

Common rules for the operation of air services in the Community. Recast

2006/0130(COD) - 18/07/2006 - Legislative proposal

PURPOSE : to establish common rules for the operation of air transport services in the Community.

PROPOSED ACT : Regulation of the European Parliament and of the Council.

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

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

More specifically, the proposal aims to :

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

The proposal requires Member States to reinforce the supervision of the operating licences and to suspend or revoke it when the requirements of the regulation are no longer met. In order to avoid inaction of a Member State , the proposal confers the right to the Commission to revoke the operating licence. The proposal has been drafted such as to take allow for the possibility of a future extension of the competencies of the European Aviation Safety Agency (EASA) for safety oversight and/or licensing such as to ensure the most efficient and consistent supervision of the air carriers;

2.strengthen the requirements for the leasing of aircraft : wet-leasing of aircraft from third countries provides EU airlines with important flexibility which thereby enhances the economic efficiency of the EU airline industry to the benefit of consumers. However, the application of the present provisions of regulation 2407/92/EEC raise social and safety concerns. Rules and practice with regard to leasing (especially wet-leasing i.e. leasing of aircraft with crew) differ between Member States. The safety assessment of leased aircraft from third countries is not pursued with the same rigour in all Member States, creating concerns about safety levels. The sometimes regular recourse to wet-leasing from third countries spurs concern about potentially adverse social consequences. The proposal introduces stricter requirements in order to minimize the risk of adverse social consequences and to enhance safety. The proposal emphasizes that, in order to agree with leasing agreements, the competent licensing authority must confirm that safety standards equivalent to the Community safety requirements are met. Concerning

the leasing of aircraft registered in third countries, they will only be allowed in exceptional circumstances for a maximum duration of six months and renewable only once in a second non-consecutive period of up to six months;

3. clarify the rules applicable to public service obligations (PSO) : the rules applicable to public service obligations have been revised in order to lighten the administrative burden, to avoid excessive recourse to PSO and to attract more competitors in the tender procedures. The publication obligations have been modified by limiting the publication in the Official Journal of the European Union to a shortened notice. To avoid excessive recourse to PSO, the Commission may require in individual cases the production of an economic report explaining the context of the PSO and the assessment of their adequacy should be performed with particular care when they are intended to be imposed on routes that are already been served by rail services with a travel time of less than three hours. The tender procedures have been modified by extending the maximum concession period from three to four years (and five years in the case of ultra-peripheral regions). The tender procedure for the renewal of a concession must be launched at least six months in advance in order to allow a careful assessment of the continued necessity of the restricted access to the route.

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

4.remove inconsistencies between the internal aviation market and services to third countries : taking account of the opinions expressed during the consultation process, the proposal addresses relations with third countries only insofar as there is a direct link with provisions contained in the third package. To ensure coherence between the internal market and its external aspects, including those of the Single European Sky, access by airlines of third countries to the intra-Community market should be managed in a coherent manner through negotiations at Community level. Therefore, the European Communities will be responsible for negotiating intra-Community traffic rights with third countries. Remaining restrictions from existing bilateral agreements between Member States will be lifted, ensuring non-discrimination in respect of code sharing and pricing by Community air carriers on routes to third countries involving points in Member States other than their own;

5. clarify the rules applicable to traffic distribution between airports : the present two-step procedure - first establishment of an airport system and then definition of the traffic distribution rules - is replaced by a one-step procedure where the concept of an "airport system" is abandoned: Member States may introduce traffic distribution rules on airports serving the same city or conurbation, but the prior approval of the Commission is required (after consultation of the appropriate committee). It adds that the airports in question should be served by an adequate transport infrastructure and the airports and the city or conurbation they shall serve should be linked by frequent, reliable and efficient public transport services. The proposal states that the traffic distribution rules shall respect the principles of proportionality and transparency, and shall be based on objective criteria. This rule confirms that traffic distribution rules may not be abused in order to discriminate between air carriers;

6. promote price transparency for passengers and fair price behaviour : the publication of fares that exclude taxes, charges and even fuel surcharges has become a widespread practice that hampers price

transparency. Insufficient price transparency leads to distortions of competition and therefore consumers face on average higher fares. The Commission also still observes cases of discrimination on the basis of the place of residence of the passenger. In the proposal, air fares have to include all applicable taxes, charges and fees and air carriers shall provide the general public with comprehensive information on their air fares and rates and the conditions attached. Air fares shall be set without discrimination on the basis of place of residence or the nationality of the passenger within the Community. Furthermore, for the access to a carrier's air fares, there may be no discrimination on the basis of the place of establishment of the travel agent.

The experience with the application of the third package on air transport liberalisation has shown that there has not been any market failure that would justify maintaining in force specific provisions regulating air fares such as the safeguard measures provided in article 6 of regulation 2409/92/EEC. In this context, and in the light of the general competition rules, these sector-specific measures are removed from the regulation.