmare om innehållet i de nya rättsakterna

Rättsakten nr 21 – Förordning (EEG) nr 2407/92
("licensieringsförordningen")

I denna rättsakt uppställs kraven på ett lufttrafikföretag för att det skall få operativt tillstånd att utföra lufttransporter av passagerare, post eller gods mot ersättning. Det skall alltid drivas med god ekonomi och på en hög säkerhetsnivå. För att skydda kunderna skall företaget dessutom vara tillräckligt försäkrat.

Av artikel 8.2 i förordningen följer att luftfartyg som ägs av företag inom gemenskapen skall få registreras i vilket land som helst inom gemenskapen.

Rättsakten nr 22 – Förordning (EEG) nr 2408/92
(marknadstillträde)

Denna rättsakt ersätter delvis respektive bygger vidare på rådets förordning 2343/90 av den 24 juli 1990 om lufttrafikföretags tillträde till flyglinjer i regelbunden trafik inom gemenskapen och om delning av passagerarkapaciteten mellan lufttrafikföretag i regelbunden lufttrafik mellan medlemsstaterna, som ingår som rättsakt nr 1 i luftfartsavtalet, samt även delvis rådets förordning 294/91 av den 4 februari 1991 om bedrivande av flygfraktrafik mellan medlemsstater, som ingår i luftfartsavtalet som rättsakt nr 3. Rättsakten nr 22 utgör ett ytterligare steg för att upprätta den inre marknaden.

I denna rättsakt öppnas stegvis rätten för lufttrafikföretag inom EG att öppna flyglinjer inom gemenskapen, alltså även mellan två orter i andra stater än den i vilket lufttrafikföretaget har sitt säte. Vidare öppnas rätten till inrikes trafik i annat land än det där lufttrafikföretaget har sitt säte, vilket innebär rätt till s.k. cabotage. Från den 1 januari 1993 och fram till den 1 april 1997 får cabotagerättigheten begränsas till att gälla endast för en förbindelse som utgör en förlängning av en internationell linje och högst 50 % av säsongskapaciteten på flyglinjen får utnyttjas för inrikestrafik i annan stat. Från och med den 1 april 1997 skall inga restriktioner längre råda för ett EG-lufttrafikföretag att utföra inrikes trafik i regelbunden luftfart i vilket land som helst inom gemenskapen.

Vidare upphävs genom denna rättsakt bl.a. nu gällande begränsningar i s.k. femte frihetsrättigheter och reglerna om utseende av flera lufttrafikföretag som gällde enligt artiklarna 8 resp. 6 i förordningen 2343/90.

I denna förordning finns regler om biljettpriser och tariffer för lufttransporter uteslutande inom gemenskapen. I princip skall prissättningen vara fri, men viss kontroll skall i efterhand kunna ske av att baspriserna inte blivit för höga, t.ex. när ett företag kan utnyttja en faktisk ensamställning. Medlemsstaterna kan också ingripa mot prissänkningar om konkurrenssituationen på en marknad blir sådan att de berörda flygföretagen gör allmänt utbredda förluster på marknaden. Denna förordning upphäver helt rådets förordning (EEG) nr 2342/90 av den 24 juli 1990 om biljettpriser för regelbunden luftfart, som ingår i luftfartsavtalet som rättsakt nr 2.

Rättsakten nr 24 – Förordning (EEG) nr 1284/91
(ändring av rättsakt nr 5)

Denna rättsakt ger kommissionen möjlighet att snabbt ingripa mot ett lufttrafikföretag som inte följer konkurrensreglerna. Rättsakten motsvarar den nästan ordagrant likalydande bestämmelse som återfinns i kapitel XI, artikel 4 a i protokoll 4 till övervakningsavtalet och som ger motsvarande befogenheter till EFTA:s övervakningsmyndighet.

Rättsakten nr 25 – Förordning (EEG) nr 2410/92
(ändring av rättsakt nr 5)

Rådets förordning (EEG) nr 3975/87 av den 14 december 1987 om förfarandet för tillämpning av konkurrensreglerna på företag inom luftfartssektorn som finns med i det ursprungliga luftfartsavtalet som rättsakt nr 5 gäller enligt artikel 1.2 i sin ursprungliga lydelse endast för internationella lufttransporter mellan flygplatser inom gemenskapen. Genom rättsakten nr 25 tas ordet "internationella" bort och förordningen blir därför tillämplig även på inrikes lufttrafik.

Rättsakten nr 26 – Förordning (EEG) nr 2411/92
(ändring av villkoren för gruppundantag)

Rådets förordning (EEG) nr 3976/87 av den 14 december 1987 om tillämpningen av artikel 85.3 i fördraget på vissa kategorier av överenskommer och samordnade förfaranden inom luftfartssektorn, som ingår i luftfartsavtalet som rättsakt nr 6, ändras genom denna rättsakt på så sätt att man begränsar de områden för vilka s.k. gruppundantag får beslutas. Med gruppundantag menas att vissa förfaranden undantas från Romfördragets hårda krav på fri konkurrens. Förordningen görs även tillämplig på inrikes lufttrafik.

Vidare ändras artikel 3. Tidigare gällde ett fastlagt sista datum efter vilket beslut om gruppundantag inte längre skall gälla. Nu gäller att nya förordningar om gruppundantag även fortsättningsvis får beslutas men då

Rättsakten nr 27 – Förordning (EEG) nr 3922/91
(harmonisering av tekniska krav m.m.)

Denna rättsakt, som gäller harmonisering av tekniska krav och administrativa procedurer inom området civil luftfart, trädde i kraft den 1 januari 1992. Den innebär att man inom gemenskapen harmoniserar sina tekniska krav och administrativa procedurer vad gäller konstruktion, tillverkning, drift och underhåll av luftfartyg samt personer och organisationer som sysslar med sådana uppgifter. Reglerna grundar sig på de bestämmelser, JAR, som utarbetats av de gemensamma luftfartsmyndigheterna (Joint Aviation Authorities, JAA). Detta organ är associerat till den europeiska konferensen för civil luftfart (European Civil Aviation Conference, ECAC).

Rättsakten nr 28 – Direktiv 91/670
(godkännande av certifikat)

Detta direktiv behandlar ömsesidigt godkännande av certifikat för förare, navigatörer och flygmaskinister inom den civila luftfarten. I huvudsak innebär det att medlemsstaterna skall harmonisera sina regler för utfärdande av certifikat och dessa skall därefter godkännas i andra medlemsstater utan att nya prov skall behöva avläggas. Vidare skall antagningen till utbildning för sådana certifikat öppnas för gemenskapens medborgare på lika villkor.

Rättsakten nr 29 – Förordning (EEG) nr 95/93
(fördelning av ankomst- och avgångstider)

I denna rättsakt ges regler för en konkurrensneutral fördelning av ankomst- och avgångstider, s.k. slots, vid gemenskapens flygplatser.

3 Ändring i lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart

Rättsakterna nr 24 och 25 ovan innebär ändringar i rådets förordning (EEG) nr 3975/87, som ingår som rättsakt nr 5 i luftfartsavtalet. Rättsakten nr 5 införlivades med svensk rätt genom lagen om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart. Ändringsförordningarna bör därför även de införlivas med lagen.

De övriga nya rättsakterna kräver inte lagform för att införlivas med svensk rätt.

I den tidigare nämnda propositionen 1992/93:93 om vissa luftfartsfrågor med anledning av avtalet om Europeiska ekonomiska samarbetsområdet (EES) lämnades förslag bl.a. till ändring i 2 kap. 2 § och 7 kap. 3 § luftfartslagen (1957:297) utifrån EES-avtalets bestämmelser. Vidare föreslogs ett ytterligare stycke i lagrummet som skulle underlätta genomförandet av det tredje luftfartspaketet inom ramen för kommande tillägg till EES-avtalet. Riksdagen antog förslagen (bet. 1992/93:TU5, rskr. 1992/93:90). Lagändringarna träder i kraft den dag regeringen bestämmer.

För att göra det möjligt att från den dag som tilläggen till luftfartsavtalet träder i kraft tillåta att inrikes luftfart bedrivs av ett norskt lufttrafikföretag eller ett EG-lufttrafikföretag enligt reglerna i rådets förordning (EEG) nr 2408/92 av den 23 juli 1992 om EG-lufttrafikföretags tillträde till flyglinjer inom gemenskapen måste ytterligare en anpassning av luftfartslagens regler ske. Eftersom det i dagens läge kan antagas att luftfartsavtalet i sin nya lydelse kommer att vara i kraft en begränsad tid bör denna speciella lagändring ske genom att en ny paragraf, 7 kap. 3 a §, införs för att tillgodose behovet. När sedan EES-samarbetet kommit till stånd och utvecklats enligt planerna kan denna nya paragraf upphävas.

På samma sätt kan problemet med rätten att i Sverige registrera luftfartyg som ägs av lufttrafikföretag med säte i Norge eller i en EG-stat lösas genom att en "tillfällig" 2 a § i 2 kap. införs. Denna paragraf kan upphävas redan den dag EES-avtalet träder i kraft.

5 Ändring i lagen om ett europeiskt ekonomiskt samarbetsområde (EES)

Lagen (1992:1317) om ett europeiskt ekonomiskt samarbetsområde (EES) innehåller en bestämmelse om att lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart skall upphävas. Den bestämmelsen bör tas bort.

I sammanhanget bör beaktas att i regeringens proposition 1992/93:225 om godkännande av protokoll med justeringar av avtalet om Europeiska ekonomiska samarbetsområdet (EES) m.m. lämnas förslag till en annan lydelse av ikraftträdandebestämmelserna. De två propositionernas lagförslag behöver därför samordnas vid riksdagsbehandlingen.

6 Upprättade lagförslag

I enlighet med vad jag nu har anfört har inom Kommunikationsdepartementet upprättas förslaget till

1. lag om ändring i lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart,
2. lag om ändring i luftfartslagen (1957:297),

Beträffande förslaget 3 har samråd skett med statsrådet Dinkelspiel.

7 Lagrådets hörande

Förslagen faller under Lagrådets granskningsområde. Med hänsyn till att det är av största vikt i förhållande till övriga berörda länder att avtalet kan träda i kraft den 1 juli 1993 eller i nära anslutning till denna tidpunkt måste riksdagen hinna behandla detta ärende under pågående riksmöte. Eftersom Lagrådets hörande skulle fördröja lagstiftningsärendets behandling så att avsevärt men skulle uppkomma, bör Lagrådets yttrande kunna underlåtas i detta fall.

8 Hemställan

Jag hemställer att regeringen föreslår riksdagen att

1. godkänna ett förslag till tilläggsavtal mellan Sverige, Norge och EEG om civil luftfart i huvudsaklig överensstämmelse med den blandade kommitténs förslag,
2. godkänna den blandade kommitténs beslut av den 26 mars 1993,
3. anta förslaget till lag om ändring i lagen (1992:138) om tillämpning av avtal mellan Sverige, Norge och EEG om civil luftfart,
4. anta förslaget till lag om ändring i luftfartslagen (1957:297),
5. anta förslaget till lag om ändring i lagen (1992:1317) om ett europeiskt ekonomiskt samarbetsområde (EES).

Ärendet bör behandlas under innevarande riksmöte.

9 Beslut

Regeringen ansluter sig till föredragandens överväganden och beslutar att genom proposition föreslå riksdagen att anta de förslag som föredraganden lagt fram.

AGREEMENT BETWEEN THE EUROPEAN ECONOMIC
COMMUNITY, THE KINGDOM OF NORWAY AND
THE KINGDOM OF SWEDEN ON CIVIL AVIATION

Prop. 1992/93:202
Bilaga 1

DECISION OF THE JOINT COMMITTEE 26. MARCH 1993

I

Pursuant to Article 12.3 in the Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation the Joint Committee has decided that the following Regulations and Directive shall be integrated into the Agreement and be added to the list in Annex I.

21. 2407/92

Council Regulation of 23 July 1992 on licensing of air carriers.

Articles 1-18

22. 2408/92

Council Regulation of 23 July 1992 on access for Community air carriers to intra-Community air routes.

Articles 1-15

The list of category 1 airports set out in Annex I of the Regulation shall be supplemented as follows:

Norway: Oslo Airport System

Sweden: Stockholm Airport System

The list of airport systems set out in Annex II of the Regulation shall be supplemented as follows:

Norway: Oslo - Fornebu/Gardermoen

Sweden: Stockholm - Arlanda/Bromma

23. 2409/92

Council Regulation of 23 July 1992 on fares and rates for air services.

Articles 1-11

24. 1284/91

Prop. 1992/93:202
Bilaga 1

Council Regulation of 14 May 1991 amending Regulations No. 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector.

Article 1

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

25. 2410/92

Council Regulation of 23 July 1992 amending Regulation No. 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector.

Article 1

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

26. 2411/92

Council Regulation of 23 July 1992 amending Regulation 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.

Article 1

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

27. 3922/91

Council Regulation of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation.

Articles 1-3, 5-11, 13

28. 91/670

Council Directive of 16 December 1991 on mutual acceptance of personnel licences for the exercise of functions in civil aviation.

Articles 1-7

Council Regulation of 18 January 1993 on common rules for the allocation of slots at Community airports.

Articles 1–13

The territory of Svalbard shall be exempted from the application of the Regulations and Directive listed above.

II

In order to safeguard the proper functioning of the Agreement, the Joint Committee in accordance with Article 12.3 recommends the Contracting Parties to amend the Agreement as set out in the Annex to this decision.

III

Pursuant to Article 14.3. of the Agreement, the decision in I above is subject to approval or ratification by the Contracting Parties in accordance with their own procedures.

This decision shall enter into force on 1 July 1993 or on the date on which the last instrument of ratification has been deposited in accordance with Article 23.3 of the Agreement whichever date is the later.

For the European Economic Community

For the Kingdom of Norway

For the Kingdom of Sweden

Avtal mellan Europeiska ekonomiska gemenskapen, konungariket Norge och konungariket Sverige om civil luftfart

Beslut av Blandade kommittén den 26 mars 1993

I

Enligt artikel 12.3 i avtalet mellan Sverige, Norge och EEG om civil luftfart har Blandade kommittén beslutat att följande förordningar och direktiv skall införlivas med avtalet och läggas till listan i bilaga I.

21. 2407/92

Rådets förordning av den 23 juli 1992 om utfärdande av tillstånd till lufttrafikföretag.

Artiklarna 1-18

22. 2808/92

Rådets förordning av den 23 juli 1992 om EG-lufttrafikföretags tillträde till flyglinjer inom gemenskapen.

Artiklarna 1-15

Listan över kategori-1-flygplatser i bilaga I till förordningen skall kompletteras med följande:

Norge: Oslo flygplatssystem

Sverige: Stockholms flygplatssystem

Listan över flygplatssystem i bilaga II till förordningen skall kompletteras med följande:

Norge: Oslo - Fornebu/Gardermoen

Sverige: Stockholm - Arlanda/Bromma

23. 2409/92

Rådets förordning av den 23 juli 1992 om biljettpriser och tariffer för luftfart.

Artiklarna 1-11

24. 1284/91

Rådets förordning av den 14 maj 1991 om ändring av rådets förordning (EEG) nr 3975/87 om förfarandet för tillämpning av konkurrensreglerna på företag inom luftfartssektorn.

Artikel 1

25. 2410/92

Rådets förordning av den 23 juli 1992 om ändring av förordning (EEG) nr 3975/87 om förfarandet för tillämpning av konkurrensreglerna på företag inom luftfartssektorn.

Artikel 1

Varje hänvisning till artiklarna 85 eller 86 i förordningen skall i stället gälla artiklarna 4 respektive 5 i detta avtal.

26. 2411/92

Rådets förordning av den 23 juli 1992 om ändring av förordning (EEG) nr 3976/87 om tillämpningen av artikel 85.3 i fördraget på vissa kategorier av överenskommelser och samordnade förfaranden inom luftfartssektorn.

Artikel 1

Varje hänvisning till artiklarna 85 eller 86 i förordningen skall i stället gälla artiklarna 4 respektive 5 i detta avtal

27. 3922/91

Rådets förordning av den 16 december 1991 om harmonisering av tekniska krav och administrativa procedurer inom området civil luftfart.

Artiklarna 1-3, 5-11, 13

28. 91/670

Rådets direktiv av den 16 december 1991 om ömsesidigt godkännande av certifikat för personal med funktioner inom den civila luftfarten.

Artiklarna 1-7

29. 95/93

Rådets förordning av den 18 januari 1993 om gemensamma regler för fördelning av ankomst- och avgångstider vid gemenskapens flygplatser.

Artiklarna 1-13

Svalbards territorium skall undantas från tillämpningen av förordningarna och direktivet som nämnts ovan.

II

Prop. 1992/93:202

Bilaga 1

För att säkerställa att avtalet får avsedd verkan, rekommenderar den blandade kommittén i enlighet med artikel 12.3 avtalsparterna att ändra avtalet på det sätt som framgår av bilagan till detta beslut.

III

I enlighet med artikel 14.3 i avtalet är beslutet under I ovan föremål för godkännande eller ratifikation av avtalsparterna enligt deras egna procedurer.

Detta beslut skall träda i kraft den 1 juli 1993 eller därefter den dag då det sista ratifikationsinstrumentet har deponerats i enlighet med artikel 23.3 i avtalet.

Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden

Whereas the Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation, hereinafter referred to as the Agreement, entered into force on 6 July 1992;

Whereas the Agreement establishes a uniform system of rules in the field of civil aviation;

Whereas since the conclusion of this Agreement new legislation in the field of civil aviation has been adopted in the Community and whereas Article 12 of the Agreement provides for the integration in the Agreement of amendments made to the legislation of each Party;

Whereas the Joint Committee, in accordance with Article 12 of the Agreement, decided on 26 March 1993 to integrate this new legislation in the Agreement;

Whereas this new legislation anticipates legislation that will be applicable under the EEA Agreement at the moment the internal procedures for its inclusion in the EEA Agreement are completed;

Whereas Article 19.3 of the Agreement provides that the Agreement shall cease to be in force from the date an agreement between the Community and EFTA countries on the European Economic Area enters into force;

Whereas, in order to ensure that the objective of the Agreement, a uniform system of rules throughout the Community, Norway and Sweden, will be met also after the entry into force of the EEA agreement for the time required to complete the procedures to supplement the legislation in the EEA Agreement, it is important that the Agreement remains in force for a limited period of time;

Whereas in view of these exceptional circumstances this agreement does not prejudice in any way the provisions of the EEA agreement and in particular not the application of article 120 of the EEA agreement;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Article 19.3 of the Agreement will be replaced by the following:

This Agreement shall cease to be in force from the date an agreement between the EC and EFTA countries on the European Economic Area enters into force.

However, as far as legislation mentioned in Annex 1 and adopted in accordance with Article 12.3 is concerned, this Agreement shall continue to apply to the extent that the same subject matter is not governed by the EEA agreement.

Prop. 1992/93:202
Bilaga 2

If this Agreement has continued to apply in part for 18 months after the entry into force of the EEA agreement, the Joint Committee shall meet to decide upon the continued application of this Agreement. If the Joint Committee does not decide otherwise, this Agreement shall cease to be in force two years after the entry into force of the EEA agreement.

In a case where the application of this Article conflicts with provisions of the EEA agreement, the latter shall prevail.

ARTICLE 2

This Agreement shall be subject to approval or ratification in accordance with the Contracting Parties' own procedures and the Parties shall notify each other of the completion of the procedures necessary for that purpose.

This Agreement shall enter into force on the date on which the last instrument of ratification has been deposited. It shall be published in the Official Journal of the European Communities.

This Agreement and the instruments of ratification shall be deposited in the archives of the Secretariat of the Council of the European Communities, which shall deliver a certified copy thereof to each Contracting Party.

ARTICLE 3

This Agreement is drawn up in all the official languages: Danish, Dutch, English, French, German, Greek, Italian, Portuguese, Spanish of the Community as well as in the Norwegian and Swedish languages, all texts being equally authentic.

For the European Economic Community

For the Kingdom of Norway

For the Kingdom of Sweden

**Avtal mellan Europeiska ekonomiska gemenskapen,
Konungariket Norge och Konungariket Sverige**

Avtalet mellan Sverige, Norge och EEG om civil luftfart, härafter benämnt avtalet, trädde i kraft den 6 juli 1992.

Avtalet lägger grunden för ett enhetligt regelsystem inom området civil luftfart.

Sedan detta avtal träffats har nya regler antagits inom gemenskapen inom området civil luftfart. Artikel 12 i avtalet ger möjlighet att revidera bestämmelserna i avtalet så att ändringar som gjorts i någon parts lagstiftning införlivas i avtalet.

Blandade kommittén beslöt den 26 mars 1993 enligt artikel 12 i avtalet att införliva denna nya lagstiftning i avtalet.

Denna nya lagstiftning föregriper lagstiftning som skall vara tillämplig under EES-avtalet så snart de interna procedurerna för dess införlivande i EES-avtalet har slutförts.

Artikel 19.3 i avtalet föreskriver att avtalet skall upphöra att gälla den dag ett avtal mellan gemenskapen och EFTA-stater om EES träder i kraft.

I syfte att säkerställa att målet för avtalet, ett enhetligt regelsystem för gemenskapen, Norge och Sverige, skall uppnås även efter det att EES-avtalet trätt i kraft för den tid som krävs för att fullfölja procedurerna för att lägga till lagstiftningen till EES-avtalet, är det viktigt att avtalet förblir gällande för en begränsad tidsperiod.

Med hänsyn till dessa exceptionella omständigheter strider detta avtal inte på något sätt mot regleringen i EES-avtalet och speciellt inte på tillämpningen av artikel 120 i EES-avtalet.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

ARTIKEL 1

Artikel 19.3 i avtalet skall ersättas med följande:

Detta avtal skall upphöra att gälla den dag ett avtal mellan EG-staterna och EFTA-stater om EES träder i kraft.

Dock skall, såvitt gäller rättsakterna som omnämns i bilaga 1 och som är antagna i enlighet med artikel 12.3, detta avtal fortsätta att

tillämpas i den utsträckning samma frågor inte regleras av EES-avtalet.

Prop. 1992/93:202
Bilaga 2

Om detta avtal har fortsatt att tillämpas delvis under 18 månader sedan EES-avtalet trätt i kraft, skall Blandade kommittén mötas för att besluta om detta avtals fortsatta giltighet. Om Blandade kommittén inte beslutar annat, skall detta avtal upphöra att gälla två år efter det att EES-avtalet har trätt i kraft.

I fall när tillämpningen av denna artikel står i strid med föreskrifterna i EES-avtalet, skall det senare avtalet äga företräde.

ARTIKEL 2

Detta avtal skall godkännas eller ratificeras i enlighet med avtalsparternas egna procedurer och parterna skall underrätta varandra om slutförandet av de nödvändiga procedurerna för detta.

Detta avtal träder i kraft den dag då det sista ratifikationsinstrumentet har deponerats. Det skall publiceras i Europeiska gemenskapernas officiella tidning.

Detta avtal och ratifikationsinstrumenten skall deponeras i arkiven på Ministerrådets sekretariat, vilket skall överlämna en bestyrkt kopia till var och en av avtalsslutande parterna.

ARTIKEL 3

Detta avtal har upprättats på alla gemenskapens officiella språk: danska, holländska, engelska, franska, tyska, grekiska, italienska, portugisiska, spanska samt på norska och svenska språken. Alla texterna äger lika giltighet.

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 ⁽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 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 ⁽⁴⁾ 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.

⁽¹⁾ OJ No C 258, 4. 10. 1991, p. 2.

⁽²⁾ OJ No C 125, 18. 5. 1992, p. 140.

⁽³⁾ OJ No C 169, 6. 7. 1992, p. 15.

⁽⁴⁾ 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⁽¹⁾ 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.

(1) 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 ⁽¹⁾.

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

⁽¹⁾ 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 proposes 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 ⁽¹⁾,

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 ⁽²⁾;

(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;

⁽¹⁾ OJ No L 36, 8. 2. 1991, p. 1.

⁽²⁾ 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 the 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 of 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

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

ANNEX II

List of airport systems

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

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.

COUNCIL REGULATION (EEC) No 2409/92
of 23 July 1992
on fares and rates for air services

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

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 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States ⁽⁴⁾ and Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services ⁽⁵⁾ 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 ⁽⁶⁾,

⁽¹⁾ OJ No C 258, 4. 10. 1991, p. 2.

⁽²⁾ OJ No C 125, 18. 5. 1992, p. 150.

⁽³⁾ OJ No C 169, 6. 7. 1992, p. 15.

⁽⁴⁾ OJ No L 374, 31. 12. 1987, p. 12.

⁽⁵⁾ OJ No L 217, 11. 8. 1990, p. 1.

⁽⁶⁾ OJ No L 36, 8. 2. 1991, p. 1.

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 ⁽⁷⁾.

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;

⁽⁷⁾ 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⁽¹⁾;
- (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 or 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.

⁽¹⁾ 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 1284/91

of 14 May 1991

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 (¹),

Having regard to the opinion of the European Parliament (²),

Having regard to the opinion of the Economic and Social Committee (³),

Whereas Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services (⁴) and Regulation (EEC) No 2343/90 (⁵) concerning access to the market and the sharing of passenger capacity provide for further liberalization of the tariff system within the Community;

Whereas, while the Community air transport policy will enable carriers to compete on their merits and will thus contribute to a more dynamic industry in the interests of the air transport user, the Commission should be able to take prompt action in cases where air carriers engage in practices which are contrary to the competition rules and which may threaten the viability of services operated by a competitor or even the existence of an airline company and thus cause irreversible damage to the competitive structure;

Whereas it is appropriate to provide for a specific procedure according to which the Commission may apply the competition rules more promptly in cases where there is an urgent need to prevent, or act against, such anti-competitive practices;

Whereas this procedure should provide the undertakings concerned with the opportunity to comment in writing on the matters to which objection is taken;

Whereas it is therefore necessary to amend Regulation (EEC) No 3975/87 (⁶),

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3975/87 is hereby amended as follows:

1. The following Article shall be inserted:

'Article 4a

Interim measures against anti-competitive practices

1. Without prejudice to the application of Article 4 (1), where the Commission has clear *prima facie* evidence that certain practices are contrary to Article 85 or 86 of the Treaty and have the object or effect of directly jeopardizing the existence of an air service, and where recourse to normal procedures may not be sufficient to protect the air service or the airline company concerned, it may by decision take interim measures to ensure that these practices are not implemented or cease to be implemented and give such instructions as are necessary to prevent the occurrence of these practices until a decision under Article 4 (1) is taken.

2. A decision taken pursuant to paragraph 1 shall apply for a period not exceeding six months. Article 8 (5) shall not apply.

The Commission may renew the initial decision, with or without modification, for a period not exceeding three months. In such case, Article 8 (5) shall apply.'

2. The following shall be added to Article 13 (1):

'(e) to comply with any measure imposed by decision taken under Article 4a.'

3. In Article 16 (1) '4a,' shall be inserted after '4,'

Article 2

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

(¹) OJ No C 155, 26. 6. 1990, p. 7; and
OJ No C 101, 18. 4. 1991, p. 19.

(²) OJ No C 48, 25. 2. 1991, p. 166.

(³) OJ No C 41, 18. 2. 1991, p. 44.

(⁴) OJ No L 217, 11. 8. 1990, p. 1.

(⁵) OJ No L 217, 11. 8. 1990, p. 8.

(⁶) OJ No L 374, 31. 12. 1987, p. 1.

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

Done at Brussels, 14 May 1991.

For the Council

The President

J. F. POOS

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 ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Regulation (EEC) No 3975/87 ⁽⁴⁾ 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;

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*.

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

⁽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 ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

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 ⁽⁴⁾, 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 ⁽⁵⁾ 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.

⁽¹⁾ OJ No C 255, 30. 8. 1991, p. 10.

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

⁽³⁾ OJ No C 169, 6. 7. 1992, p. 13.

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

⁽⁵⁾ 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

COUNCIL REGULATION (EEC) No 3922/91

of 16 December 1991

on the harmonization of technical requirements and administrative procedures in the field of
civil aviation

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, as provided for in Article 8a of the Treaty, measures should be adopted with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market will comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas a high general level of safety in civil aviation in Europe should be maintained and current technical requirements and administrative procedures in the Member States should be raised to the highest standard currently attained in the Community;

Whereas safety is a key factor in Community air transport; whereas account should be taken of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, which provides for implementation of the measures necessary to ensure the safe operation of aircraft;

Whereas the current restrictions on the transfer of aircraft and aviation products and of certain services in the field of aviation between Member States would cause distortions in the internal market;

Whereas the Joint Aviation Authorities (JAA), an associated body of the European Civil Aviation Conference (ECAC), have worked out arrangements to cooperate in

the development and implementation of joint aviation requirements (JARs) in all fields relating to the safety of aircraft and their operation;

Whereas, under the common transport policy, technical requirements and administrative procedures relating to the safety of aircraft and their operation should be harmonized on the basis of the JAR codes of the JAA;

Whereas the accession of all Member States to the JAA and the participation of the Commission in its proceedings would facilitate such harmonization;

Whereas, in order to achieve the Community objectives as regards freedom of movement of persons and products and also as regards the common transport policy, Member States should accept the certification of products and of bodies and persons concerned with the design, manufacture, maintenance and operation of products, without further technical work or evaluation, when the product, organization or person has been certificated in accordance with the common technical requirements and administrative procedures;

Whereas safety problems may arise and, in such case, Member States must take all appropriate measures as a matter of urgency; whereas such measures must be duly justified and, where the common technical requirements and administrative procedures present shortcomings, it is for the Commission, exercising its implementing powers, to adopt the necessary amendments;

Whereas it is desirable that funding by the Member States of research to improve aviation safety be coordinated to ensure optimum use of resources and to enable the maximum benefit to be achieved;

Whereas it is appropriate to empower the Commission, assisted by a committee of experts nominated by the Member States, to make the amendments developed by the JAA to the common technical requirements and administrative procedures adopted by the Council,

⁽¹⁾ OJ No C 270, 26. 10. 1990, p. 3.

⁽²⁾ OJ No C 267, 14. 10. 1991, p. 154.

⁽³⁾ OJ No C 159, 17. 6. 1991, p. 28.

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation shall apply to the harmonization of technical requirements and administrative procedures in the field of civil aviation safety as listed in Annex II, and in particular with respect to:

- the design, manufacture, operation and maintenance of aircraft,
- persons and organizations involved in these tasks.

2. The harmonized technical requirements and administrative procedures referred to in paragraph 1 shall apply to all aircraft operated by operators as defined in Article 2 (a), whether registered in a Member State or in a third country.

Article 2

1. For the purpose of this Regulation:

- (a) 'operator' means a natural person residing in a Member State or a legal person established in a Member State using one or more aircraft in accordance with the regulations applicable in that Member State, or a Community air carrier as defined in Community legislation;
- (b) 'product' means a civil aircraft, engine, propeller or appliance;
- (c) 'appliance' means any instrument, equipment, mechanism, apparatus or accessory used or intended to be used in operating an aircraft in flight, whether installed in, intended to be installed in, or attached to, a civil aircraft, but not forming part of an airframe, engine or propeller;
- (d) 'component' means a material, part or sub-assembly not covered by the definitions in (b) or (c) for use on civil aircraft, engines, propellers or appliances;
- (e) 'certification' (of a product, service, organization or person) means any form of legal recognition that such a product, service, body or person complies with the applicable requirements. Such certification comprises two acts:
 - (i) the act of checking that technically the product, service, organization or person complies with the applicable requirements; this act is referred to as 'making the technical findings';
 - (ii) the act of formal recognition of such compliance with the applicable requirements by the issue of a certificate, licence, approval or other document in

the manner required by national laws and procedures; this act is referred to as 'making the legal findings';

- (f) 'maintenance' means all inspections, servicing, modification and repair throughout the life of an aircraft needed to ensure that the aircraft remains in compliance with the type certification and offers a high level of safety in all circumstances; this shall include in particular modifications imposed by the authorities party to the arrangements referred to in (h) in accordance with airworthiness checking concepts;
- (g) 'national variant' means a national requirement or regulation imposed by a country in addition to or instead of a JAR;
- (h) 'arrangements' means arrangements developed under the auspices of the European Civil Aviation Conference (ECAC) for cooperation in the development and implementation of joint requirements in all fields relating to the safety and safe operation of aircraft. These arrangements are specified in Annex I.

Article 3

Without prejudice to Article 11, the common technical requirements and administrative procedures applicable in the Community with regard to the fields listed in Annex II shall be the relevant codes referred to in that Annex and in force on 1 January 1992.

Article 4

1. With regard to fields not listed in Annex II, the Council shall adopt common technical requirements and administrative procedures on the basis of Article 84 (2) of the Treaty. The Commission shall, where appropriate and as soon as possible, submit suitable proposals in these fields.
2. Pending adoption of the proposals referred to in paragraph 1 member States may apply the relevant provisions of their existing national regulations.

Article 5

Member States shall ensure that their responsible civil aviation authorities meet the conditions for membership of the JAA specified in the arrangements and shall sign such arrangements without reservation before 1 January 1992.

Article 6

1. Member States shall, without further technical requirements or evaluation, recognize products designed,

manufactured, operated and maintained in compliance with the common technical requirements and administrative procedures where such products have been certificated by another Member State. When the original recognition is for a particular purpose, or purposes, any subsequent recognition shall cover the same purpose(s).

2. Existing products and their derivatives which are not certificated in accordance with the common technical requirements and administrative procedure may be accepted by a Member State under their current national regulations pending the adoption of the common technical requirements and administrative procedures applicable to these products pursuant to this Regulation.

Article 7

Member States shall recognize the certification granted pursuant to this Regulation by another Member State or by a body acting on its behalf, to bodies or persons placed under its jurisdiction and under its authority, who are concerned with the design, manufacture and maintenance of products, and the operation of aircraft.

Article 8

1. None of the above provisions shall prevent a Member State from reacting immediately to a safety problem which becomes apparent from an accident, incident or service experience and involves either a product designed, manufactured, operated or maintained in accordance with this Regulation, or a person, procedure or body involved in such tasks. If the safety problem results from:

- an inadequate safety level corresponding to the application of the common technical requirements and administrative procedures, or
- shortcomings in the common technical requirements and administrative procedures,

the Member State shall forthwith inform the Commission and the other Member States of the measures taken and the reasons therefor.

2. In the cases referred to in paragraph 1, the Commission shall consult the Member States at the earliest opportunity. If an inadequate level of safety or a shortcoming in the common technical requirements and administrative procedures is confirmed, the Commission shall make appropriate proposals in accordance with the procedures provided for in Article 4 and/or Article 11.

Article 9

Member States shall take the necessary steps to coordinate their research programmes to improve the safety of civil aircraft and their operation and to inform the Commission

thereof. After consulting the Member States, the Commission may take any relevant initiative to promote such national research programmes.

Article 10

Member States shall notify the Commission of:

- (a) any new or amended requirement or procedure developed or adopted in accordance with procedures laid down in the Arrangements; and
- (b) any modification of the Arrangements; and
- (c) the results of consultations with industry and other interested bodies.

Article 11

1. The Commission, following the procedure laid down in Article 12, shall make the amendments necessitated by scientific and technical progress to the common technical requirements and administrative procedures listed in Annex II or adopted by the Council in accordance with Article 4.

2. Where the amendments referred to in paragraph 1 contain a national variant for a Member State the Commission, following the procedure laid down in Article 12, shall decide whether or not to include that variant in the common technical requirements and administrative procedures.

Article 12

1. For the application of Articles 8, 9 and 11, the Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the Commission representative.

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 representative 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.

- (c) If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

2. As part of the mutual assistance referred to in paragraph 1 the Member States' competent authorities shall regularly exchange all available information on:

- infringements of this Regulation by non-residents and penalties imposed in respect thereof,
- penalties imposed on its residents by a Member State in respect of such infringements committed in other Member States.

Article 13

1. Member States shall assist one another in implementing this Regulation and in monitoring its implementation.

Article 14

This Regulation shall enter into force on 1 January 1992.

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

Done at Brussels, 16 December 1991.

For the Council

The President

H. MAIJ-WEGGEN

ANNEX I

Arrangements referred to in Article 2 (1) (b)

'Arrangements concerning the Development, the Acceptance and the Implementation of Joint Aviation Requirements (JAR)', concluded in Cyprus on 11 September 1990.

ANNEX II

Lists of codes in force containing the common technical requirements and administrative procedures referred to in Article 3

1. *General and procedures*

JAR 1 Definitions and abbreviations

2. *Type certification of products and parts*

JAR 22 Sailplanes and powered sailplanes

JAR 25 Large aeroplanes

JAR AWO All weather operations

JAR E Engines

JAR P Propellers

JAR APU Auxiliary power units

JAR TSO Technical standards orders

JAR VLA Very light aeroplanes

JAR 145 Approved maintenance organizations

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 16 December 1991

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

(91/670/EEC)

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 the existence in sufficient numbers of cockpit personnel holding the necessary qualifications and licences is vital for the smooth and safe running of air transport services;

Whereas also the completion of the internal market by the end of 1992 requires the existence of an efficient air transport system in order to facilitate the movement of persons within the Community;

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 than the national level;

Whereas it is therefore essential that the common transport policy in the field of civil aviation be extended to facilitate the movement of cockpit personnel within the Community;

Whereas the requirements for licences of cockpit personnel differ between Member States;

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 by aircraft registered on 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 solely by reference to their own national education and training systems, where the person concerned has already acquired those qualifications in another Member State;

Whereas in order to facilitate compliance with Treaty obligations and to ensure the mobility of cockpit personnel, a Community procedure should be introduced for the acceptance of licences and qualifications of such personnel;

⁽¹⁾ OJ No C 10, 16. 1. 1990, p. 12; and OJ No C 175, 6. 7. 1991, p. 14.

⁽²⁾ OJ No C 284, 12. 11. 1990, p. 198.

⁽³⁾ OJ No C 124, 21. 5. 1990, s. 18.

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

Whereas, if in order to be permitted to operate aircraft registered in a Member State other than that where they obtained their licence, professional pilots have to be subjected to additional tests, they should be offered the possibility of sitting such tests as soon as possible;

Whereas training facilities available in Member States are not always commensurate with demand; whereas in conformity with Article 7 of the Treaty, Member States must 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, the Council will adopt, taking account of progress reached in the proceedings of international organizations, before 1 January 1993, on a proposal by the Commission to be submitted before 1 July 1992, the measures for harmonized requirements in respect of licences and training programmes; whereas each Member State will recognize any licence which satisfies these requirements,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive shall apply to procedures for mutual acceptance of licences issued by Member States to civil aviation cockpit personnel.

Article 2

For the purposes of this Directive

- (a) *licence* means any valid document, issued by a Member State, authorizing the holder to exercise functions as a member of the cockpit personnel on board a civil aircraft registered in a Member State. This definition also includes ratings associated with the document;
- (b) *rating* means a statement entered on a licence, or in a separate document, setting forth 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 issued by another Member State together with the privileges and certificates pertaining thereto. The acceptance, which may be effected through the issue by the Member State of a licence of its own, shall not extend beyond the period of validity of the original licence;

- (d) *recognition* means the permission to use on an aircraft registered in one Member State a licence issued in another Member State, in accordance with the privileges pertaining thereto;
- (e) *validation* means the express declaration by a Member State that a licence issued by another Member State can be used as one of its own;
- (f) *cockpit personnel* means personnel holding a licence and charged with duties essential to the operation of an aircraft during flight time. This definition applies to pilots, flight navigators and flight engineers.

Article 3

1. A Member State shall accept, without undue delay or additional tests, any licence issued by another Member State together with privileges and certificates pertaining thereto.
2. Any person holding a private pilot's 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's licence and of associated aircraft ratings under visual flight rules (VFR) by day only in an aircraft certificated for single-pilot operations.

Article 4

1. Article 3 (1) shall apply where a licence issued by a Member State and presented to another Member State for acceptance is based on requirements which are equivalent to those of the host Member State. In order to enable the competent authorities to assess the equivalence of licences issued by other Member States, the Commission shall make, and forward to all the Member States before 1 January 1992, a comparison of the requirements applied in each Member State for issuing licences for the same functions.
2. (a) Any Member State may ask the Commission for an opinion on the equivalence of a licence, presented to it for acceptance, within three weeks of receiving the request.
 - (b) The Commission must deliver an opinion within two months. The Member State concerned shall then have a month to reply to the applicant.
 - (c) If a Member State does not ask the Commission for an opinion, it shall be bound to reply to the applicant within three months.

- (d) The periods referred to in (a), (b) and (c) above shall start to run when all the necessary information is available.

Article 6

When a Member State issues, for reasons of equivalence, a licence on the basis of a licence issued by a third country together with the privileges and certificates pertaining thereto, this shall be recorded in the licence. Other Member States shall not be obliged to accept any such licence.

Article 7

3. If, after the examination of a licence by the Member State to which it has been presented for acceptance, reasonable doubts remain as to the equivalence of the licence concerned, that Member State may, notwithstanding the principles laid down in Article 3 (1), consider that additional requirements and/or tests are necessary to enable the licence to be accepted. The licence holder, the Member State which issued the licence and the Commission shall be informed thereof in writing. The opportunity to take an additional test shall be given to the licence holder by the host Member State to which the licence is submitted for approval as soon as possible, and in any event without discrimination on grounds of nationality.

4. Where the applicant has met the additional requirements and/or has passed the required test(s) as laid down in paragraph 3 the Member State concerned shall forthwith accept the licence in question.

5. Notwithstanding the above, with respect to pilot's licences and notwithstanding paragraphs 1 to 4, a Member State shall accept any licence issued in accordance with the requirements of Annex 1 to the Chicago Convention on International Civil Aviation if the bearer satisfies the special validation requirements laid down in the Annex to this Directive.

1. After consulting the Commission, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 June 1992. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

4. Member States shall assist one another in the implementation of this Directive and shall, if need be, exchange information on the licences they have accepted on grounds of equivalence.

5. The confidential information obtained pursuant to this Directive shall be covered by professional secrecy.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 16 December 1991.

Article 5

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

For the Council

The President

H. MAIJ-WEGGEN

ANNEX
Special validation procedure

| Special validation requirements | | | | | |
|--|---------------------|--|--------------|---|--|
| Role | Licence | Medical | Age | Experience | Aptitude tests (*) |
| (1) | (2) | (3) | (4) | (5) | (6) |
| 1. Commercial air transportation in FAR 25/JAR 25 aeroplanes | | | | | |
| (a) PIC | (a) ATPL-A | (a) Class 1 medical certificate without waiver | (a) 21 to 60 | (a) 1 500 hours as PIC on FAR 25/JAR 25 aeroplanes | (a) A flight test including IR test in flight or simulator |
| (b) Co-pilot | (b) ATPL-A | (b) Class 1 medical certificate without waiver | (b) 21 to 60 | (b) 1 500 hours on FAR 25/JAR 25 aeroplanes | (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 to 60 | (a) 1 000 hours as PIC in commercial air transportation since gaining an IR | (a) A flight test including IR test in flight or simulator |
| (b) Co-pilot | (b) CPL-A (with IR) | (b) Class 1 medical certificate without waiver | (b) 21 to 60 | (b) 1 000 hours in commercial air transportation | (b) A flight test including IR test in flight or simulator |

| (1) | (2) | (3) | (4) | (5) | (6) |
|--|--|--|--------------|--|--|
| 3. (a) Aerial work in aeroplanes (excluding flying instruction) | (a) CPL-A | (a) Class 1 medical certificate without waiver | (a) 21 to 60 | (a) 700 hours as PIC on conventional aeroplanes including 200 hours in the kind of aerial work for which validation is sought, including 50 hours in the role in the last 12 months | (a) Flight check in role |
| 3. (b) Aerial work in helicopters (excluding flying instruction and offshore operations) | (b) CPL-H | (b) Class 1 medical certificate without waiver | (b) 21 to 60 | (b) 700 hours as PIC on helicopters including 200 hours in the kind of aerial work for which validation is sought, including 50 hours in the role in the last 12 months | (b) Flight check in role |
| 4. Commercial air transportation or offshore operations in helicopters | (a) ATPL-H (with IR if IFR flights required) | (a) Class 1 medical certificate without waiver | (a) 21 to 60 | (a) 1 500 hours as PIC flying related to the kind of operation for which validation is being sought. If IR flight is required, have gained 500 hours flying experience since gaining an IR | (a) A flight test, including IR test, if appropriate, in flight or simulator |
| (a) PIC | (b) CPL-H (with IR, if IFR flights required) | (b) Class 1 medical certificate without waiver | (a) 21 to 60 | (b) 1 500 hours flying related to the kind of operation for which validation is being sought. If IR flight is required, have gained 500 hours flying experience since gaining an IR | (a) A flight test, including IR test, if appropriate, in flight or simulator |
| (b) Co-pilot | | | | | |

IR = instrument rating.

(*) The applicant must be given the possibility of undergoing the abovementioned check and test as soon as possible. Conventional aeroplanes means aeroplanes other than those certificated under JAR 23 and ultralights.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 95/93

of 18 January 1993

on common rules for the allocation of slots at Community airports

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 there is a growing imbalance between the expansion of the air transport system in Europe and the availability of adequate airport infrastructure to meet that demand; whereas there is, as a result, an increasing number of congested airports in the Community;

Whereas the allocation of slots at congested airports should be based on neutral, transparent and non-discriminatory rules;

Whereas the requirement of neutrality is best guaranteed when the decision to coordinate an airport is taken by the Member State responsible for that airport on the basis of objective criteria;

Whereas under certain conditions, in order to facilitate operations, it is desirable that a Member State should be able to designate an airport as coordinated provided that principles of transparency, neutrality and non-discrimination are met;

Whereas the Member State responsible for the coordinated airport should ensure the appointment of a coordinator whose neutrality should be unquestioned;

Whereas transparency of information is an essential element for ensuring an objective procedure for slot allocation;

Whereas the principles governing the existing system of slot allocation could be the basis of this Regulation

provided that this system evolves in harmony with the evolution of new transport developments in the Community;

Whereas it is Community policy to facilitate competition and to encourage entrance into the market, as provided for in Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ⁽⁴⁾, and whereas these objectives require strong support for carriers who intend to start operations on intra-Community routes;

Whereas the existing system makes provision for grandfather rights;

Whereas there should also be provisions to allow new entrants into the Community market;

Whereas it is necessary to make special provisions, under limited circumstances, for the maintenance of adequate domestic air services to regions of the Member State concerned;

Whereas it is also necessary to avoid situations where, owing to a lack of available slots, the benefits of liberalization are unevenly spread and competition is distorted;

Whereas it is desirable to make the best use of the existing slots in order to meet the objectives set out above;

Whereas it is desirable that third countries offer Community carriers equivalent treatment;

Whereas the application of the provisions of this Regulation shall be without prejudice to the competition rules on the Treaty, in particular Articles 85 and 86;

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;

⁽¹⁾ OJ No C 43, 19. 2. 1991, p. 3.

⁽²⁾ OJ No C 13, 20. 1. 1992, p. 446.

⁽³⁾ OJ No C 339, 31. 12. 1991, p. 41.

⁽⁴⁾ OJ No L 240, 24. 8. 1992, p. 8.

Whereas this Regulation should be reviewed after a fixed period of operation to assess its functioning,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation shall apply to the allocation of slots at Community airports.
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 declarations 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 of that date.

Article 2

Definitions

For the purpose of this Regulation:

- (a) 'slot' shall mean the scheduled time of arrival or departure available or allocated to an aircraft movement on a specific date at an airport coordinated under the terms of this Regulation;
- (b) 'new entrant' shall mean:
 - (i) an air carrier requesting slots at an airport on any day and holding or having been allocated fewer than four slots at that airport on that day, or,
 - (ii) an air carrier requesting slots for a non-stop service between two Community airport where at most two other air carriers operate a direct service between these airports or airports systems on that day and holding or having been allocated fewer than four slots at that airport on that day for that non-stop service.

An air carrier holding more than 3 % of the total slots available on the day in question at a particular airport, or more than 2 % of the total slots available on the day in question in an airport system of which that airport forms part, shall not be considered as a new entrant at that airport;

- (c) 'direct air service' shall mean a service between two airports including stopovers with the same aircraft and same flight number;
- (d) 'scheduling period' shall mean either the summer or winter season as used in the schedules of air carriers;
- (e) 'Community air carrier' shall mean 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⁽¹⁾;
- (f) 'coordinated airport' shall mean an airport where a coordinator has been appointed to facilitate the operations of air carriers operating or intending to operate at that airport;
- (g) 'fully coordinated airport' shall mean a coordinated airport where, in order to land or take off, during the periods for which it is fully coordinated, it is necessary for an air carrier to have a slot allocated by a coordinator;
- (h) 'airport system' shall mean two or more airports grouped together and serving the same city or conurbation, as indicated in Annex II to Regulation (EEC) No 2408/92.

Article 3

Conditions for airport coordination

1. A Member State shall be under no obligation to designate any airport as coordinated save in accordance with the provisions of this Article.
2. A Member State may, however, provide for any airport to be designated as a coordinated airport provided that principles of transparency, neutrality and non-discrimination are met.
3. (i) When air carriers representing more than a half of the operations at an airport and/or the airport authority consider that capacity is insufficient for actual or planned operations at certain periods or
 - (ii) when new entrants encounter serious problems in securing slots or
 - (iii) when a Member State considers it necessary,

the Member State shall ensure that a thorough capacity analysis is carried out, having regard to commonly recognized methods, as soon as possible at the airport with the purpose of determining possibilities of increasing the capacity in the short term through infrastructure or operational changes, and to determine the time frame envisaged to resolve the problems. The analysis, shall be updated periodically. Both the analysis and the method underlying it shall be made available to interested parties.

⁽¹⁾ OJ No L 240, 24. 8. 1992, p. 1.

4. If, after consultation with the air carriers using the airport regularly, their representative organizations, the airport authorities, air traffic control authorities and passengers' organizations where such organizations exist, the analysis does not indicate possibilities of resolving the serious problems in the short term, the Member State shall ensure that the airport shall be designated as fully coordinated for the periods during which capacity problems occur.

5. When a capacity sufficient to meet actual or planned operations is provided at a fully coordinated airport, its designation as a fully coordinated airport shall be lifted.

Article 4

The coordinator

1. The Member State responsible for a coordinated or fully coordinated airport shall ensure the appointment of a natural or legal person with detailed knowledge of air carrier scheduling coordination as airport coordinator after having consulted the air carriers using the airport regularly, their representative organizations and the airport authorities. The same coordinator may be appointed for more than one airport.

2. A Member State shall ensure that the coordinator carries out his duties under this Regulation in an independent manner.

3. The coordinator shall act in accordance with this Regulation in a neutral, non-discriminatory and transparent way.

4. The coordinator shall participate in such international scheduling conferences of air carriers as are permitted by Community law.

5. The coordinator shall be responsible for the allocation of slots.

6. The coordinator shall monitor the use of slots.

7. Where slots are allocated, the coordinator shall, on request and within a reasonable time, make available for review to all interested parties the following information :

- (a) historical slots by airline, chronologically, for all air carriers at the airport,
- (b) requested slots (initial submissions), by air carriers and chronologically, for all air carriers,
- (c) all allocated slots, and outstanding slot requests, listed individually in chronological order, by air carriers, for all air carriers,

(d) remaining available slots,

(e) full details on the criteria being used in the allocation.

8. The information in paragraph 7 shall be made available at the latest at the time of the relevant scheduling conferences and as appropriate during the conferences and thereafter.

Article 5

Coordination committee

1. A Member State shall ensure that in an airport that has been designated as fully coordinated a coordination committee is set up to assist, in a consultative capacity, the coordinator referred to in Article 4. Participation in this committee shall be open to at least the air carriers and/or their representative organizations using the airport(s) regularly, the airport authorities concerned and representatives of the air traffic control. The same coordination committee may be designated for more than one airport.

The tasks of the coordination committee shall be, *inter alia*, to advise on :

- possibilities for increasing the capacity determined in accordance with Article 6,
- improvements to traffic conditions prevailing at the airport in question,
- complaints on the allocation of slots as provided for in Article 8 (7),
- the methods of monitoring the use of allocated slots,
- guidelines for allocation of slots, taking into account local conditions,
- serious problems for new entrants as provided for in Article 10.

2. Paragraph 1 may be applied to airports designated as coordinated under the provisions of Article 3.

Article 6

Airport capacity

1. At an airport where slot allocation takes place, the competent authorities shall determine the capacity available for slot allocation twice yearly in cooperation with representatives of air traffic control, customs and immigration authorities and air carriers using the airport and/or their representative organizations and the airport coordinator, according to commonly recognized methods. Where the competent authority is not the airport authority it shall also be consulted.

This exercise shall be based on an objective analysis of possibilities of accommodating the air traffic, taking into account the *different* types of traffic at that airport.

The results of this exercise shall be provided to the airport coordinator in good time before the initial slot allocation takes place for the purpose of scheduling conferences.

2. Paragraph 1 may be applied to airports designated as coordinated under the provisions of Article 3.

Article 7

Information for the coordinator

Air carriers operating or intending to operate at a coordinated or fully coordinated airport shall submit to the coordinator relevant information requested by the coordinator.

Article 8

Process of slot allocation

1. (a) Subject to the provisions of Article 10, a slot that has been operated by an air carrier as cleared by the coordinator shall entitle that air carrier to claim the same slot in the next equivalent scheduling period.

(b) In a situation where all slot requests cannot be accommodated to the satisfaction of the air carriers concerned, preference shall be given to commercial air services and in particular to scheduled services and programmed non-scheduled services.

(c) The coordinator shall also take into account additional priority rules established by the air carrier industry and if possible additional guidelines recommended by the coordination committee allowing for local conditions, provided such guidelines respect Community law.

2. If a requested slot cannot be accommodated, the coordinator shall inform the requesting air carrier of the reasons therefore and shall indicate the nearest alternative slot.

3. The coordinator shall, at all times, endeavour to accommodate *ad hoc* slot requests for any type of aviation including general aviation. To this end, the slots available in the pool referred to in Article 10 but not yet allocated may be used, as may slots liberated at short notice.

4. Slots may be freely exchanged between air carriers or transferred by an air carrier from one route, or type of service, to another, by mutual agreement or as a result of a

total or partial takeover or unilaterally. Any such exchanges or transfers shall be transparent and subject to confirmation of feasibility by the coordinator that:

- (a) airport operations would not be prejudiced;
- (b) limitations imposed by a Member State according to Article 9 are respected;
- (c) a change of use does not fall within the scope of Article 11.

5. Slots allocated to new entrants operating a service between two Community airports may not be exchanged or transferred between air carriers or by an air carrier from one route to another as provided for in paragraph 4 for a period of two seasons.

6. The Commission may establish, after consultations with air carriers, coordinators, and airport authorities, recommended standards for the automated systems which are used by the coordinators in order to ensure the proper implementation of Articles 4 and 7.

7. Where there are complaints about the allocation of slots, the coordination committee shall consider the matter and may make proposals to the coordinator in an attempt to resolve the problems.

8. If the problems cannot be resolved after consideration by the coordination committee, the Member State concerned may provide for mediation by an air carriers' representative organization or other third party.

Article 9

Regional services

1. A Member State may reserve certain slots at a fully coordinated airport for domestic scheduled services:

(a) on a route to an airport serving a peripheral or development region in its territory, any such route being considered vital for the economic development of the region in which the airport is located, on condition that:

- (i) the slots concerned are being used on that route at the time of entry into force of this Regulation;
- (ii) only one air carrier is operating on the route;
- (iii) no other mode of transport can provide an adequate service;
- (iv) the reservation of slots shall end when a second air carrier has established a domestic scheduled service on the route with the same number of frequencies as the first air carrier and operated it for at least a season;

(b) on routes where public service obligations have been imposed under Community legislation.

2. The procedures in Article 4 (1) (d) to 4 (1) (i) of Regulation (EEC) No 2408/92 shall be applied if another Community air carrier is interested in servicing the route and has not been able to obtain slots within one hour before or after the times requested of the coordinator.

3. The Member State shall communicate to the Commission a list of routes for which slots have been so reserved at a fully coordinated airport. This shall first be done at the entry into force of this Regulation. The Commission shall publish an overview of the routes concerned in the *Official Journal of the European Communities* not later than two months after the communication.

Article 10

Slot pool

1. At an airport where slot allocation takes place, a pool shall be set up for each coordinated period and shall contain newly created slots, unused slots and slots which have been given up by a carrier during, or by the end of, the season or which otherwise become available.

2. Any slot not utilized shall be withdrawn and placed in the appropriate slot pool unless the non-utilization can be justified by reason of the grounds of the grounding of an aircraft type, or the closure of an airport or airspace or other similarly exceptional case.

3. Slots which are allocated to an air carrier for the operation of a scheduled service or a programmed non-scheduled service on a particular moment of a day and for the same day of the week over a recognizable period up to one scheduling period shall not entitle that air carrier to the same series of slots in the next equivalent period, unless the air carrier can demonstrate to the satisfaction of the coordinator that they have been operated, as cleared by the coordinator, by that air carrier for at least 80 % of the time during the period for which they have been allocated.

4. Slots allocated to an air carrier before 31 January for the following summer season, or before 31 August for the following winter season, but which are returned to the coordinator for reallocation before those dates shall not be taken into account for the purposes of the usage calculation.

5. If the 80 % usage of the series of slots cannot be demonstrated, all the slots constituting that series shall be placed in the slot pool, unless the non-utilization can be justified on the basis of any of the following reasons:

(a) unforeseeable and irresistible cases outside the air carrier's control leading to, for example:

— grounding of the aircraft type generally used for the service in question, or

— closure of an airport or airspace;

(b) problems relating to the starting up of a new scheduled passenger service with aircraft of no more than eighty seats on a route between a regional airport and the coordinated airport and where the capacity does not exceed 30 000 seats per year, or

(c) serious financial damage for a Community air carrier concerned, with, as a result, the granting of a temporary licence by the licensing authorities pending financial reorganization of the air carrier in accordance with Article 5 (5) of Regulation (EEC) No 2407/92;

(d) an interruption of a series of non-scheduled services due to cancellations by tour operators, in particular outside the usual peak period, provided that overall slot usage does not fall below 70 %;

(e) an interruption of a series of services due to action intended to affect these services, which makes it practically and/or technically impossible for the air carrier to carry out operations as planned.

6. If serious problems continue to exist for new entrants, the Member State shall ensure that a meeting of the airport coordination committee is convened. The purpose of the meeting shall be to examine possibilities for remedying the situation. The Commission shall be invited to such a meeting.

7. Without prejudice to Article 8 (1) of Regulation (EEC) No 2408/92, slots placed in the pools shall be distributed among applicant carriers. 50 % of these slots shall be allocated to new entrants unless requests by new entrants are less than 50 %.

8. A new entrant which has been offered slots within two hours before or after the time requested but has not accepted this offer shall not retain the new entrant status.

Article 11

Safeguard mechanism

1. Where a solution cannot be found under paragraph 2 and taking into account that competition between the air carriers concerned should not be distorted, an air carrier shall not be allowed to use the flexibility provided for in Article 8 (4) for the purpose of introducing one or more additional frequencies on a route between a fully coordinated airport within the Community and an airport in another Member State, if another Community air carrier, licensed by another Member State, has not been able, despite serious and consistent efforts, to obtain landing and departure slots which can reasonably be used for providing one or more additional frequencies on the route within two hours before or after the times requested of the coordinator.

This provision shall not apply if the air carrier using the flexibility provided for in Article 8 (4) does not exceed the frequencies of the other air carrier.

2. Taking into account that competition between the air carriers concerned should not be distorted, the Member States responsible for the fully coordinated airport referred to in paragraph 1 shall endeavour to facilitate an agreement between the air carriers concerned.

An alternative solution to the problem should be sought such as :

- endeavouring to ensure that the request for slots of the air carrier licensed by the other Member State is accommodated,
- the reasonable use by that carrier of the flexibility provided for in Article 8 (4).

3. A Member State concerned may request the Commission to investigate the application of this Article within two months of an air carrier informing the coordinator of its intention to use the flexibility provided for in Article 8 (4).

Article 12

General provisions

1. Whenever it appears that a third country, with respect to the allocation of slots at airports,

- (a) does not grant Community air carriers treatment comparable to that granted by Member States to air carriers from that country, or
- (b) does not grant Community air carriers *de facto* national treatment, or
- (c) grants air carriers from other third countries more favourable treatment than Community air carriers,

appropriate action may be taken to remedy the situation in respect of the airport or airports concerned, including the suspension wholly or partially of the obligations of this Regulation in respect of an air carrier of that third country, in accordance with Community law.

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

Done at Brussels, 18 January 1993.

2. Member States shall inform the Commission of any serious difficulties encountered, in law or in fact, by Community air carriers in obtaining slots at airports in third countries.

Article 13

Report and cooperation

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Regulation three years after its entry into force. This report should include *inter alia* the following elements :

- (a) the structure of the airline industry ;
- (b) progress made by the industry in reducing the non-use of slots ;
- (c) size of the slot pool, as defined in Article 10 (1), each season at selected airports ;
- (d) volume of unsuccessful applications for slots each season at selected airports ;
- (e) number of new entrants applying for slots each season at selected airports ;
- (f) use of dispute procedures established within the terms of Article 8.

2. Member States and the Commission shall cooperate in the application of this Regulation, particularly as regards the collection of information for the report mentioned in paragraph 1.

Article 14

Revision

The Council shall decide on the continuation or revision of this Regulation by 1 July 1997, on the basis of a proposal from the Commission to be submitted no later than 1 January 1996.

Article 15

Entry into force

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

For the Council

The President

T. PEDERSEN