



**COUNCIL OF
THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject : Common position adopted by the Council on 18 April 2008 with a view to the adoption of a Regulation of the European Parliament and of the Council on common rules for the operation of air services in the Community (Recast)

STATEMENT OF THE COUNCIL'S REASONS

I. Introduction

The Commission's proposal was adopted in July 2006. It aims to consolidate and rationalise the content of current Regulations in force on the licensing of carriers, the freedom to operate air services in the Community and the pricing of such air services. At the same time, the proposal introduces stricter requirements on the financial strength of air carriers and the practice of wet leasing of aircraft (the operation of an air service with an aircraft and crew belonging to a different company). In addition, the rules for public service obligations for air routes are clarified, inconsistencies between the internal aviation market and services to third countries are removed and the rules on traffic distribution among airports serving the same city or conurbation are simplified. Lastly the proposal strengthens price transparency with respect to air fares and rates offered to passengers and cargo customers.

II. Analysis of the Common Position

The Council was able to agree with most of the main elements of the Commission proposal. On certain important points, however, the Council decided to modify the text. In general this was done so as to ensure complete clarity as to the responsibilities of Member States' licensing authorities, the respective competencies of the Community and of the Member States vis-à-vis relations with third countries and also to ensure that an appropriate balance was maintained between oversight of carriers and avoiding the imposition of overly-burdensome requirements. In this context, due account was taken of the impact study carried out by the Commission.

During the Council's discussions the following main modifications to the Commission proposal were agreed upon.

The Council made some important changes to the definitions in article 2 and article 3 to make it entirely clear that the authority of the Member State which is responsible for the safety oversight of the operator is also responsible for issuing its operating licence. Mindful that the proposal forms part of the Community's efforts to simplify legislation, the Council also considered that it was possible to improve the balance between the need to ensure close monitoring of the financial health of airlines and the need not to over-burden operators with administrative requirements which would not improve consumer protection. In this connection some changes were also made to allow operators to wet lease aircraft. Whilst recognising that operators in some cases have legitimate operational reasons for wet-leasing, the text of the common position lays down strict conditions applicable to the wet leasing of non-Community aircraft (aircraft whose safety oversight is not subject to Community standards).

Regarding the international dimension of the Community aviation market, the Council removed certain paragraphs of article 15 which were not, in its view, consistent with the respective competencies of Member States and the Community. Also in this connection the Council's text clarifies that Member States retain the right to impose restrictions on codeshare arrangements between Community and non-Community carriers if the country of the foreign carrier restricts the commercial opportunities available to Community carriers.

The Council simplified some of the rules and procedures relating to the imposition of public service obligations under article 16 and 17 and made other changes to ensure that they are consistent with the aims and objectives underlying the use of public service obligations.

A new article is introduced in the common position allowing Member States to impose restrictions on traffic rights where this is dictated by serious environmental problems. This aligns the new text with the possibilities provided under the current Regulations and incorporates a safeguard to ensure that such measures are non-discriminatory and fully justified.

With regard to the rules on the distribution of traffic within airport systems, the Council has incorporated a text which reinforces the principle that airports within such systems are served by adequate transport infrastructure, in the interests of passengers.

Lastly, the Council broadened the scope of the rules on pricing transparency to include all flights departing from Community airports (regardless of destination). Under the Council's text all tickets **prices** for such flights will need to be published inclusive of **the air fare or rate**, fees, taxes and charges. .

With respect to the amendments proposed by the European Parliament, the Council was able to accept in full the following amendments: 3, 5, 7, 9, 14, 19, 21, 22, 27, 30, 34, 37, 38, 39, 42, 44, 51, 52, 53 and 56. It is noted that amendments 42 and 56, covering traffic distribution rules and compliance with social legislation respectively, were the subject of lengthy and difficult negotiations in the Council. They were agreed as part of compromise with the Parliament which the Council hopes will form the basis of an overall agreement at second reading.

Amendments 1, 6, 10, 33, 41, 45, 46, 48 and 49 were accepted in principle (but incorporated elsewhere in the text) or were accepted with some redrafting.

However, the Council was unable to accept a number of other amendments. A number of these were rejected as they served to broaden the scope of the Regulation to an extent which the Council deems unreasonable (amendments 2, 15, 17 and 50). A further set of amendments were rejected because they would impose an unfair burden on operators or would detract from the fairness of the licensing regime (4, 16, 25 and 28).

Certain amendments were rejected because they were redundant due to changes made by the Council to the Commission proposal (12 and 43). A further set of amendments were rejected because in the Council's view they detract from the clarity of the text or they contained technical errors (8, 11, 13, 18, 23, 24, 26, 29, 31, 32 and 47). Although amendment 20 was rejected, it was taken up elsewhere in the Council's text. Amendment 36 was rejected because it would prejudice Member States' competencies vis-à-vis code-share arrangements with airlines of third countries. Lastly, concerning amendments 35 and 40, these were rejected because they covered the same issue as other amendments which were the subject of compromise texts included in the common position to which the Council hopes the Parliament will be able to agree at second reading.

III. Conclusion

The Council submits that the text of its Common Position is appropriate and balanced. The Council notes the extensive contacts which have already taken place with the Parliament and trusts that these may soon bear fruit in the shape of early adoption of this legislation.
