



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 July 2006

11829/06

**Interinstitutional File:
2006/0130 (COD)**

**AVIATION 109
CODEC 784**

PROPOSAL

from: the European Commission
dated: 19 July 2006

Subject: Proposal for a Regulation of the European Parliament and of the Council
on common rules for the operation of air transport services in the
Community (recast)

Delegations will find attached a proposal from the Commission submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2006) 396 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.7.2006
COM(2006) 396 final

2006/0130 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on common rules for the operation of air transport services in the Community
(recast)**

(presented by the Commission)

{SEC(2006) 943}

{SEC(2006) 976}

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The framework of liberalisation set by the regulations (EEC) No 2407/92, 2408/92 and 2409/92 - the "third package" of the internal aviation market - has favoured the transformation of air transport services into more efficient and affordable services. But the experience of the last decade has shown that some measures of the third package are either poorly applied or need to be clarified or revised. Divergent application and interpretation of the three regulations in the Member States and the need for clarification require a revision of the regulations in order to ensure the establishment of a true level playing field for all EU airlines. The revision of the third package aims to increase market efficiency, to enhance the safety of air services and to improve passenger protection.

- **General context**

On 23 July 1992 the final stage in the liberalisation of air transport in the Community was reached with the adoption of the three Council Regulations - No 2407/92, 2408/92 and 2409/92 - known as the "third package". This followed up the "first package", adopted in December 1987, and the "second package" of June 1990.

More than ten years after the entry into force the third package has largely played its role, allowing the unprecedented expansion of air transport in Europe. Old monopolies have been swept away, intra-Community cabotage has been introduced, and competition in all markets has intensified to the benefit of consumers.

Despite this success, most of the Community's airlines continue to suffer from overcapacity and from the excessive fragmentation of the market. The inconsistent application of the third package across the Member States and the lingering restrictions on intra-Community air services translate into the following effects:

- o Absence of a level-playing field: market efficiency is affected by competition distortions (e.g. varying application with regard to the requirements of the operating licence; discrimination between EU carriers on the basis of nationality; discriminatory treatment concerning routes to third countries; etc.);
- o Inconsistent application of rules governing the leasing of aircraft from third countries with crew, with consequent distortions of competition and social implications;
- o Passengers not reaping the full benefits of the internal market because of the lack of price transparency or discriminatory practices on the basis of the place of residence.

- **Existing provisions in the area of the proposal**

The proposal aims at revising and consolidating the regulations (EEC) No 2407/92, 2408/92 and 2409/92.

- **Consistency with the other policies and objectives of the Union**

The proposal reinforces the internal market by promoting market consolidation and thereby creating a more competitive environment with European air carriers capable of taking on their international competitors. It contributes to the objectives of the Lisbon strategy for increasing Europe's competitiveness.

Special attention has been devoted to the simplification and the consolidation of the content of the regulations (EEC) No 2407/92, 2408/92 and 2409/92. This is done in accordance with the Commission's commitment to simplify the content of the acquis, to up-date it and to reduce its volume.

Some of the proposed changes may have an environmental impact. It must be recalled that the environmental impact is already being addressed by distinct Commission initiatives in the framework of the Sustainable Development Strategy and the European Climate Change Programme (see also “reducing the Climate Change Impact of Aviation”, Communication from the Commission to the Council, the European Parliament and Social Committee and the Committee of the Regions, COM(2005)459 of 27 September 2005).

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The preparation of this proposal has been preceded by a public consultation in order to gather as many comments and suggestions as possible from the individuals and bodies concerned. The Commission received 56 contributions from national authorities, international organisations, air carriers and their representative bodies, airports and organisations representing air transport workers or air transport users.

On 26 February 2004 a consultation meeting with stakeholders was held in Brussels. Delegations from 11 Member States and from 11 organisations representing airlines, airports, tourism operators and the air sector's employees and workers were present.

Summary of responses and how they have been taken into account

The majority of the respondents are satisfied with the current regulations, but agree to the need for a few adjustments and an effort to harmonise which could be made by adding more detail in the texts or drafting guidelines. There is support for the modernisation and simplification of the texts and the suppression of provisions that were needed in 1992 but that are outdated today.

As regards Regulation (EEC) No 2407/92, there is a need for more detail for tightening the monitoring of air carriers' financial viability and for stricter requirements for the leasing of aircraft.

As regards Regulation (EEC) No 2408/92, most respondents stress that relations with third countries must be the subject of specific agreements and regulations. There is broad agreement on the need to simplify the procedure for fulfilling public service

obligations, but a significant number of the air carriers stress the risk of distortion of competition that could arise from the excessive use of public service obligations. Most respondents were in favour of clarifying the rules concerning traffic distribution between airports and the fixing of objective criteria.

As regards Regulation (EEC) No 2409/92, air carriers are opposed to anything that might jeopardise the freedom to set fares, as presently enshrined in the competition law and safeguard rules of Regulation 2409/92. However, some national and regional authorities and user organisations appear to be willing to act to ensure greater transparency and genuine accessibility for all Europeans to the air fares offered in the Union.

All the comments expressed during the consultation process have been carefully examined in the preparation of the proposed revision. The results from the consultation have been fed into the impact assessment. The latter was supported by a contract with an external consultant that was carried out between December 2004 and October 2005.

An open consultation was conducted over the internet from 17/03/2003 to 30/09/2003. The Commission received 56 response(s). The results are available on http://europa.eu.int/comm/transport/air/rules/package_3_en.htm.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The revision of the third package does not intend to radically change the legal framework, but rather to make a series of adjustments in order to address the identified problems. Any options that move too far away from the existing legal framework – such as the creation of a Community licensing authority - have already been excluded through the consultation process. Therefore, we compared a 'no change' option and a 'change' option where the latter consists of a series of measures addressing directly each of the problems identified in the analysis of the third package:

1. The 'No change' option leaves unaltered the present three regulations composing the third package of the internal aviation market. The previously mentioned problems arising from the inconsistent application of the third package regulations are expected to continue or even worsen if the legislation is left unchanged.
2. The 'change' option includes a series of changes to the third package in order to ensure the homogenous and effective application of its rules. The impact assessment showed that these measures meet well the objectives, that their economic and social impact is positive, at a quite limited environmental cost.

The Commission carried out an impact assessment listed in the Work Programme, which accompanies the present proposal.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The draft regulation will ensure an efficient and homogeneous application of Community legislation for the internal aviation market via stricter and more precise application criteria (e.g. for operating licences, leasing of aircraft, public service obligations and traffic distribution rules). It also reinforces the internal market by lifting still existing restrictions on the provision of air services stemming from old bilateral agreements between Member States and by conferring to the Community the right to negotiate intra-Community traffic rights with third countries. It enhances consumer rights by promoting price transparency and non-discrimination.

The proposal simplifies and consolidates the legislation as it removes obsolescent parts of the third package and clarifies the text where needed. The three existing regulations of the third package will be consolidated into a single text.

- **Legal basis**

This draft regulation that repeals regulations (EEC) No 2407/92, 2408/92 and 2409/92 is based on article 80 (2) of the Treaty establishing the European Community.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

- The experience with the third package on the internal aviation market has shown that the legislation is not interpreted and applied in a uniform way across Member States. This situation hinders the existence of a true level-playing field between Community air carriers. Given the international nature of aviation, these problems cannot be resolved at Member State level.

- The non-homogenous application of the third package leads to competition distortions in the internal aviation market as air carriers from different Member States do not operate under the same conditions.

Community action will better achieve the objectives of the proposal for the following reason(s).

- More homogeneous application of the third package can best be achieved by clarifying and specifying its rules on a Community level.

- Some impediments to the free provision of air services need to be removed from the Community legislation.

- The identified problems can only be addressed at a Union level given their trans-national character.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

- The proposed revision of the third package leaves the scope for national decisions mostly unchanged but helps to ensure a homogeneous interpretation of the Community legislation. Only in precise cases, where the potential of market distortions arising from national decisions is highest, have the possibilities for Community intervention been enhanced.

- The administrative burden on national authorities may increase for some Member States in the area of the supervision of the operating licences as the proposal involves a more stringent supervision. However, in other areas of the proposal, the administrative burden should remain unchanged or decrease (e.g. public service obligations).

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

A regulation is the most appropriate instrument as:

- the proposal concerns the revision of three existing regulations;

- the objective is to ensure a more homogeneous application of Community legislation on the internal aviation market.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation.

In this proposal, obsolete measures have been removed and - where possible - the content, the presentation and the wording of the regulations have been revised in order to improve their understanding and to avoid ambiguous interpretations. In addition, given the now simplified structure of the regulations, they have been consolidated into one single text.

The proposal is included in the Commission's rolling programme for up-date and simplification of the acquis communautaire and its Work and Legislative Programme under the reference 2002/TREN/28.

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

1. Reinforcement of the requirements for the granting and revoking of an operating licence

The financial health of the airlines is being checked with different degrees of severity depending on the Member State that issued the licence. Therefore, a real level-playing field between airlines from different Member States is not always assured and consolidation of the market is slowed down. Furthermore, the continued operation of financially fragile air companies involves safety risks, in addition to the financial risks incurred by customers in the case of bankruptcy of an air carrier.

The proposal requires Member States to reinforce the supervision of the operating licences and to suspend or revoke it when the requirements of the regulation are no longer met (articles 5 to 10). In order to avoid inaction of a Member State, the proposal confers the right to the Commission to revoke the operating licence (article 14).

The proposal has been drafted such as to take allow for the possibility of a future extension of the competencies of the European Aviation Safety Agency (EASA) for safety oversight and/or licensing such as to ensure the most efficient and consistent supervision of the air carriers.

2. The proposal strengthens the requirements for the leasing of aircraft (article 13)

Wet-leasing of aircraft from third countries provides EU airlines with important flexibility which thereby enhances the economic efficiency of the EU airline industry to the benefit of consumers. However, the application of the present provisions of regulation (EEC) No 2407/92 raise social and safety concerns. Rules and practice with regard to leasing (especially wet-leasing i.e. leasing of aircraft with crew) differ between Member States.

The safety assessment of leased aircraft from third countries is not pursued with the same rigour in all Member States, creating concerns about safety levels. The sometimes regular recourse to wet-leasing from third countries spurs concern about potentially adverse social consequences.

The proposal introduces stricter requirements in order to minimize the risk of adverse social consequences and to enhance safety. The proposal emphasizes that, in order to agree with leasing agreements, the competent licensing authority must confirm that safety standards equivalent to the Community safety requirements are met. Concerning the leasing of aircraft registered in third countries, they will only be allowed in exceptional circumstances for a maximum duration of six months and renewable only

once in a second non-consecutive period of up to six months.

3. The proposal clarifies the rules applicable to public service obligations (PSO) (articles 16, 17 and 18)

The rules applicable to public service obligations have been revised in order to lighten the administrative burden, to avoid excessive recourse to PSO and to attract more competitors in the tender procedures. The publication obligations have been modified by limiting the publication in the Official Journal of the European Union to a shortened notice.

To avoid excessive recourse to PSO, the Commission may require in individual cases the production of an economic report explaining the context of the PSO and the assessment of their adequacy should be performed with particular care when they are intended to be imposed on routes that are already been served by rail services with a travel time of less than three hours. The tender procedures have been modified by extending the maximum concession period from three to four years (and five years in the case of ultra-peripheral regions). The tender procedure for the renewal of a concession must be launched at least six months in advance in order to allow a careful assessment of the continued necessity of the restricted access to the route.

Furthermore, an urgency procedure has been introduced to cope with sudden interruptions of service on routes with a PSO.

If the proposed regulation, once adopted, retains guarantees of transparency, non-discrimination and proportionality equivalent to those proposed by the Commission in its proposal concerning the determination and award of public service compensations, and in order to give operators legal certainty regarding compensation paid for the execution of PSOs awarded in accordance with this regulation, the Commission intends to adopt, at the latest at the time of the entry into force of the regulation, a binding act based on art. 86(3) declaring compatible and exempting of notification compensation granted in conformity with the regulation insofar as this may constitute State aid. This act could take the form of an update of Commission decision of 28 November 2005 (OJ L312 of 29.11.2005) inserting a reference to this new regulation and extending its scope to any PSO compensation granted to airlines in conformity with this regulation.

4. The proposal removes inconsistencies between the internal aviation market and services to third countries (articles 15 and 22)

Taking account of the opinions expressed during the consultation process, the proposal addresses relations with third countries only insofar as there is a direct link with provisions contained in the third package.

To ensure coherence between the internal market and its external aspects, including those of the Single European Sky, access by airlines of third countries to the intra-Community market should be managed in a coherent manner through negotiations at Community level. Therefore, the European Communities will be responsible for negotiating intra-Community traffic rights with third countries.

Remaining restrictions from existing bilateral agreements between Member States will be lifted, ensuring non-discrimination in respect of code sharing and pricing by

Community air carriers on routes to third countries involving points in Member States other than their own.

5. The proposal clarifies the rules applicable to traffic distribution between airports (article 19)

The present two-step procedure - first establishment of an airport system and then definition of the traffic distribution rules - is replaced by a one-step procedure where the concept of an "airport system" is abandoned: Member States may introduce traffic distribution rules on airports serving the same city or conurbation, but the prior approval of the Commission is required (after consultation of the appropriate committee). It adds that the airports in question should be served by an adequate transport infrastructure and the airports and the city or conurbation they shall serve should be linked by frequent, reliable and efficient public transport services.

The proposal states that the traffic distribution rules shall respect the principles of proportionality and transparency, and shall be based on objective criteria. This rule confirms that traffic distribution rules may not be abused in order to discriminate between air carriers.

6. The proposal promotes price transparency for passengers and fair price behaviour

The publication of fares that exclude taxes, charges and even fuel surcharges has become a widespread practice that hampers price transparency. Insufficient price transparency leads to distortions of competition and therefore consumers face on average higher fares. The Commission also still observes cases of discrimination on the basis of the place of residence of the passenger.

In the proposal, air fares have to include all applicable taxes, charges and fees and air carriers shall provide the general public with comprehensive information on their air fares and rates and the conditions attached (articles 2(18) and 24(1)).

Air fares shall be set without discrimination on the basis of place of residence or the nationality of the passenger within the Community (article 24(2)). Furthermore, for the access to a carrier's air fares, there may be no discrimination on the basis of the place of establishment of the travel agent.

The experience with the application of the third package on air transport liberalisation has shown that there has not been any market failure that would justify maintaining in force specific provisions regulating air fares such as the safeguard measures provided in article 6 of regulation (EEC) No 2409/92. In this context, and in the light of the general competition rules, these sector-specific measures are removed from the regulation.

↓ 2407/92 - 2408/92 - 2409/92
(adapted)

2006/0130 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules for the operation of air transport services in the Community

(Text with EEA relevance)

☒ THE EUROPEAN PARLIAMENT AND ☒ THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article ~~84(2)~~ ☒ 80(2) ☒ thereof,

Having regard to the proposal from the Commission¹,

~~Having regard to the opinion of the European Parliament,~~

Having regard to the opinion of the European Economic and Social Committee²,

↓ new

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

(1) A number of substantial changes are to be made to Council Regulations (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁵, (EEC) No 2408/92 of 23 July 1992 on access of Community air carriers to intra-Community air routes⁶ and (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services⁷. In the interests of

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 240, 24.8.1992, p.1

⁶ OJ L240, 24.8.1992, p.8. Regulation as last amended by the Act of Accession

⁷ OJ L 240, 24.8.1992, p.15

clarity, these Regulations should be recast and consolidated into one single Regulation.

- (2) Through the adoption of those three Regulations air transport in the Community was liberalised. Despite the success of that liberalisation in terms of growth, competition and lower fares, the inconsistent application of those Regulations across the Member States distorts the functioning of the internal aviation market.
- (3) In order to ensure a more efficient and consistent application of Community legislation for the internal aviation market a series of adjustments to the current legal framework are required.
- (4) Recognizing the potential link between the financial health of an air carrier and safety, a more stringent monitoring of the financial situation of the air carriers should be established.
- (5) Given the growing importance of air carriers with operational bases in several Member States and the necessity to ensure the efficient supervision of these air carriers, the same Member State should be responsible for the oversight of the AOC and of the operating licence.
- (6) To ensure a consistent monitoring of the compliance with the requirements of the operating licences of all Community air carriers, licensing authorities should proceed to regular assessments of the air carriers' financial situation. Therefore, the latter should provide sufficient information on their financial situation, especially in the first two years of their existence as these are particularly critical for the survival of an air carrier on the market.
- (7) To reduce risks to passengers, Community air carriers failing to fulfil the requirements for maintaining a valid operating licence should not be allowed to continue operations. In these cases, the competent licensing authority should revoke or suspend the operating licence. In cases where the competent licensing authority fails to do so, the Commission should be allowed to revoke or suspend the operating licence in order to ensure the homogeneous application of Community legislation.
- (8) In order to avoid the excessive recourse to lease agreements of aircraft registered in third countries, especially with crew (wet lease), these possibilities should only be allowed in exceptional circumstances, such as the lack of adequate aircraft on the Community market, be strictly limited in time and fulfil safety standards equivalent to the safety rules of Community legislation.
- (9) In order to ensure the safe and coherent functioning of the internal aviation market, it is desirable that the Community be responsible for negotiating intra-Community traffic rights with third countries. This would avoid possible inconsistencies between the internal market and individual negotiations by Member States.
- (10) In order to complete the internal aviation market, still existing restrictions applied between Member States, such as restrictions on the code sharing on routes to third countries or on the price setting on routes to third countries with intermediate stop in another Member State (6th freedom flights) should be lifted.

- (11) The conditions under which public service obligations may be imposed should be defined clearly in a non ambiguous way, while the associated tender procedures should allow a sufficient number of competitors to take part in the tenders. The Commission should be able to obtain as much information as necessary to be able to assess the economic justifications for public service obligations in individual cases.
- (12) The rules in force with regard to traffic distribution between airports serving a same city or conurbation should be clarified and simplified.
- (13) It is appropriate to ensure that Member States have the possibility to react to sudden problems resulting from unforeseeable and unavoidable circumstances, which make it technically or practically very difficult to carry out air services.
- (14) Passengers should have access to the same tariffs for the same flights irrespective of their place of residence within the Community or their nationality and irrespective of the place of establishment of the travel agents within the Community.
- (15) Passengers should be able to effectively compare tariffs between airlines. Therefore published tariffs should indicate the final price to be paid by the passenger, inclusive of all taxes, charges and fees.
- (16) The measures necessary for the implementation of this regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸.
- (17) Since the more homogeneous application of the Community legislation with regard to the internal aviation market cannot be sufficiently achieved by the Member States because of the international character of air transport, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (18) It is therefore necessary to repeal Regulations (EEC) No 2407/92, 2408/92 and 2409/92,

HAVE ADOPTED THIS REGULATION:

⁸ OJ L 184, 17.7.1999, p. 23

Chapter I: General provisions

Article 1

Subject matter

↓ 2407/92 art. 1(1) (adapted)

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

↓ 2408/92 art. 1(1)

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

↓ 2409/92 art. 1(1) (adapted)

~~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.~~

↕ new

1. This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate air services within the Community, and the pricing of air services within the Community.

↓ 2408/92 art. 1(2) (adapted)

2. The application of Chapter III 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.

↓ 2408/92 art. 1(3) (adapted)

3. Application of the provisions of Chapter III 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.

↓ 2408/92 art. 1(4) (adapted)

~~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.~~

↓ 2407/92 art. 2 (adapted)

Article 2

Definitions

For the purposes of this Regulation, ☒ the following definitions shall apply ☒ .

↓ 2407/92 art. 2(c) (adapted)

⇒ new

- (1) '*operating licence*' means an authorization granted by the ~~Member State responsible~~ ⇒ competent licensing authority ⇐ 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;
-

↓ new

- (2) '*competent licensing authority*' means an authority, entitled to grant, refuse, revoke or suspend an operating licence in accordance with Chapter II ;
-

↓ 2407/92 art. 2(a) (adapted)

- (3) '*undertaking*' means any natural ~~any~~ ☒ or ☒ legal person, whether profit-making or not, or any official body whether having its own legal personality or not.

↓ 2408/92 art.2(c) and 2409/92 art.2(f)

- (4) '*air service*' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;

↓ 2408/92 art. 2(e)

- (5) '*flight*' means a departure from a specified airport towards a specified destination airport;

↓ 2408/92 art. 2(k)

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

↓ 2407/92 art. 2 (d) (adapted)
⇒ new

- (7) '*air operator's certificate (AOC)*' means ~~a document issued~~ a certificate delivered to an undertaking ~~or a group of undertakings by the competent authorities of the Member States which affirms~~ affirming that the operator in question has the professional ability and organisation to secure the safe operation of aircraft for the aviation activities specified in the certificate, as provided in the relevant provisions of Community law.

↓ 2407/92 art. 2 (g)

- (8) '*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;

↓ 2407/92 art. 2 (b)

- (9) '*air carrier*' means an air transport undertaking with a valid operating licence;

↓ 2408/92 art. 2(b) and 2409/92 art. 2(h) (adapted)
⇒ new

- (10) '*Community air carrier*' means an air carrier with a valid operating licence ~~issued by a Member State~~ ⇒ granted by a competent licensing authority ⇐ in accordance with ~~Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers~~ Chapter II ⇐ ;
-

↓ 2407/92 art. 2 (e)
⇒ new

- (11) '*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 ⇒ expected ⇐ market development and the investments to be carried out, including the financial and economic implications of these activities;
-

↓ new

- (12) '*Intra-Community air service*' means an air service operated within the Community;
-

↓ new

- (13) '*Transit*' means the right to fly across the territory of the Community or of a third country without landing and to land for non-traffic purposes;
-

↓ 2408/92 art. 2(f) (adapted)

- (14) '*traffic right*' means the right ~~of an air carrier to carry passengers, cargo and/or mail on an air service~~ ⇐ operate an air service ⇐ between two Community airports;
-

↓ 2408/92 art. 2(l) (adapted)
⇒ new

- (15) '*regional airport*' means an airport ~~other than one listed in Annex I as category I airport~~ ⇒ fulfilling at least one of the criteria set out in Annex II ⇐ ;

↓ 2408/92 art. 2(g)

- (16) '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 authorised agent or a charterer;
-

↓ 2408/92 art. 2(d)

- (17) '*scheduled air service*' means a series of flights possessing all the following characteristics:
- (a) 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 the public (either directly from the air carrier or from its authorized agents);
 - (b) it is operated so as to serve traffic between the same two or more airports, either:
 - according to a published timetable; or
 - with flights so regular or frequent that they constitute a recognizably systematic series.
-

↓ 2408/92 art. 2(n)

- (18) 'capacity' means the number of seats offered to the general public on a scheduled air service over a given period;
-

↓ 2409/92 art. 2(a) (adapted)
⇒ new

- (19) '*air fares*' means the prices expressed in ~~ecu~~ ☒ euros ☒ or in local currency to be paid by passengers to air carriers or their agents for the carriage of ~~them~~ ☒ those passengers ☒ 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 ⇒ and including all applicable taxes, charges and fees; ⇐
-

↓ 2409/92 art. 2(d) (adapted)
⇒ new

- (20) '~~cargo~~ ☒ air ☒ rates' means the prices expressed in ~~ecu~~ ⇒ euros ⇐ 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 ⇒ and including all applicable taxes, charges and fees ⇐ ;

↓ 2408/92 art. 2(h) and 2409/92 art. 2(i)

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

↓ 2408/92 art. 2(i) and 2409/92 art. 2(j)

(22) '*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;

↓ new

(23) '*Conurbation*' means an urban area comprising a number of cities or towns which, through population growth and expansion, have physically merged to form one continuous built up area;

↓ 2407/92 art. 2 (f)
⇒ new

(24) '*management account*' means a detailed statement of income and costs ⇒ of an air carrier ⇐ for the period in question including a breakdown between air-transport-related and other activities as well as between pecuniary and non-pecuniary elements;

↓ 2408/92 art. 2(m) (adapted)

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

↓ 2409/92 art. 2(e) (adapted)

~~'standard cargo rates' means the rates which the air carrier would normally quote including the availability of normal discounts;~~

↓ 2409/92 art. 2(c) (adapted)

~~‘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;~~

↓ 2409/92 art. 2(k) (adapted)

~~‘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;~~

↓ 2408/92 art. 2(o) (adapted)

~~‘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;~~

↓ 2409/92 art. 2(b) (adapted)

~~‘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;~~

↓ 2408/92 art. 2(j) (adapted)

~~‘State of registration’ means the Member State in which the licence referred to in (b) is granted~~

↓ 2407/92 art.3(3) (adapted)
⇒ new

Chapter II: Operating licence

Article 3

⇒ Operating licence ⇐

1. ~~Without prejudice to Article 1(2), no~~ 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 within the Community unless it ~~the undertaking~~ has been granted the appropriate operating licence.

↓ 2407/92 art. 3(2) (adapted)

An undertaking meeting the requirements of this ~~Regulation~~ Chapter shall be entitled to receive an operating licence. ~~Such licence does not confer in itself any rights of access to specific routes or markets.~~

↓ 2407/92 art. 3(1) (adapted)

2. ~~Without prejudice to Article 5(5), Member States~~ The competent licensing authority shall not grant operating licences ~~or maintain them in force~~ where any of the requirements of this ~~Regulation~~ Chapter are not complied with.

↓ 2407/92 art. 1(2) (adapted)

3. ~~The carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and /or ultralight 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.~~ Without prejudice to any other applicable provisions of Community, national, or international law the following categories of air services are not subject to the requirement to hold a valid operating licence:
- (a) air services performed by non-power driven aircraft and/or ultralight power driven aircraft, and
 - (b) local flights not involving carriage between different airports.

↓ 2407/92 art. 4(1) (adapted)
⇒ new

Article 4

⇒ Conditions for granting an operating licence ⇐

~~No~~ An undertaking shall be granted an operating licence by a ~~Member State~~
 the competent licensing authority ~~unless~~ provided that :

- (a) its ~~principal place of business~~ ⇐ head office ⇐ and, if any, registered office are located in ~~that Member State~~ ⇐ the Community and it carries out the largest part of its operational activities in the Community ⇐ ;
- (b) ⇐ it holds a valid AOC; ⇐
- (c) ⇐ where the licence is applied for to the authority of a Member State, its head office and, if any, registered office are located in that Member State, it carries out a substantial part of its operational activities in that Member State and, where the AOC is issued by a national authority, the same Member State is responsible for the oversight of the AOC; ⇐
- (d) its main occupation is air transport in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;
- (e) ⇐ its company structure allows the competent licensing authority to implement the provisions of this Chapter;
- (f) Member States and/or nationals of Member States own more than 50 per cent of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided in an agreement with a third country to which the Community is a party;
- (g) it meets the financial conditions specified in Article 5.
- (h) it complies with the insurance requirements specified in Article 11. ⇐

↓ 2407/92 art. 4(2) (adapted)

~~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.~~

↓ 2407/92 art. 4(4) (adapted)

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

↓ 2407/92 art. 4(3) (adapted)

~~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 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.~~

~~(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.~~

↓ 2407/92 art. 5(1) (adapted)

⇒ new

Article 5

⇒ *Financial conditions for granting an operating licence* ⇐

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~~ ⇒ The competent licensing authority ⇐ ☒ shall closely assess whether an undertaking applying for the first time for an operating licence can demonstrate that ☒:
 - (a) it can meet at any time its actual and potential obligations established under realistic assumptions, for a period of ~~24~~ ⇒ 36 ⇐ months from the start of operations;
 - (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.

↓ 2407/92 art. 5(2) (adapted)
⇒ new

2. For the purpose of paragraph 1, each applicant shall submit a business plan for, at least, the first ~~two~~ ⇒ three ⇐ 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 point ~~A~~ ⇔ 1 ⇔ of the Annex ⇔ I ⇔ .

↓ 2407/92 art. 5(7) (adapted)
⇒ new

3. Paragraphs 1 ⇔ and ⇔ 2, ~~3, 4 and 6~~ shall not apply to air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOW (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 80000~~ ⇒ EUR 100,000 ⇐ or to provide when required by the licensing authority the information relevant for the purposes of ~~paragraph 5~~ ⇔ article 9(2). ⇔

A Member State may nevertheless apply paragraphs 1 ⇔ and ⇔ 2, ~~3, 4 and 6~~ to air carriers licensed by it that operate scheduled services or whose turnover exceeds ~~ECU~~ ⇔ EUR ⇔ 3 million per year.

~~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.~~

~~Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by qualified majority, may in exceptional circumstances take a different decision within a period of one month.~~

↓ 2407/92 art. 9 (adapted)
⇒ new

Article 6

⇒ *Air operator's certificate* ⇐

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~~ ⇔ under relevant Community law ⇔ . ~~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.~~

2. ⇒ Any modification in the AOC of a Community air carrier shall be reflected in its operating licence. ⇐

↓ 2407/92 art. 6 (adapted)
⇐ new

Article 7

⇐ *Proof of good repute* ⇐

1. Where ~~the competent authorities of a Member State require~~, for the purpose of issuing an operating licence, proof ☒ is required ☒ 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~~ ☒ or for the purpose of suspending or revoking ☒ the operating licence in the event of serious professional misconduct or a criminal offence, ~~that Member State the~~ ⇒ competent licensing authority ⇐ shall accept as sufficient evidence in respect of nationals of ~~other~~ Member States the production of documents issued by the competent authorities in the Member State of origin or the Member State ~~from which the foreign national comes~~ ⇒ where the person has his/her permanent residence ⇐ showing that those requirements are met.
2. Where ~~the competent authorities of the Member State of origin or the Member State from which the foreign national comes~~ ⇒ where the person has his/her permanent residence ⇐ does not issue the documents referred to in ~~the first subparagraph~~ ☒ paragraph 1 ☒, 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~~ ⇒ where the person has his/her permanent residence ⇐; such authority, ~~or~~ notary ⇒ or qualified professional body ⇐ shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.
3. ~~The competent authorities of Member States~~ ⇒ competent licensing authority ⇐ may require that the documents and certificates referred to in paragraphs 1 ☒ and 2 ☒ be presented no more than three months after their date of issue.

↓ 2407/92 art. 11(1) (adapted)
⇒ new

Article 8

⇒ *Validity of an operating licence* ⇐

1. An operating licence shall be valid as long as the ☒ Community ☒ air carrier ~~meets the obligations of this Regulation~~ ☒ complies with the requirements of this Chapter. ~~☒ 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.~~

↓ 2407/92 art. 4(5) (adapted)
⇒ new

A ☒ Community ☒ air carrier shall at all times be able on request to demonstrate to ~~the Member State responsible for the operating licence~~ ⇒ the competent licensing authority ⇐ that it meets ☒ all ☒ the requirements of this ~~Article~~ ☒ Chapter ☒ . ~~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.~~

⇓ new

2. The competent licensing authority shall closely monitor the compliance with the requirements of this chapter. It shall in any case review the compliance with these requirements two years after a new operating licence has been granted, when a potential problem has been suspected, or at the request of the Commission.

In case the competent licensing authority suspects that financial problems at a Community air carrier might affect the safety of its operations, it will immediately inform the authority competent for the AOC.

↓ 2407/92 art. 11(2) (adapted)
⇒ new

3. ⇒ The operating licence shall be resubmitted for approval ⇐ when a ☒ Community ☒ air carrier
- (a) ☒ has not started operations for six months after the granting of an operating licence ☒
 - (b) has ceased its operation for ~~six~~ ⇒ more than three ⇐ 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.~~

↓ 2407/92 art. 5(6) (adapted)
⇒ new

4. A Community air carrier shall provide to ~~its~~ the competent licensing authority every financial year ~~without undue delay~~ the audited accounts relating to the previous financial year ⇒ within six months following the accounts closing date ⇐. ⇒ During the first two years of operation of a Community air carrier, the data as referred to in point 3 of Annex I shall be updated and made available to the competent licensing authority on a six monthly basis ⇐. ~~At any time upon request of the licensing authority a 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.~~
- ⇒ The competent licensing authority may at any time assess the financial performance of a Community air carrier to which it has granted an operating licence by requesting the relevant information and, in particular, the data referred to in point 3 of Annex I. ⇐
-

↓ 2407/92 art. 5(3) (adapted)
⇒ new

5. A Community air carrier shall notify ⇒ the competent licensing authority: ⇐
- (a) in advance ~~to its licensing authority~~ of any plans for ~~operation of new scheduled service or non-scheduled service to a continent or a world region not previously served, changes in the type or number of aircraft used or a~~ substantial change in the scale of its activities;
 - (b) in advance of any intended mergers or acquisitions, and
 - (c) within fourteen days of any change in the ownership of any single shareholding which represents 10% or more of the total shareholding of the Community 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.~~
-

↓ 2407/92 art. 5(4) (adapted)
⇒ new

6. If the competent licensing authority deems the changes notified under paragraph ~~3~~ 5 to have a significant bearing on the finances of the Community 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 the relevant information, including~~ as well as the data referred to in point ~~B~~ 2 of the Annex I, ~~⇒ in addition to the information to be provided under paragraph 4 to assess whether the air carrier can meet its existing and potential obligations during that period of 12 months.~~

The competent 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.

↓ 2407/92 art. 11(3) (adapted)
⇒ new

7. In relation to Community air carriers licensed by them it, Member States shall ~~⇒ the competent licensing authority 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 Community air carriers 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.~~

↓ 2407/92 art. 5(7) (adapted)
⇒ new

8. Paragraphs ~~1, 2, 3,~~ 4, 5 and 6 shall not apply to air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOW (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 80000~~ ⇒ EUR 100,000 or to provide when required by the licensing authority the information relevant for the purposes of ~~paragraph 5~~ article 9(2).

A Member State may nevertheless apply paragraphs ~~1, 2, 3,~~ 4, 5 and 6 to air carriers licensed by it that operate scheduled services or whose turnover exceeds ~~ECU~~ ⇒ EUR 3 million per year.

~~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.~~

~~Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by qualified majority, may in exceptional circumstances take a different decision within a period of one month.~~

↓ 2407/92 art. 5(5) (adapted)
⇒ new

Article 9

⇒ *Suspension and revocation of an operating licence* ⇐

- ~~1. Licensing authorities may, at any time and in any event whenever there are clear indications that financial problems exist with an air carriers licensed by them, assess its financial performance and may~~ ⇒ The competent licensing authority shall ⇐ suspend or revoke the ⊗ operating ⊗ licence if it is no longer satisfied that the ⊗ Community ⊗ air carrier can meet its actual and potential obligations for a 12-month period. ~~Licensing authorities may also~~

⇒ The competent licensing authority may ⇐ grant a temporary licence, ⇐ not exceeding 12 months ⇐, pending financial reorganisation of the ⊗ Community ⊗ air carrier provided ~~safety is not at risk~~ ⇒ that this temporary licence reflects any changes to the AOC and that there is a realistic prospect of a satisfactory financial reconstruction within that time period. ⇐

↓ 2407/92 art. 12 (adapted)
⇒ new

2. ~~An air carrier against which~~ ⇒ Whenever there are clear indications that financial problems exist or when ⇐ 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~~ ⇒ against an air carrier licensed by it the competent licensing authority shall without delay make an in depth assessment of the financial situation and on the basis of its findings review the status of the operating licence in compliance with this article within a time period of three months.

The competent licensing authority shall inform the Commission of the assessment procedure and of its findings, as well as of the decision it takes relating to the status of the operating licence. ⇐

3. ⇒ When the audited accounts referred to in Article 8(4) have not been communicated within six months following the account closing date of the previous financial year, the competent licensing authority shall request the Community air carrier to communicate these audited accounts without delay.

If the audited accounts are not communicated within one month, the operating licence shall be revoked or suspended.

The competent licensing authority shall inform the Commission of the default of the air carrier to communicate its audited accounts within the six months time limit and of the subsequent actions it takes. ↩

4. ⇒ In case a Community air carrier's AOC is suspended or withdrawn, the competent licensing authority shall immediately suspend or revoke that air carrier's operating licence. ↩

↓ 2407/92 art. 13(2) (adapted)
⇒ new

Article 10

⇒ Decisions on operating licences ↩

1. The ~~Member State concerned~~ ⇒ competent licensing authority ↩ 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 therefore.

↓ 2407/92 art. 13(1) (adapted)
⇒ new

2. Procedures for granting, ⇒suspending and revoking ↩ of operating licences shall be made public by the ~~Member State concerned~~ ⇒ competent licensing authorities ↩ ☒ which shall inform ☒ the Commission ~~shall be informed~~.

↓ 2407/92 art. 13(4) (adapted)
⇒ new

3. ⇒ A list of ↩ decisions ~~by Member States~~ ⇒ of the competent licensing authorities ↩ to grant, ⇒ suspend ↩ or revoke operating licences shall be published ⇒ annually ↩ in the *Official Journal of the European Union*.

↓ 2407/92 art. 13(3) (adapted)

~~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.~~

↓ 2407/92 art. 7
⇒ new

Article 11

⇒ **Insurance requirements** ⇐

An air carrier shall be insured to cover liability in case of accidents, in particular with respect of passengers, luggage, cargo, mail and third parties. ⇒ Where applicable, the insurance coverage shall comply with the minimum requirements provided in Regulation (EC) No 785/2004⁹. ⇐

↓ 2407/92 art. 8(2) (adapted)
⇒ new

Article 12

⇒ **Registration** ⇐

1. Without prejudice to ~~paragraph 3~~ ☒ Article 13(2) ☒, aircraft used by a ☒ Community ☒ air carrier shall be registered, ~~at the option of the Member State issuing the operating licence, in its~~ ☒ the ☒ national register ☒ of the Member State issuing the operating licence ☒, or within the Community.

~~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.~~

↓ 2407/92 art. 8(4) (adapted)

2. ~~When applying paragraph 2(a) a Member State~~ ☒ In accordance with paragraph 1, a competent licensing authority ☒ 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 transfers of aircraft in addition to the normal registration fee.

⁹ OJ L 138, 30.4.2004, p.1

↓ 2407/92 art. 8(1) (adapted)
⇒ new

Article 13

⇒ *Leasing* ⇐

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 air craft at their disposal, through ownership or any form of lease agreement.~~

⇒ An undertaking requesting the granting of an operating licence shall have one or more aircraft at its disposal through ownership or lease without crew (dry lease) agreement. ⇐

⇒ A Community air carrier shall have one or more aircraft at its disposal through ownership or lease without crew (dry lease) agreement. ⇐

⇒ A Community air carrier may have one or more aircraft at its disposal through lease with crew (wet leasing) agreement. ⇐

↓ 2407/92 art. 8(3) (adapted)
⇒ new

2. In the case of short-term lease agreements to meet temporary needs of ~~the~~ ☒ a Community ☒ air carrier, or otherwise in exceptional circumstances, ~~a Member State~~ ⇒ the competent licensing authority ⇐ may grant waivers to the requirement of ~~paragraph 2(a)~~ ⇒ registration provided for in Article 12(1). In any case no Community air carrier shall be granted a waiver in order to meet a temporary need or exceptional circumstance of more than six months in duration, although a waiver may be renewed once only for a second non-consecutive period of up to six months. ⇐

⇒ In case of leasing of aircraft with crew (wet-leasing), such waivers shall be subject to the existence of a valid agreement providing for reciprocity as regards wet-leasing between the Member State concerned or the Community and the third country of registration of the leased aircraft. ⇐

↓ 2407/92 art. 10(1) (adapted)
⇒ new

3. For the purposes of ensuring safety ~~and liability~~ standards, a ☒ Community ☒ air carrier using an aircraft from another undertaking or providing it to another undertaking, ⇒ with or without crew ⇐, shall obtain prior approval for the operation

from the ~~appropriate~~ ⇒ competent ⇐ licensing authority. The conditions of the approval shall be part of the lease agreement between the parties.

↓ 2407/92 art. 10(2) (adapted)
⇒ new

4. ~~A Member State~~ ⇒ The competent licensing authority ⇐ shall not approve agreements leasing aircraft with crew to an air carrier to which it has granted an operating licence unless ⇒ that authority has determined and declared in writing to the air carrier in question that ⇐ safety standards equivalent to those imposed ~~under Article 9~~ ⇒ in the relevant Community ⇐ law are met.
-

↓ 2407/92 art. 14 (adapted)
⇒ new

Article 14

⇒ Examination by the Commission ⇐

1. ⇒ The Commission acting in accordance with the procedure referred to in Article 25(2) at the request of a Member State, or on its own initiative, shall examine compliance with the requirements of this Chapter and take a decision to suspend or revoke an operating licence if necessary. ⇐
2. ~~+~~ In order to carry out its duties under ~~⊗~~ this ~~⊗~~ 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~~ ⇒ competent licensing authority or directly from the Community air carrier(s) concerned within a time limit fixed by the Commission. ⇐
- ~~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(6).~~

↓ 2407/92 art. 15 (adapted)

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

↓ 2407/92 art. 16 (adapted)

~~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 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.~~

↓ 2407/92 art. 17 (adapted)

~~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.~~

↓ 2408/92 art. 3(1) (adapted)
⇒ new

Chapter III: Access to routes

Article 15

⇒ Provision of intra-Community air services ⇐

- ~~1. Subject to this regulation, Community air carriers shall be permitted entitled by the Member States concerned to exercise traffic rights on routes within the Community.~~
2. ⇒ Member States shall not subject the exercise of traffic rights by a Community air carrier to any permit or authorisation. If a Member State has reasons to doubt of the validity of the operating licence issued to a Community air carrier, it shall raise the

matter with the competent licensing authority. Member States shall not require Community air carriers to provide any documents or information which they have already supplied to the competent licensing authority. ⇐

↓ 2408/92 art.3(2) (adapted)

~~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.~~

↓ 2408/92 art. 3(3) (adapted)

~~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.~~

↓ 2408/92 art. 3(4) (adapted)

~~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.~~

↓ 2408/92 art. 7 (adapted)

⇒ new

3. In operating ⇐ intra-Community ⇐ 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~~ ⇐ and to enter into code share arrangements, without prejudice to the Community competition rules applicable to undertakings. ⇐
4. ⇐ Any restrictions on the freedom of Community air carriers to provide intra-Community air services arising from bilateral agreements between Member States are hereby superseded. ⇐
5. ⇐ Notwithstanding the provisions of bilateral agreements between Member States, and subject to the Community competition rules applicable to undertakings, Community air carriers shall be permitted by the Member State(s) concerned to

combine air services and to enter into code share arrangements on air services to, from or via any airport in their territory from or to any point(s) in third countries. ⇐

6. ⇐ Without prejudice to any existing rights granted prior to the entry into force of this Regulation, and notwithstanding Regulation (EC) Nr. 847/2004¹⁰, non-Community air carriers shall not be permitted to exercise traffic rights, to combine air services or to enter into code-share arrangements in respect of routes wholly within the Community unless they are permitted to do so by an agreement concluded by the Community with a third country ⇐

7. ⇐ Without prejudice to any existing rights granted prior to the entry into force of this Regulation, and notwithstanding Regulation (EC) Nr 847/2004, air carriers of third countries shall not be permitted to transit the territory of the Community unless the third country concerned is a party to the International Air Services Transit Agreement signed at Chicago on 7 December 1944 or has concluded an agreement to that effect with the Community. ⇐

↓ 2408/92 art 4(1)(a) (adapted)
⇐ new

Article 16

⇐ *General principles for public service obligations* ⇐

1. 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 a ⇐ regional ⇐ airport ~~servicing a peripheral or development region in its territory or on a thin route to any regional airport on its territory~~, any such route being considered vital for the economic development of the region in which the airport is located. ⇐ That obligation shall be imposed only ⇐ to the extent necessary to ensure on that route the ~~adequate~~ ⇐ minimum ⇐ provision of scheduled air services satisfying fixed standards of continuity, regularity, ~~capacity and~~ pricing ⇐ or minimum capacity ⇐, which standards air carriers would not assume if they were solely considering their commercial interest.

⇐ The fixed standards imposed to the route subject to that public service obligation shall be set in a transparent and non-discriminatory way ⇐ .

¹⁰ OJ L157, 30.4.2004, p.7

↓ 2408/92 art.4(1)(c) (adapted)
⇒ new

2. In instances where other ~~forms~~ ☒ modes ☒ of transport cannot ensure an ~~adequate and~~ uninterrupted service ⇒ with at least two daily frequencies ⇐ , 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.

↓ 2408/92 art.4(1)(j) (adapted)

3. When a public service obligation has been imposed in accordance with ~~subparagraphs (a) and (c)~~ ☒ 1 and 2 ☒ 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.

↓ 2408/92 art. 4(1)(d) (adapted)
⇒ new

4. If no air carrier has commenced or is about to commence scheduled air services on a route in accordance with the public service obligation which has been imposed on that route, ~~then~~ the Member State concerned may limit access to ⇒ the scheduled air services on ⇐ that route to only one air carrier for a period of up to ~~three~~ ⇒ four ⇐ years, after which the situation shall be reviewed.

⇒ This period may be up to five years if the public service obligation is imposed on a route to an airport serving an ultra-peripheral region, as defined in Article 299(2) of the Treaty. ⇐

5. The right to operate the services ☒ referred to in paragraph 4 ☒ shall be offered by public tender ⇒ in accordance with article 17 ⇐ , either singly or, ⇒ in cases where this is indispensable for operational reasons ⇐ , 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.~~

6. ⇒ When a Member State wishes to impose a public service obligation, it shall communicate the complete text of the envisaged imposition of the public service obligation to the Commission, to the other Member States concerned and to the air carriers operating the route in question.

The Commission shall publish an information notice in the *Official Journal of the European Union* :

- (a) identifying the two airports connected by the route concerned,
- (b) mentioning the date of entry into force of the public service obligation and
- (c) indicating the complete address where the text and any relevant information and/or documentation related to the public service obligation shall be made available without delay and free of charge by the Member State concerned. ⇐

7. The ⇒ necessity and the ⇐ adequacy of ~~scheduled air services~~ ⇒ an envisaged public service obligation ⇐ shall be assessed by the Member States having regard to:

– ~~the public interest~~

- (a) ⇒ the proportionality between the envisaged obligation and the economic development needs of the region concerned; ⇐
- (b) the possibility, ~~in particular for island regions,~~ of having recourse to other ~~forms~~ ⊗ modes ⊗ of transport and the ability of such ~~forms~~ ⊗ modes ⊗ to meet the transport needs under consideration, ⇒ in particular when existing rail services serve the envisaged route with a travel time of less than three hours; ⇐
- (c) the air fares and conditions which can be quoted to users;
- (d) the combined effect of all air carriers operating or intending to operate on the route.

8. ⇒ The date of entry into force of a public service obligation shall not be earlier than the date of publication of the information notice referred to in the second subparagraph of paragraph 6.

9. A public service obligation shall be deemed to have expired if no scheduled air service has been operated during a period of more than twelve months in the route subject to such obligation. ⇐

10. ⇒ In case of sudden interruption of service by the air carrier selected in accordance with Article 17, the Member State concerned may, in case of emergency, select by

mutual agreement a different air carrier to operate the public service obligation for a period up to six months, not renewable, under the following conditions: ⇐

- (a) ⇐ any compensation paid by the Member State shall be made in compliance with Article 17(8); ⇐
- (b) ⇐ the selection shall be made among Community air carriers in compliance with the principles of transparency and non-discrimination. ⇐

⇐ The Commission and the Member State(s) shall be informed without delay of the emergency procedure and of its reasons. At the request of a Member State(s), or on its own initiative, the Commission may, in accordance with the procedure referred to in Article 25(2) suspend the procedure if it considers that it does not meet the requirements of this paragraph or is otherwise contrary to Community legislation. ⇐

⇓ new

Article 17

Public tender procedure for public service obligation

1. The public tender required in Article 16(5) shall be conducted according to the procedure set out in paragraphs 2 to 11.
2. The Member State concerned shall communicate the entire text of the invitation to tenders to the Commission.
3. The Commission shall make the invitation to tender known through an information notice published in the *Official Journal of the European Union*. The deadline for submission of tenders shall not be earlier than two months after the day of publication of such an information notice. In case the tender concerns a route to which the access had already been limited to one carrier in accordance with article 16(4), the invitation to tender will be published at least six months before the start of the new concession in order to assess the continued necessity of the restricted access.
4. The information notice shall provide the following information:
 - (a) Member State(s) concerned;
 - (b) Air route concerned;
 - (c) Period of validity of the contract;
 - (d) Complete address where the text of the invitation to tender and any relevant information and/or documentation related to the public tender and the public service obligation shall be made available by the Member State concerned;
 - (e) Deadline for submission of tenders.

5. The Member State(s) concerned shall communicate without delay and free of charge any relevant information and documents requested by a party interested in the public tender.
-

↓ 2408/92 art. 4(1)(g) (adapted)

~~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.~~

↓ 2408/92 art. 4(1)(k) (adapted)

~~Subparagraph (d) shall not apply in any case in which another Member State concerned proposed a satisfactory alternative means of fulfilling the same public service obligation.~~

↓ 2408/92 art. 4(2) (adapted)

~~Paragraph 1 (d) shall not apply to routes where other forms of transport can ensure an adequate and uninterrupted service when their capacity offered exceeds 30000 seats per years.~~

↓ 2408/92 art. 4(1)(e) (adapted)

⇒ new

6. The invitation to tender and the subsequent contract shall cover, inter alia, the following points:
- (a) The standards required by the public service obligation;
 - (b) Rules concerning amendment and termination of the contract, in particular to take account of unforeseeable changes;
 - (c) The period of validity of the contract;
 - (d) ~~Penalties~~ ⇒ Sanctions ⇐ in the event of failure to comply with the contract;
 - (e) ⇒ Objective and transparent parameters on the basis of which compensation, if any, for the discharging of the public service obligations shall be calculated. ⇐

↓ 2408/92 art. 4(1)(f)

7. 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.
-

↓ 2408/92 art.4(1)(h) (adapted)

⇒ new

8. ~~A~~ The Member State concerned may ~~reimburse~~ compensate an air carrier, which has been selected under paragraph ~~(4)~~ 7, for satisfying standards required by a public service obligation imposed under ~~this paragraph~~ Article 16. Such ~~reimbursement~~ compensation ~~shall take into account the costs and revenue generated by the service~~ ⇒ may not exceed the amount required to cover the net costs incurred in discharging each public service obligation, taking account of revenue relating thereto kept by the air carrier and a reasonable profit ⇐.
-

↓ new

9. The Commission shall be informed without delay of the results of the public tender and of the selection through a notice from the Member State including the following information:

- (a) Numbers, names and corporate information of tenderers;
- (b) Operational elements contained in the offers;
- (c) Compensation requested in the offers;
- (d) Name of the selected tenderer.

10. At a request of a Member State or on its own initiative, the Commission may request Member States to communicate, within one month, all relevant documents relating to the selection of an air carrier for the operation of a public service obligation. In case the requested documents are not communicated within the deadline, the Commission may decide to suspend the invitation to tender in accordance with the procedure referred to in Article 25(2).

↓ 2408/92 art. 4(1)(i) (adapted)
⇒ new

Article 18

⇒ *Examination of public service obligations* ⇐

1. Member States shall take ⇒ all ⇐ ~~the~~ necessary measures ~~necessary~~ to ensure that any decision taken under ~~this Article~~ Articles 16 and 17 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 Community law.

⇒ In particular, at a request of a Member State or on its own initiative, the Commission may request Member States to communicate, within two months:

- (a) a document justifying the need for the public service obligation and its compliance with the criteria mentioned in Article 16
- (b) an analysis of the economy of the region,
- (c) an analysis of the proportionality between the envisaged obligations and the economic development objectives,
- (d) an analysis of the existing air services, if any, and of the other modes of transport available which could be considered a substitute of the envisaged imposition. ⇐

↓ 2408/92 art. 4(3) (adapted)
⇒ new

2. 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~~ Articles 16 and 17, or on its own initiative, the Commission shall carry out an investigation and, within ~~two~~ ⇒ six ⇐ months of receipt of the request ⇒ and in accordance with the procedure referred to in Article 25(2), ⇐ shall take a decision on the basis of all relevant factors on whether ~~paragraph 1~~ Articles 16 and 17 shall continue to apply in respect of the route concerned.

⇒ Pending such decision, the Commission may decide on interim measures including the suspension, in whole or in part, of a public service obligation. ⇐

↓ 2408/92 art. 4(4) (adapted)

~~The Commission shall communicate its decision to the Council and to the other 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 qualified majority, may take a different decision within a period of one month.~~

↓ 2408/92 art. 5 (adapted)

~~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.~~

↓ 2408/92 art. 6 (adapted)

- ~~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.~~
-

↓ 2408/92 art. 8(2)

⇒ new

Article 19

⇒ Traffic distribution between airports and exercise of traffic rights ⇐

1. The exercise of traffic rights shall be subject to published Community, national, regional and local operational rules relating to safety, ⇒ security ⇐, the protection of the environment and the allocation of slots.
-

↓ 2408/92 art. 8(1) (adapted)

⇒ new

2. ~~This regulation shall not affect a Member State's right to~~ ⇒ A Member State, after consultation of the air carriers concerned, may ⇐ regulate, without discrimination ⇒ among destinations inside the Community or ⇐ on grounds of nationality or identity of air carriers, the distribution of ⇒ air ⇐ traffic between the airports ~~within an airport system~~ ⇒ satisfying the following conditions: ⇐
 - (a) ⇒ the airports serve the same city or conurbation; ⇐
 - (b) ⇒ the airports are served by an adequate transport infrastructure; and ⇐

(c) ⇒ the airports and the city or conurbation they shall serve are linked by frequent, reliable and efficient public transport services ⇐

⇒ Any decision to regulate the distribution of air traffic between the airports shall respect the principles of proportionality and transparency, and shall be based on objective criteria. ⇐

↓ 2408/92 art. 8(3) (adapted)
⇒ new

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.~~ ⇒ Without prejudice to traffic distribution rules existing prior to the adoption of this Regulation, the Member State concerned shall inform the Commission of its intention to regulate the distribution of air traffic or to change an existing traffic distribution rule.

The Commission shall examine the application of paragraphs 1 and 2 and, within six months of receipt of this request, and in accordance with the procedure referred to in Article 25(2), shall decide whether the Member State may apply the measures.

The Commission shall publish its decision in the *Official Journal of the European Union* and the measures shall not be applied before the publication of the Commission's approval. ⇐

↓ 2408/92 art. 8(4) (adapted)

4. ~~Any Member State may refer the Commission's decision to the Council with 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.~~

↓ 2408/92 art. 8(5) (adapted)

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 airport 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.~~

↓ 2408/92 art. 9(1) (adapted)

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.~~

↓ 2408/92 art. 9(2) (adapted)

~~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.~~
-

↓ 2408/92 art. 9(3) (adapted)

~~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.~~

↓ 2408/92 art. 9(4) (adapted)

~~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.~~

↓ 2408/92 art. 9(5) (adapted)
⇒ new

Article 20

Emergency measures

1. ~~Notwithstanding paragraphs 3 and 4, A Member State may~~ ⇒ refuse, limit or impose conditions on the exercise of traffic rights ⇐ ~~take the necessary action~~ to deal with sudden problems of short duration ⇒ resulting from unforeseeable and unavoidable circumstances ⇐. ~~Provided that Such action is consistent with paragraph 2~~ ⇒ shall respect the principles of proportionality and transparency and shall be based on objective and non-discriminatory criteria ⇐ .

The Commission and the ☒ other ☒ Member States 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.

2. 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 paragraph 1 ~~and 2~~ or is otherwise contrary to Community law.

↓ 2408/92 art. 9(6) (adapted)

~~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.~~

↓ 2408/92 art. 9(7) (adapted)

~~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.~~

↓ 2408/92 art. 9(8) (adapted)

~~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:~~

~~to establish a new service, or~~

~~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.~~

↓ 2408/92 art.10 (adapted)

~~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.~~

↓ 2409/92 art. 1(2) (adapted)
⇒ new

⊗ Chapter IV: Provisions on Pricing ⊗

Article 21

⇔ Pricing ⇔

Without prejudice to ~~paragraph 3~~ ⊗ Article 23 ⊗, this Regulation ⊗ Chapter ⊗ shall not apply to:

- (a) ⊗ air ⊗ fares and rates charged by air carriers other than Community air carriers;
- (b) ⊗ air ⊗ fares and rates established by public service obligation in accordance with ~~Council Regulation (EEC) No 2408/92 of 23 July 1992 on~~

↓ 2409/92 art. 5(1) (adapted)
⇒ new

Article 22

⇒ **Pricing freedom** ⇐

1. Without prejudice to ~~this Regulation~~ ☒ Articles 16(1), 23 and 24 ☒ , Community air carriers shall freely set air fares ⇒ and rates for intra-Community air services ⇐ .
 2. ⇒ Notwithstanding the provisions of bilateral agreements between Member States, Member States may not discriminate on grounds of nationality or identity of air carrier in allowing Community air carriers to set fares and rates for air services between their territory and a third country. Any remaining restrictions on pricing, including with respect to routes to third countries, arising from bilateral agreements between Member States are hereby superseded. ⇐
-

↓ 2409/92 art. 3 (adapted)

~~Charter fares and seat and cargo rates charged by Community carriers shall be set by free agreement between the parties to the contract of carriage.~~

↓ 2409/92 art. 1(3) (adapted)
⇒ new

Article 23

⇒ **Price leadership** ⇐

⇒ Without prejudice to agreements concluded by the Community with a third country, for air services between Community airports ⇐ , only Community air carriers shall be entitled to introduce new products or lower ☒ air ☒ fares than the ones existing for identical products.

↓ 2409/92 art. 4 (adapted)
⇒ new

Article 24

⇒ *Information and non discrimination* ⇐

1. Air carriers operating within the Community shall ~~inform~~ ⇒ provide ⇐ the general public ~~on request of all air fares and standard cargo rates~~ ⇒ with comprehensive information on their air fares and rates and the conditions attached. ⇐
2. ⇒ Air carriers shall set air fares without any discrimination based on the nationality or the place of residence of the passenger or on the place of establishment of the travel agent within the Community. ⇐

↓ 2409/92 art. 5(2) (adapted)

~~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.~~

↓ 2409/92 art. 5(3) (adapted)

~~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.~~

↓ 2409/92 art. 5(4) (adapted)

~~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.~~

↓ 2409/92 art. 6 (adapted)

1. ~~Subject to the procedures set out in 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 carriers including a satisfactory return on capital;~~

~~b) to stop, in a non-discriminatory way, further fare decreases in the 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 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 States involved, as well as to the air carrier(s) concerned.~~

~~3. If within fourteen days of the date of receiving notification no Member State involved or the Commission has notified disagreement stating its reasons on the basis of paragraph 1, the Member State which has taken the decision pursuant to paragraph 1 may instruct the air carrier(s) concerned to withdraw the basic fare in question and 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 fourteen days of being requested, unless otherwise agreed.~~

↓ 2409/92 art. 7 (adapted)

~~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.~~

↓ 2409/92 art. 8 (adapted)

~~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.~~

↓ 1882/2003 art.1 and Annex I.5
(adapted)
⇒ new

Chapter V: Final provisions

Article 25

⇒ **Committee** ⇐

1. The Commission shall be assisted by a committee. ~~The Committee shall advise the Commission on the application of Articles 9 and 10.~~

~~The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Regulation.~~

2. Where reference is made to this ~~Article~~ ☒ paragraph ☒ , Articles 3 and 7 of Decision 1999/468/EC¹¹ shall apply, having regard to the provisions of Article 8 thereof.
 3. The Committee shall adopt its rules of procedure.
-

↓ 2407/92 art.18(1) - 2408/92 art. 14(1) - 2409/92 art. 10(1) (adapted)

Article 26

Cooperation and right to obtain information

1. Member States and the Commission shall cooperate in ~~implementing~~ ☒ applying ☒ this Regulation, ~~particularly as regards collection of information for the report referred to in Article 9 (of regulation 2409/92).~~
-

↓ 2408/92 art. 12(1) (adapted)
⇒ new

2. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from Member States ~~concerned~~, which shall also ensure the provision of information by air carriers licensed by ~~them~~ ⇒ their competent licensing authorities ⇐ .
-

↓ 2408/92 art. 12(2) (adapted)

~~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.~~

¹¹ OJ L 184, 17.7.1999, p.23

↓ 2407/92 art.18(2) - 2408/92 art. 14(2) - 2409/92 art. 10(2) (adapted)
⇒ new

3. ~~Confidential information obtained in application of this regulation shall be covered by professional secrecy~~ ⇒ Member States shall, according to their national legislation, take the necessary measures to ensure appropriate confidentiality of the information received by them in application of this Regulation. ⇐
-

↓ 2408/92 art. 13 (adapted)

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

↓ 2409/92 art. 9 (adapted)

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

↓ 2408/92 art. 15 (adapted)

~~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.~~

↓ 2409/92 art. 11 (adapted)

~~Regulation (EEC) No 2342/90 is hereby repealed.~~

↓ new

Article 27

Repeal

Regulations (EEC) No 2407/92, 2408/92 and 2409/92 are repealed.

References to the repealed Regulations shall be construed as references to this regulation and shall be read in accordance with the correlation table in the Annex III.

↓ new

Article 28

Entry into force

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

↓ 2407/92 art. 19 (adapted)

~~This Regulation shall enter into force on 1 January 1993.~~

↓ 2408/92 art. 16 (adapted)

~~This Regulation shall enter into force on 1 January 1993.~~

↓ 2409/92 art. 12 (adapted)

~~This Regulation shall enter into force on 1 January 1993.~~

↓ new

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

↓ 2407/92 annex (adapted)

⇒ new

ANNEX I

Information for use in association with Article 5 of financial fitness of air carriers to be provided in the context of Articles 5 and 8

1. Information to be provided by a first-time applicant from a financial fitness point of view
 - 1.1. The most recent internal management accounts and, if available, audited accounts for the previous financial year.
 - 1.2. A projected balance sheet, including profit and loss account, for the following ~~two~~ ⇒ three ⇐ years.
 - 1.3. 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.
 - 1.4. Details of the start-up costs incurred in the period from submission of application to commencement of operations and an explanation of how it is proposed to finance these costs.
 - 1.5. Details of existing and projected sources of finance.
 - 1.6. 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.
 - 1.7. Projected cash-flow statements and liquidity plans for the first ~~two~~ ☒ three ☒ years of operation.
 - 1.8. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.
2. 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
 - 2.1. If necessary, the most recent internal management balance sheet and audited accounts for the previous financial year.
 - 2.2. 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.
 - 2.3. 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.
 - 2.4. 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.
 - 2.5. Cash-flow statements and liquidity plans for the following year, including all proposed changes in structure or activities with a significant bearing on finances.
 - 2.6. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

3. Information to be provided for assessment of the continuing financial fitness of existing licence holders
 - 3.1. Audited accounts not later than six months after the end of the relevant period and, if necessary, the most recent internal management balance sheet.
 - 3.2. A projected balance sheet, including profit and loss account, for the forthcoming year.
 - 3.3. 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.
 - 3.4. Cash-flow statements and liquidity plans for the following year.

↓ new

ANNEX II

Definition of regional airports for the purpose of Article 16

Are considered to be regional airports, all airports that fulfil at least one of the following criteria:

- (a) Annual traffic volume does not exceed 900000 passenger movements annually;
- (b) Annual traffic volume does not exceed 50000 tonnes freight throughput annually;
- (c) The airport is located on an island of a Member State;

↑

ANNEX III

CORRELATION TABLE

Regulation 2407/92	This Regulation
Article 1(1)	Article 1
Article 1(2)	Article 3(3)
Article 2	Article 2
Article 3(1)	Article 3(2)
Article 3(2)	Article 3(1) second paragraph

Article 3(3)	Article 3(1) first paragraph
Article 4(1)	Article 4(1)
Article 4(2)	Article 4 f
Article 4(3)	-
Article 4(4)	Article 4 f
Article 4(5)	Article 8(1) second paragraph
Article 5(1)	Article 5(1)
Article 5(2)	Article 5(2)
Article 5(3)	Article 8(5)
Article 5(4)	Article 8(6)
Article 5(5)	Article 9(1)
Article 5(6)	Article 8(4)
Article 5(7)	Article 5(3) and 8(8)
Article 6	Article 7
Article 7	Article 11
Article 8(1)	Article 13(1)
Article 8(2)	Article 12(1)
Article 8(3)	Article 13(2)
Article 8(4)	Article 12(2)
Article 9	Article 6
Article 10(1)	Article 13(3)
Article 10(2)	Article 13(4)
Article 11(1)	Article 8(1)
Article 11(2)	Article 8(3)
Article 11(3)	Article 8(7)
Article 12	Articles 9(2) – 9(4)
Article 13(1)	Article 10(2)

Article 13(2)	Article 10(1)
Article 13(3)	-
Article 13(4)	Article 10(3)
Article 14	Article 14
Article 15	-
Article 16	-
Article 17	-
Article 18(1)	Article 26(1)
Article 18(2)	Article 26(3)
Article 19	-
ANNEX	ANNEX I

Regulation 2408/92	This Regulation
---------------------------	------------------------

Article 1(1)	Article 1
Article 1(2)	Article 1(2)
Article 1(3)	Article 1(3)
Article 1(4)	-
Article 2	Article 2
Article 3(1)	Article 15(1) + 15(2)
Article 3(2)	-
Article 3(3)	-
Article 3(4)	-
Article 4 (1) a	Article 16(1)
Article 4(1) b	Article 16(6)
Article 4(1) c	Article 16(2)
Article 4(1) d	Article 16(4)

-	Article 17(1)
-	Article 17(2)
-	Article 17(3)
-	Article 17(4)
-	Article 17(5)
Article 4(1) e	Article 17(6)
Article 4(1) f	Article 17(7)
Article 4(1) g	-
Article 4(1) h	Article 17(8)
-	Article 17(9)
-	Article 17(10)
Article 4(1) i	Article 18(1)
Article 4(1) j	Article 16(3)
Article 4(1) k	-
Article 4(2)	-
Article 4(3)	Article 18(2)
Article 4(4)	-
Article 5	-
Article 6(1) and 6(2)	-
Article 7	Article 15(3) – 15(6)
Article 8(1)	Article 19(2)
Article 8(2)	Article 19(1)
Article 8(3)	Article 19(3)
Article 8(4)	-
Article 8(5)	-
Article 9(1)	-
Article 9(2)	-

Article 9(3)	-
Article 9(4)	-
Article 9(5)	Article 20
Article 9(6)	-
Article 9(7)	-
Article 9(8)	-
Article 10	-
Article 11	Article 25
Article 12(1)	Article 26(2)
Article 12(2)	-
Article 13	-
Article 14(1)	Article 26(1)
Article 14(2)	Article 26(3)
Article 15	-
Article 16	-
ANNEX I	-
ANNEX II	-
ANNEX III	-
-	ANNEX II

Regulation 2409/92	This Regulation
---------------------------	------------------------

Article 1(1)	Article 1
Article 1(2)	Article 21
Article 1(3)	Article 23
Article 2	Article 2

Article 3	-
Article 4	Article 24
Article 5(1)	Article 22
Article 5(2)	-
Article 5(3)	-
Article 5(4)	-
Article 6	-
Article 7	-
Article 8	-
Article 9	-
Article 10(1)	Article 26(1)
Article 10(2)	Article 26(3)
Article 11	-
Article 12	-
-	Article 27
-	Article 28

↓ 2408/92 annex and act of accession of Austria, Sweden and Finland, art. 29 and annex I, and act of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, art.20 and annex II (adapted)

~~ANNEX I~~

~~List of category 1 airports~~

BELGIUM:	Brussels-Zaventem
CZECH REPUBLIC:	Praha-Ruzyně
DENMARK:	Copenhagen airport system

GERMANY	Frankfurt-Rhein/Main Düsseldorf-Lohausen Munich Berlin airport system
ESTONIA	Tallinna Lennujaam
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
CYPRUS	Larnaka airport
LATVIA:	Riga
LITHUANIA	Vilnius
HUNGARY	Budapest-Ferihegy International Airport
MALTA	Luqa
NETHERLANDS	Amsterdam Schiphol
POLAND	Warszawa-Okęcie
PORTUGAL:	Lisbon Faro
SLOVENIA	Ljubljana
SLOVAKIA	Bratislava Airport

UNITED KINGDOM:	London airport system Luton
AUSTRIA	Vienna
FINLAND	Helsinki-VantaaHelsingfors Vanda
SWEDEN	Stockholm airport system

~~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
SWEDEN:	Stockholm-Arlanda/Bromma

↓ 2408/92 ANNEX III (adapted)

~~Interpretation referred to in Article 15 Under the terms of Annex I to Regulation (EEC) No 2343/90 the air carrier Seanair, 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.~~