



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 December 2007

16054/07

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

**AVIATION 217
CODEC 1394**

OUTCOME OF PROCEEDINGS

From:	Council
To:	Delegations
No. prev. doc.	15774/07 AVIATION 214 CODEC 1349
No Cion prop.	11829/06 AVIATION 109 CODEC 784
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) - <i>political agreement</i>

Delegations will find attached the political agreement reached at the Council at its meeting on 29-30 November 2007.

As the proposal concerns a recast of three existing Regulations, specific markers are used to indicate changes to the Commission's proposal. Deletions suggested by the Council are shown as follows:

☞ ... ☞

New text additions suggested by the Council are shown as follows:

☞ added text ☞

ANNEX I

↓ 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,

¹ OJ C , , p. .

² OJ C , , p. .

↓ new

☞ Council

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

☞ [...] ☞

(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) ☞ [...] ☞ **Recognising** ☞ 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.

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

(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.
⇒ In order to avoid a distortion of competition arising from the different application of the rules at national level, it is necessary to reinforce the financial oversight of all Community air carriers by Member States. ⇐

(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. ⇒ [...] ⇐

⇒ (7a) According to Regulation (EC) No 785/2004 an air carrier should be insured to cover liability in case of accidents with respect to passengers, cargo and third parties. Obligations should also be placed upon air carriers for insurance to cover liability in case of accidents with respect to mail. ⇐

(8) In order to avoid the excessive recourse to lease agreements of aircraft registered in third countries, especially **⇒ [...] ◐ 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 **⇒ and national ◐** legislation.

⇒ (8a) With respect to employees of a Community air carrier operating air services from an operational base outside the territory of the Member State where that Community air carrier has its principal place of business, Member States should ensure the proper application of Community and national social legislation. ◐

⇒ [...] ◐

(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.

⇒ (10a) To take into account the special characteristics and constraints of the ultra-peripheral regions, in particular their remoteness, insularity and small size, and the need to properly link them with the central regions of the Community, special arrangements ⇒ [...] ◐ may be justified regarding the rules on the period of validity of the contracts for public service obligations covering routes to such regions. ◐

(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) ☞ [...] ☞ Customers ☞ should have access to ☞ [...] ☞ all air fares and rates ☞ 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) ☞ [...] ☞ Customers ☞ should be able to ☞ [...] ☞ compare ☞ effectively ☞ ☞ [...] ☞ air fares and rates ☞ between airlines. Therefore published ☞ [...] ☞ air fares and rates for travel originating in the Community ☞ should indicate the final price to be paid by the ☞ [...] ☞ customer ☞, inclusive of all taxes, charges and fees. ☞ Community air carriers are also encouraged to show the final price for their air services from third countries to the Community. ☞
- (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.

⁸ OJ L 184, 17.7.1999, p. 23

(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.

⇒ (17a) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006, during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on the Airport made in London on 2 December 1987, and the full compliance with it will be deemed to constitute compliance with the 1987 declaration. ⇐

(18) It is therefore necessary to repeal Regulations (EEC) No 2407/92, 2408/92 and 2409/92,

HAVE ADOPTED THIS REGULATION:

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

→ Council

1. This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate → intra-Community ← air services → [...] ←, and the pricing of → intra-Community ← air services → [...] ←.

↓ 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)

↻ Council

3. ~~↻ [...] ↻~~

↓ 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

⇒ Council

1. 'operating licence' means an ☐ [...] ☐☐ **authorisation** ☐ granted by the ~~Member State~~ **responsible** ⇒ competent licensing authority ☐ to an undertaking, permitting it to ☐ [...] ☐☐ **provide air services** ☐, as stated in the operating licence ☐ [...] ☐;
-

↓ new

⇒ Council

2. 'competent licensing authority' means an authority ☐ **of a Member State** ☐, entitled to grant, refuse, revoke or suspend an operating licence in accordance with Chapter II ☐ **of this regulation** ☐;

↓ 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;
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↓ 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;
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↓ 2408/92 art. 2(e)

☞ Council

5. 'flight' means a departure from a specified airport towards a specified destination airport;

☞ **(5a) 'local flight' means a flight not involving carriage of passengers, mail and/or cargo between different airports or other authorised landing points; ☞**

↓ 2408/92 art. 2(k)

☞ Council

6. 'airport' means any area in a Member State ☞ [...] ☞ especially adapted for air services ☞;

↓ 2407/92 art. 2 (d) (adapted)

⇒ new

↻ Council

7. 'air operator ~~↻ [...] ↻~~ 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 ~~↻ [...] ↻~~ has the professional ability and organisation to ~~↻ [...] ↻~~ ~~↻ ensure the safety of operations ↻~~ specified in the certificate, ⇒ as provided in the relevant provisions of Community ~~↻ or national ↻~~ law ~~↻, as applicable ↻~~. ↵

↓ 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), 2408/92 art. 2(a)
and 2409/92 art. 2(g)
⇒ Council

9. 'air carrier' means an [...] **undertaking with a valid operating licence or equivalent** [...];

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

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 ⊗ **of this regulation**;

↓ 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

⇒ Council

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

⇒ 13. ⇐ [...]

↓ 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)

⇒ Council

15. ⇒ [...]

↓ 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)

↻ Council

17. '*scheduled air service*' means a series of flights possessing all the following characteristics:
- (a) **↻ on each flight seats and/or capacity to transport cargo and/or mail ↻**
↻ [...] ↻ are available for individual purchase by the public (either directly from the air carrier or from its **↻ [...] ↻ ↻ authorised ↻** 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 **↻ [...] ↻ ↻ recognisably ↻** systematic series.

↓ 2408/92 art. 2(n)

⇒ Council

18. 'capacity' means the number of seats **⇒ or the payload** offered to the general public on a scheduled air service over a given period;
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↓ 2409/92 art. 2(a) (adapted)

⇒ Council

19. 'air fares' means the prices expressed in ~~eeus~~ **⇒ [...] ⇒ Euro** or in local currency to be paid by passengers to air carriers or their agents **⇒ or other ticket sellers** for the carriage of ~~them~~ ⊗ those passengers ⊗ **⇒ [...] ⇒** on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services; **⇒ [...] ⇒**
-

↓ 2409/92 art. 2(d) (adapted)

⇒ new

⇒ Council

20. 'cargo **⇒ air** rates' means the prices expressed in ~~eeus~~ **⇒ [...] ⇒ Euro** 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 **⇒ [...] ⇒**;

↓ 2408/92 art. 2(h)

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

↻ Council

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;

☞ (25) *"Dry lease agreement"* means an agreement between undertakings pursuant to which
☞ [...] ☞ the aircraft is operated under the AOC of the lessee;

(26) *"Wet lease agreement"* means an agreement between air carriers pursuant to which
☞ [...] ☞ the aircraft is operated under the AOC of the lessor;

(27) *"Principal place of business"* ☞ [...] ☞ means the head office ☞ [...] ☞ or ☞ [...] ☞
☞ [...] ☞ registered office of a Community air carrier in ☞ [...] ☞ the Member State
within ☞ [...] ☞ which the principal financial functions and operational control,
including continued airworthiness management, of the Community air carrier are
exercised.☞

↓ 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

⇒ Council

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 [...] 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)

⇒ new

⇒ Council

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

↓ 2407/92 art. 1(2) (adapted)

↻ Council

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 ☐ [...] ☐ shall ☐ not ☐ be ☐ 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 ☐ [...] ☐ ☐. ☐ ☐

↓ 2407/92 art. 4(1) (adapted)

⇒ new

⇒ Council

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 ⇐ **of a Member State** ⇐ ~~unless~~ ☒ provided that ☒:

(a) its **principal place of business is** ⇐ **[...]** ⇐ located in **that Member State** ⇐ ~~that Member State~~ ⇒ **[...]** ⇐;

⇒ (b) it holds a valid AOC **AOC issued by a national authority of the same Member State whose competent licensing authority is responsible for granting, refusing, revoking or suspending the operating licence of the Community carrier** ⇐; ⇐

(c) **[...] ⇐ it has one or more aircraft at its disposal through ownership or dry lease agreement;** ⇐

(d) its main occupation is **[...] ⇐ to operate air services** ⇐ 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. ⇐ ➔ **and in Regulation (EC) 785/2004; and**
- (i) it complies with the provisions on good repute as specified in accordance with Article 7**
-

↓ 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

⇒ Council

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~~ ~~...~~ months from the start of operations;
⇒ **and** ⇐
- (b) it can meet its fixed and operational costs incurred from operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations. ⇒ ~~...~~ ⇐

↓ 2407/92 art. 5(2) (adapted)

⇒ Council

2. For the purpose of paragraph 1, each applicant shall submit a business plan for, at least, the first ~~two~~ [...] ~~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

⇒ Council

3. Paragraphs 1 and 2 [...] ~~3, 4 and 6~~ shall not apply to ~~an~~ **undertaking applying for an operating licence intended to cover** operations with aircraft of less than 10 tonnes MTO [...] ~~M~~ (Maximum Take Off [...] ~~Mass~~) and/or less than 20 seats. Such [...] ~~undertakings~~ shall [...] demonstrate that their net capital is at least ~~ECU 80000~~ ⇒ EUR 100,000 ⇐ [...] **or provide, when required by the competent licensing authority, all relevant information for the purposes of paragraph 1; in particular the data referred to in point 1 of Annex 1.**

~~⊃ [...] ⊂~~ ~~⊃ The competent licensing authority ⊂~~ may nevertheless apply paragraphs 1
⊗ and ⊗ 2, ~~3, 4 and 6~~ to ~~⊃ [...] ⊂~~ ~~⊃ an undertaking applying for an operating
licence under the provisions of ⊃ [...] ⊂ the previous subparagraph that intends to ⊂~~
operate scheduled ~~⊃ air ⊂~~ 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

⇒ Council

Article 6

⇒ *Air operator 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
~~⊃ [...] ⊂~~.

2. ⇒ Any modification in the AOC of a Community air carrier shall be reflected ↻, **where appropriate,** Ⓞ in its operating licence. ⇐

↓ 2407/92 art. 6 (adapted)

⇒ new

↻ Council

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~~ ↻ [...] Ⓞ ↻ [...] Ⓞ ~~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

↻ Council

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 **↻ in the following cases ↻** : **↻ [...] ↻**

– **↻ two years after a new operating licence has been granted, or**

↻ [...] ↻

– **↻ 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 **↻ [...] ↻ ↻ shall ↻** immediately inform the authority competent for the AOC.

↓ 2407/92 art. 11(2) (adapted)

⇒ new

⇒ Council

3. ⇒ The operating licence shall be resubmitted for approval ⇒ : ⇒ ⇐

– when a ⇒ Community ⇐ air carrier ☒ has not started operations for six months after the granting of an operating licence ☒ ⇒ , or ⇒

– ⇒ [...] ⇒ when a Community air carrier ⇒ has ceased its operation for ~~six~~ ⇒ more than ⇒ [...] ⇒ ⇒ six ⇒ ⇐ months ⇒ , or ⇒ ~~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.~~

– ⇒ when a Community air carrier licensed on the basis of Article 5 (3), first indent intends to engage in operations with aircraft above the size threshold specified in Article 5 (3) ⇒ [...] ⇒ or no longer complies with the financial conditions set out therein. ⇒

– ⇒ [...] ⇒

↓ 2407/92 art. 5(6) (adapted)

⇒ new

⇒ Council

4. A ⇒ Community ⇐ air carrier shall provide to ~~its~~ ⊗ the competent ⊗ licensing authority **⇒ its audited accounts no later than ⇒ [...] ⇐ six months following the last day of the respective financial year, unless otherwise provided for in national law. ⇐ ⇒ [...] ⇐**
- ⇒ 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 ⇒ [...] ⇐ made available to the competent licensing authority ⇒ [...] ⇐ **⇒ upon request ⇐** ⇐ ~~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 ⇒ . **⇒ As part of such an assessment, the Community air carrier in question shall update the ⇒ [...] ⇐ data referred to in point 3 of Annex I and provide it to the competent licensing authority upon request. ⇐ ⇒ [...] ⇐**

↓ 2407/92 art. 5(3) (adapted)

⇒ new

⇒ Council

5. A ⇒ Community ⇐ air carrier shall notify ⇒ the competent licensing authority: ⇐
- (a) in advance ~~to its licensing authority~~ of any plans for ⇒ **the operation of a new air service to a continent or a world region not previously served, or any other substantial change in the scale of its activities, including, but not limited to, changes in the type or number of aircraft used** ⇐ ~~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~~ ⇒ [...] ⇐
- (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

⇒ Council

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 **⇒ as to whether the Community air carrier can meet its existing and potential obligations during that period of 12 months. Such a decision shall be taken ⇐** not later than three months after all the necessary information has been submitted to it.

↓ 2407/92 art. 11(3) (adapted)

⇒ new

⇒ Council

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 ⇒ [...] ⇐ ~~undertaking~~ ⇒ ⇒ a ⇐ Community air carrier ⇒ [...] ⇐ ⇐ and, in particular, in the case of ⇒ a ⇐ merger ⇒ [...] ⇐ or takeover ⇒ [...] ⇐. ~~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

⇒ Council

8. Paragraphs ~~1, 2, 3,~~ 4, ⊗ 5 ⊗ and 6 shall not apply to ⇒ Community ⇐ air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOM (Maximum Take Off Mass) and/or less than 20 seats. Such ⇒ Community ⇐ 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 ⇒ competent ⇐ licensing authority the information relevant for the purposes of ~~paragraph 5~~ ⊗ article 9(2). ⊗

~~⊖ [...] ⊖~~ ~~⊖ The competent licensing authority ⊖~~ may nevertheless apply paragraphs ~~1, 2, 3,~~ 4, ~~⊗~~ 5 and 6 ~~⊗~~ to ~~⊖ Community ⊖~~ air carriers licensed by it that operate scheduled ~~⊖ air ⊖~~ 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

⇒ Council

Article 9

⇒ *Suspension and revocation of an operating licence* ⇐

- ~~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 ⇒ **may at any time assess the financial performance of a Community air carrier which it has licensed. Based upon its assessment, the authority** ⇒ [...] ⇐ ⇐ shall ⇐ suspend or revoke the ⊗ operating ⊗ licence if it is no longer satisfied that ⇒ [...] ⇐ ⇒ **this** ⇐ ⇒ [...] ⇐ ⇒ Community ⇐ air carrier can meet its actual and potential obligations for a 12-month period. ~~Licensing authorities may also~~ ⇒ **Nevertheless, the** ⇐ ⇒ ⇒ [...] ⇐ competent licensing authority may ⇐ grant a temporary licence, ⇒ not exceeding 12 months ⇐, pending financial reorganisation of ⇒ [...] ⇐ ⇒ **a** ⇐ ⇒ Community ⇐ air carrier provided ⇒ **that safety is not at risk,** ⇐ ⇒ that this temporary licence reflects ⇒ **, when appropriate,** ⇐ 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

⇒ Council

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 a ⇒ [...] ⇐ ⇒ **Community** ⇐ 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 ⇒ [...] ⇐ its ⇒ [...] ⇐ ⇒ **decisions,** ⇐ relating to the status of the operating licence. ⇐

3. ⇒ When the audited accounts referred to in Article 8(4) have not been communicated within ⇒ [...] ⇒ the deadline ⇒ [...] ⇒ indicated in that Article , the competent licensing authority shall ⇒ , without undue delay, request the Community air carrier to communicate these audited accounts ⇒ [..].

If the audited accounts are not communicated within one month, the operating licence ⇒ [...] ⇒ may be revoked or suspended.

⇒ [..] ⇐

⇒ 3a The competent licensing authority shall suspend or revoke the operating licence if the Community air carrier knowingly or recklessly furnishes the competent licensing authority with information which is false in a material particular.

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. ⇐

⇒ 5. ⇒ [..] The competent licensing authority ⇒ [..] may suspend or revoke the operating licence of a Community air carrier if such a carrier no longer satisfies the requirements relating to good repute set out in Article 7.

↓ 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

⇒ Council

2. Procedures for granting, ⇒suspending and revoking ⇐ ⇒ [...] ⇐ operating licences shall be made public by the ~~Member State concerned~~ ⇒ competent licensing authorities ⇐ ⇒, ⇐ ⊗ which shall inform ⇐ the Commission ~~shall be informed~~ ⇒ thereof ⇐ .

↓ 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

⇒ Council

Article 11

⇒ *Insurance requirements* ⇐

⇒ |...| ⇐

~~Notwithstanding Regulation (EC) No 785/2004, an air carrier shall be insured to cover liability in case of accidents with respect to mail~~

↓ 2407/92 art. 8(2) (adapted)

⇒ new

⇒ Council

Article 12

⇒ Registration ⇐

1. Without prejudice to ~~paragraph 3~~ Article 13 ~~(4)~~, aircraft used by a ~~Community~~ air carrier shall be registered **at the option of the Member State whose competent authority issues the operating licence, in its national register 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)

↻ Council

2. ~~When applying paragraph 2(a) a Member State~~ ☒ In accordance with paragraph 1, ~~the~~ ~~competent~~ ~~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.
-

↓ 2407/92 art. 8(1)

⇒ new

↻ Council

Article 13

⇒ *Leasing* ⇐

1. ~~Without prejudice to Article 4 (c), a~~ ~~Community air carrier~~ may have one or more aircraft at its disposal through ~~dry or wet~~ lease agreement. ~~Community air carriers may freely operate wet-leased Community aircraft except where this would lead to endangering safety. The Commission will ensure that the implementation of such a provision is reasonable and proportionate and based on safety considerations.~~

2. A dry lease agreement to which a Community air carrier is a party or a wet lease agreement under which the Community air carrier is the lessee of the wet leased aircraft shall be subject to prior approval in accordance with [...] applicable Community or national law on aviation safety.

[...]

↓ 2407/92 art. 8(3)

→ Council

3. A Community air carrier wet leasing [...] aircraft registered in a third country from another undertaking [...] shall obtain prior approval for the operation from the competent licensing authority. The competent [...] authority may grant an approval if:

a) [...] the Community air carrier [...] demonstrate s to the satisfaction of the competent [...] authority that all safety standards equivalent to those imposed by Community or national law are met [...] ; and

[...]

☞ b) one of the following conditions is fulfilled: ☞

**☞ [...] ☞ ☞ i) ☞ the Community air ☞ [...] ☞ ☞ carrier ☞ ☞ [...] ☞
☞ justifies ☞ such leasing on the basis of exceptional needs, in which case
☞ [...] ☞ ☞ an approval ☞ may be granted for a period of up to seven
months ☞ [...] ☞ that may be renewed once for up to seven months; or**

**☞ [...] ☞ ☞ ii) ☞ the Community air carrier demonstrates that the leasing is
necessary to satisfy seasonal capacity needs, which cannot reasonably be
satisfied through leasing aircraft registered ☞ [...] ☞ ☞ within the
Community, in which case the approval may be renewed; or ☞**

**☞ [...] ☞ ☞ iii) ☞ the Community air carrier demonstrates that the leasing is
necessary to overcome ☞ [...] ☞ operational difficulties ☞ [...] ☞ and it is not
possible or reasonable to lease aircraft registered ☞ [...] ☞ ☞ within the
Community ☞ , in which case the ☞ [...] ☞ ☞ approval ☞ shall be of
limited duration strictly necessary for overcoming the difficulties.**

☞ [...] ☞

**☞ The competent ☞ [...] ☞ authority may attach conditions to the ☞ [...] ☞
☞ approval ☞. Such conditions shall form part of the wet lease agreement.**

The competent [...] authority may refuse to grant [...] an approval if there is no reciprocity as regards [...] wet leasing between the Member State concerned or the Community and the third country where the wet leased aircraft is registered.

The competent [...] authority shall inform the Member States concerned about [...] an approval it has granted for wet leasing aircraft registered in a third country.

↓ 2407/92 art. 10(1)

↻ Council

↻ [...] ↻

↓ 2407/92 art. 10(2)

↻ Council

↻ [...] ↻

↓ 2407/92 art. 14

↻ Council

Article 14

↻ [...] ↻

~~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)

↻ Council

~~Member States shall consult the Commission before adopting laws, regulations or administrative provisions in implementation of this Regulation. They shall communicate any such measures to the Commission when adopted.~~

⇒ Article 14a

Right to be heard

The competent licensing authority shall ensure that, when adopting a decision to suspend or revoke the operating licence of a Community air carrier, the Community air carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure. ☹

↓ 2408/92 art. 3(1) (adapted)

⇒ new

⇒ Council

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 ⇒ operate intra-Community air services. ☹
⇒ [...] ☹

2. ⇒ Member States shall not subject the ⇒ [...] ☹ ⇒ operation of intra-Community air services ☹ by a Community air carrier to any permit or authorisation. ⇒ [...] ☹ Member States shall not require Community air carriers to provide any documents or information which they have already supplied to the competent licensing authority ⇒ , provided that the relevant information may be obtained from the competent licensing authority in due time. ☹ ⇐

⇒ [...] ☹

3. If the Commission, on the basis of information obtained under Article 26(2), finds that the operating [...] licence granted to a Community air carrier is not in compliance with the requirements of this Regulation it shall forward its findings to the competent licensing authority which shall send its comments to the Commission within 15 working days.

If the Commission, after examining the comments of the competent licensing authority, maintains that the operating licence is not compliant, or no comments have been received from the competent licensing authority it shall, in accordance with the procedure referred to in Article 25(2), take a decision to request the competent licensing authority to take the appropriate corrective measures or to suspend or revoke the operating licence.

The decision shall set a date by which the corrective measures or actions by the competent licensing authority shall be implemented. If the corrective measures or actions have not been implemented by that date the Community air carrier shall not be entitled to exercise its rights under paragraph 1.

The Community air carrier may resume exercising its rights under paragraph 1 upon notification to the Commission by the competent licensing authority that the corrective measures have been implemented and that the competent licensing authority has verified the implementation.

↓ 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

⇒ new

⇒ Council

⇒ [...] ⇒ **4.** ⇒ [...] ⇒ **When** 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. ⇐

⇒ [...] ⇒ Any restrictions on the freedom of Community air carriers to ⇒ [...] ⇒ **operate** ⇐ 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 ⇒ **with any air carrier** ⇐ on air services to, from or via any airport in their territory from or to any point(s) in third countries. ⇐

⇒ A Member State may, in the framework of the bilateral air service agreement with the third country concerned, impose restrictions on code share arrangements between Community air carriers and air carriers of a third country, in particular if the third country concerned does not allow similar commercial opportunities to Community air carriers operating from the Member State concerned. In doing so, ⇒ [...] ⇒ Member States shall ensure that restrictions imposed under such agreements ⇒ [...] ⇒ do not restrict competition and are non-discriminatory between Community air carriers and ⇒ [...] ⇒ that they are not more restrictive than necessary ⇒ [...] ⇒

⇒ [...] ⇒

↓ 2408/92 art 4(1)(a) (adapted)

⇒ new

⇒ Council

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 **⇒, the airports concerned ⇐** and air carriers operating on the route, may impose a public service obligation in respect of scheduled air services **⇒ [...] ⇐ ⇒ between an airport in the Community and ⇐** an airport **⇒ serving a peripheral or development region ⇐** in its territory **⇒ or on a thin route to any airport on its territory ⇐**, any such route being considered vital for the economic **⇒ and social ⇐** development of the region **⇒ [...] ⇐** which the airport **⇒ serves ⇐ ⇒ [...] ⇐** .
⇒ 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 ⇐ .

↓ 2408/92 art.4(1)(c) (adapted)

⇒ new

⇒ Council

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 **Community** 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.

3. The necessity and the adequacy of an envisaged public service obligation shall be assessed by the Member States having regard to:

a) the proportionality between the envisaged obligation and the economic development needs of the region concerned;

(b) the possibility, of having recourse to other modes of transport and the ability of such 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 and with sufficient frequencies, [...] connections and suitable timings;

(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.

4. When a Member State wishes to impose a public service obligation, it shall communicate the text of the envisaged imposition of the public service obligation to the Commission, to the other Member States concerned, to the airports 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 and possible intermediate stop-over point(s),

(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.

4a. Notwithstanding the provisions of paragraph 4, ☞ [...] ☜ with respect to routes where the number of passengers expected to use the air service is less than 10.000 per annum, the information notice on a public service obligation shall be published either in the Official Journal of the European Union or in the national official journal of the Member State concerned.

5. 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 4

↓ 2408/92 art.4(1)(j) (adapted)
↻ Council

↻ [...] ↻ 6. When a public service obligation has been imposed in accordance with subparagraphs ~~(a) and (e)~~ 1 and 2 then **Community** air **carrier** shall **be able to offer seat-only sales provided that** 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.

6a. When a public service obligation has been imposed in accordance with paragraphs 1 and 2, any other Community air carriers shall at any time be allowed to commence scheduled air services meeting all the requirements of the public service obligation, including the period of operation that may be required in accordance with paragraph 2.

↓ 2408/92 art. 4(1)(d) (adapted)

⇒ new

⇒ Council

⇒ [...] ⇒ 7. ⇒ **Notwithstanding paragraph 6a,** ⇒ [...] ⇒ **if** no
⇒ **Community** air carrier has commenced or ⇒ **can demonstrate that it** is about to
commence ⇒ **sustainable** 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
⇒ **Community** 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. ⇐

⇒ [...] ⇒ 8. The right to operate the services ☒ referred to in paragraph ⇒ [...] ⇒
⇒ 7. ⇐ ☒ shall be offered by public tender ⇒ in accordance with article 17 ⇐ , either
singly or, ⇒ in cases where ⇒ **justified for reasons of operational** ⇒ [...] ⇒ **efficiency** ⇒
⇒ [...] ⇐ , for a group of such routes to any Community air carrier entitled to operate
such air services. ⇒ **For reasons of administrative efficiency, a Member State may**
issue a single invitation to tender covering different routes. ⇐

~~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.~~

↓ 2408/92 art. 4(1)(a) and (b)

⇒ new

⇒ Council

⇒ [...] ⇐

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

10. ⇒ In case of sudden interruption of service by the ⇒ Community ⇐ air carrier selected in accordance with Article 17, the Member State concerned may, in case of emergency, select by mutual agreement a different ⇒ Community ⇐ air carrier to operate the public service obligation for a period up to ⇒ [...] ⇐ ⇒ seven ⇐ 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; ⇐

⇒ **(c) a new call for tender shall be launched** ⇒ [...] ⇐

⇒ The Commission and the Member State(s) ⇒ **concerned** ⇐ 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 ⇒ **after its assessment** ⇐ that it does not meet the requirements of this paragraph or is otherwise contrary to Community legislation. ⇐

↓ new

⇒ Council

Article 17

Public tender procedure for public service obligation

1. The public tender required in Article ⇒ [...] ⇐ ⇒ **16(8)** ⇐ 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 ⇒ **except where, in accordance with Article 16 (4a), it has made the public service obligation known through the publication of a notice in its national official journal. In such case the tender shall also be published in the national official journal.** ⇐ .

➤ 3. 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) 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

➤ [...] ➤ 4. 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.

➔ [...] 5. 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.

➔ [...] 6. 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 interrupted service when their capacity offered exceeds 30000 seats per years.~~

↓ 2408/92 art. 4(1)(e)

⇒ Council

⇒ [...] ⇐

↓ 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 ~~(A)~~ ~~⊗~~ 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

→ Council

9. The Commission shall be informed **→ in writing and ←** without delay of the results of the public tender and of the selection **→ [...] ← → by ←** 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 for the envisaged imposition. ⇐

↓ 2408/92 art. 4(3) (adapted)

⇒ new

↻ Council

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.

↻ [...] ⇐

↓ 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

⇒ Council

2. ~~This regulation shall not affect a Member State's right to~~ ⇒ A Member State, after consultation ⇒ [...] ⇐ ⇒ **with ⇒ [...] ⇐ interested parties including the air carriers and airports** ⇐ 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 ⇒ [...] adequate transport infrastructure
⇒ providing, to the extent possible, a direct connection making it possible to arrive at the airport within ninety minutes including, where necessary, on a cross-border basis ; ⇒ [...] ↵

(c) ⇒ the airports ⇒ are linked to one another and ⇒ to the city or conurbation they shall serve ⇒ [...] by frequent, reliable and efficient public transport services ↵ ⇒ and

(d) the airports offer necessary services to air carriers , and do not unduly prejudice their commercial opportunities ⇒ [...] ↵

⇒ 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

⇒ Council

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.~~ ⇒ ⇒ [...] A 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 or 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)

↻ Council

~~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.~~

↻ 4. With respect to traffic distribution rules existing at the time of the entry into force of this Regulation, the Commission shall at the request of a Member State and may at its own initiative examine the application of paragraphs 1 and 2 and, in accordance with the procedure referred to in Article 25(2), shall decide whether the Member State may continue to apply the measure.

5. The Commission shall publish its decisions made under this Article in the *Official Journal of the European Union*.

Article 19a

Environmental measures

⊖ [...] ⊕

⊖ 1. When serious environmental problems exist, the Member State responsible may limit or refuse the exercise of traffic rights, in particular when other modes of transport provide ⊖ [...] ⊕ appropriate levels of service. The measure shall be non-discriminatory, shall not distort competition between air carriers, shall not be more restrictive than necessary to relieve the problems, and shall have a limited period of validity, not exceeding three years, after which it shall be reviewed.

2. 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 3, takes it up for further examination.

3. At the request of another Member State or on its own initiative, the Commission may, in accordance with the procedure referred to in Article 25(2), suspend the measures if they do not meet the requirements of paragraph 1 or are otherwise contrary to Community law. ☹

↓ 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)
⇒ Council

⊗ Chapter IV: Provisions on Pricing ⊗

Article 21

⇒ [...] ⇐

↓ 2409/92 art. 5(1) (adapted)
⇒ new
⇒ Council

Article 22

⇒ *Pricing freedom* ⇐

1. Without prejudice to ~~this Regulation~~ ⊗ Article ⇒ [...] ⇐ 16(1) ⇒ [...] ⇐ ⊗ ,
Community air carriers ⇒ **and, on the basis of reciprocity, air carriers of third**
countries ⇒ [...] ⇐ ⇐ 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)

↻ Council

Article 23

↻ [...] ↻

↓ 2409/92 art. 4 (adapted)

⇒ new

⇒ Council

Article 24

⇒ *Information and non discrimination* ⇐ ⇒ [...] ⇐

⇒ [...] ⇐

⇒ **1. Air fares and rates offered or published in any form, including on the Internet, for air services from an airport located in the territory of a Member State to which the Treaty applies, available to the general public shall include the applicable conditions. The final price to be paid shall at all times be indicated and shall include the applicable air fare or rate as well as all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. In addition to the indication of the final price, at least the following shall be specified:**

a) air fare or rate;

b) taxes;

c) airport charges; and

d) other charges, surcharges or fees, such as those related to security or fuel;

where the items listed under (b), (c) and (d) have been added to the air fare or rate. Optional price supplements shall be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer should be on an “opt-in” basis.

2. **Without prejudice to Article 16 (1), a access to air fares and rates for air services from an airport located in the territory of a Member State to which the Treaty applies, available to the general public shall be granted without any discrimination based on the nationality or the place of residence of the customer or on the place of establishment of the air carrier's agent or other ticket seller within the Community.**

Article 24a

Sanctions

Member States shall ensure compliance with the rules set out in this Chapter and shall lay down sanctions for infringements thereof. Those sanctions shall be effective, proportionate and dissuasive.

↓ 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.~~

~~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 by 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/EC⁹ shall apply, having regard to the provisions of Article 8 thereof.
3. The Committee shall adopt its rules of procedure.

⁹ OJ L 184, 17.7.1999, p.23

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

Article 26

Cooperation and right to obtain information

1. Member States and the Commission shall cooperate in ~~implementing~~ ☒ applying ☒ **and monitoring** ☒ 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
⇒ Council

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 **[...]** **facilitate** ☒ 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 supplied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.~~

↓ 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
→ Council

Article 27

Repeal

Regulations (EEC) No 2407/92, 2408/92 and 2409/92 → [...] shall be 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 → [...] Annex → [...] II.

↓ new

↻ Council

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

↻ Council

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

Done at Brussels, ↻ [...] ↻

For the European Parliament

For the Council

The President

The President

☞ [...] ☺

☞ ANNEX 1 TO ANNEX I ☺

↓ 2407/92 annex (adapted)

⇒ new

☞ Council

☞ [...] ☺

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, ☞ air navigation charges, ground handling costs, ☺ 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, **☞ air navigation charges, ground handling costs,** ☹ 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 **☞ [...] ☹ ☞ no later than six months following the last day of the respective financial year, unless otherwise provided for in national law ☹** 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, **☞ air navigation charges, ground handling costs,** ☹ insurance, etc. Traffic/revenue forecasts.
 - 3.4. Cash-flow statements and liquidity plans for the following year.
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☞ [...] ☞

☞ ANNEX 2 TO ANNEX I ☞

↓ new

☞ Council

☞ [...] ☞

☞ Correlation table

[Referred to in Article 27] ☞

↓ 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

~~Interpretation referred to in Article 15 Under the terms of Annex I to Regulation (EEC) No 2343/90 the air carrier Scanair, which is structured and organized exactly as Scandinavian Airlines System, is to be considered in the same way as the air carrier Scandinavian Airlines System.~~

ANNEX II

The following statements were presented for the minutes of the Council:

Unilateral statement by the Commission

Re: Article 3 (3) “AOC requirements for local flights”

In the context of the revision of Regulation No 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, the European Commission, assisted by the European Aviation Safety Agency, has consulted all the stakeholders in general aviation with a view to drawing up implementing rules for the new Regulation.

The Commission undertakes to develop rules adapted to this activity, in particular to take properly into account circular flights in light aircraft, such as maiden flights, and as regards both the maintenance and operation of aircraft, as well as licences.

Joint statement of the Member States and of the Commission
Re: Article 15 “Cooperation with respect to access by third countries
to the internal air transport market”

The so-called “Third Aviation Package”, adopted in 1992, established a truly open internal air transport market for Community air carriers, which has been subsequently developed and now includes common rules in matters such as aviation safety, security, state aid and competition.

Without prejudice to the obligations of Member States under the Convention on International Civil Aviation and the International Air Services Transit Agreement and taking into account air services agreements with third countries, cooperation is important between Member States and with the Commission regarding the issue of the right of third country carriers to fly over the Community and to provide intra-Community air services.

For that purpose, and without prejudice to country-specific negotiating mandates granted in accordance with the Council conclusions of June 2005 on external aviation policy, the Member States and the Commission confirm, to the fullest possible extent and in a coordinated approach, their use of the existing mechanisms and framework of Regulation 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries.

Joint statement of the Commission and of the Council
Re: Article 15 - “social effects of Community aviation legislation”

Since 1992, the creation of an Air Transport Single Market has led to important benefits to consumers, operators and employees. It saw a significant increase in activities (in traffic, number of routes and new entrants). Community air carriers can establish themselves anywhere in the Community and operate air services from bases in Member States, other than the one where they have their principal place of business. This implies an increased mobility of employees in civil aviation throughout the EU.

Member States should ensure the proper application of terms and conditions of employment, including maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, as well as health, safety and hygiene at work, which they apply in compliance with Community law, with respect to employees of a Community air carrier operating air services from an operational base outside the territory of the Member State where that Community air carrier has its principal place of business.

The Council takes note that the European Commission is assessing comprehensively the interactions between the internal market, employment and working conditions in an increasingly globalised sector. To this end, the European Commission has launched a study to have a clear picture of the situation in air transport and its evolutions since 1997. The results will be available at the end of 2007.

The Council also takes note of the intention of the European Commission to assess, as a result of this study, what action if any is appropriate. The Commission will inform the European Parliament and the Council on the outcome.”

Unilateral statement by the Commission

Re: Article 15.5 – “restrictions on codeshare arrangements between Community air carriers and carriers of third countries”

Paragraphs 4 and 5 of Article 15 of the draft Regulation on common rules for the operation of air transport services in the Community provide as the general rule that all restrictions on the freedom of Community air carriers to code-share with third country air carriers arising from bilateral agreements between Member States shall be eliminated.

However, in order to maintain the negotiating leverage towards third countries which do not allow equal opportunities to Community air carriers in terms of code-sharing, Member States may, as an exception, impose restrictions on code-sharing between Community and third country air carriers in the framework of the respective air services agreements with third countries and subject to strict conditions set out in Article 15. These conditions include non-discrimination, unrestricted competition and the proportionality of the measures introduced.

The Commission underlines the exceptional nature of restrictions imposed by Member States on free code-sharing, and will closely monitor any such restrictions to ensure that they fully comply with the above-mentioned conditions.”

Unilateral statement by France

Re: Article 15.4 and 15.5 – “restrictions on codeshare arrangements between Community air carriers and carriers of third countries”

The provisions of existing bilateral agreements between Member States and third countries governing code share arrangements between air carriers shall continue to apply as long as this does not create any discrimination between Community carriers. Only those provisions of existing bilateral agreements between the Member States which concern code sharing shall come to an end under this draft text.

In the absence of a specific mandate being given to the European Commission, negotiations concerning existing provisions of air transport agreements with third countries which relate to code sharing shall remain entirely under the competence of the Member States.

This draft Regulation in no way modifies the existing division of competences between the Member States and the European Community as regards external relations.

Unilateral statement of the Portuguese Republic

Re: Article 22 - “pricing freedom”

Further to Article 22, “reciprocity” on the free establishment of air fares and rates for intra-Community air services on a specified route for a third country airline shall be taken as meaning that an airline, designated by one of the Member States concerned, is authorised by that third country to freely set fares and rates on specified routes involving that third country, and exercises equivalent traffic rights.

Unilateral statement by Austria

Re: Article 24 – “price information and non-discrimination”

Austria takes it that the proposed wording in Article 24 (in particular the word "foreseeable") can be broadly construed, so as to be consistent with the relevant Austrian legal situation regarding indication of prices.