

Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance)

REGULATION (EC) No 1008/2008 OF THE  
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 September 2008

on common rules for the operation of air services in the Community (Recast)

(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 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

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 carriers<sup>(4)</sup>, (EEC) No 2408/92 of 23 July 1992 on access of Community air carriers to intra-Community air routes<sup>(5)</sup>, and (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services<sup>(6)</sup>. In the interests of clarity, these Regulations should be recast and consolidated into one single Regulation.
- (2) 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 is required.
- (3) Recognising the potential link between the financial health of an air carrier and safety, more stringent monitoring of the financial situation of air carriers should be established.
- (4) Given the growing importance of air carriers with operational bases in several Member States and the need to ensure the efficient supervision of these air carriers, the same Member State should be responsible for the oversight of the air operator certificate and of the operating licence.
- (5) To ensure consistent monitoring of the compliance with the requirements of the operating licences of all Community air carriers, licensing authorities should carry out 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.

- (6) 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 such cases, the competent licensing authority should revoke or suspend the operating licence.
- (7) According to Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators<sup>(7)</sup> 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 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 a lack of adequate aircraft on the Community market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of Community and national legislation.
- (9) 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 an intermediate stop in another Member State (sixth freedom flights) should be lifted.
- (11) To take into account the special characteristics and constraints of the outermost 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.
- (12) The conditions under which public service obligations may be imposed should be defined clearly in an unambiguous 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.
- (13) The rules in force with regard to traffic distribution between airports serving the same city or conurbation should be clarified and simplified.
- (14) 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.

- (15) Customers should have access to all air fares and air 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.
- (16) Customers should be able to compare effectively the prices for air services of different airlines. Therefore the final price to be paid by the customer for air services originating in the Community should at all times be indicated, inclusive of all taxes, charges and fees. Community air carriers are also encouraged to indicate the final price for their air services from third countries to the Community.
- (17) 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 Commission<sup>(8)</sup>.
- (18) Since the objective of this Regulation, namely more homogeneous application of 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 that objective.
- (19) 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 full compliance with it will be deemed to constitute compliance with the 1987 declaration.
- (20) It is therefore necessary to repeal Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Subject matter**

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.

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.

## Article 2

### Definitions

For the purposes of this Regulation:

1. 'operating licence' means an authorisation granted by the competent licensing authority to an undertaking, permitting it to provide air services as stated in the operating licence;
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;
3. 'undertaking' means any natural or legal person, whether profit-making or not, or any official body whether having its own legal personality or not;
4. 'air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
5. 'flight' means a departure from a specified airport towards a specified destination airport;
6. 'local flight' means a flight not involving carriage of passengers, mail and/or cargo between different airports or other authorised landing points;
7. 'airport' means any area in a Member State especially adapted for air services;
8. 'air operator certificate (AOC)' means a certificate delivered to an undertaking confirming 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;
9. '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;
10. 'air carrier' means an undertaking with a valid operating licence or equivalent;
11. 'Community air carrier' means an air carrier with a valid operating licence granted by a competent licensing authority in accordance with Chapter II;
12. '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;
13. 'intra-Community air service' means an air service operated within the Community;
14. 'traffic right' means the right to operate an air service between two Community airports;

15. '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;
16. '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;
17. 'capacity' means the number of seats or the payload offered to the general public on a scheduled air service over a given period;
18. 'air fares' means the prices expressed in euro or in local currency to be paid to air carriers or their agents or other ticket sellers for the carriage of passengers on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
19. 'air rates' means the prices expressed in 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;
20. 'Member State(s) concerned' means the Member State(s) between or within which an air service is operated;
21. '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;
22. '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;
23. '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;
24. 'dry lease agreement' means an agreement between undertakings pursuant to which the aircraft is operated under the AOC of the lessee;
25. 'wet lease agreement' means an agreement between air carriers pursuant to which the aircraft is operated under the AOC of the lessor;
26. '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.

## CHAPTER II

### OPERATING LICENCE

#### *Article 3*

#### **Operating licence**

1 No undertaking established in the Community shall be permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire unless it has been granted the appropriate operating licence.

An undertaking meeting the requirements of this Chapter shall be entitled to receive an operating licence.

2 The competent licensing authority shall not grant operating licences or maintain them in force where any of the requirements of this Chapter are not complied with.

3 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.

#### *Article 4*

#### **Conditions for granting an operating licence**

An undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that:

- (a) its principal place of business is located in that Member State;
- (b) it holds a valid 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 air carrier;
- (c) it has one or more aircraft at its disposal through ownership or a 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 % of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for 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) No 785/2004; and

- (i) it complies with the provisions on good repute as specified in Article 7.

### *Article 5*

#### **Financial conditions for granting an operating licence**

1 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 by operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.

2 For the purposes of the assessment referred to in paragraph 1, each applicant shall submit a business plan for, at least, the first 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 1 of Annex I.

3 Paragraphs 1 and 2 shall not apply to an undertaking applying for an operating licence intended to cover operations with aircraft of less than 10 tonnes maximum take-off mass (MTOM) and/or less than 20 seats. Such undertakings shall demonstrate that their net capital is at least EUR 100 000 or provide, when required by the competent licensing authority, all relevant information for the purposes of the assessment referred to in paragraph 1, in particular the data referred to in point 1 of Annex I.

The competent licensing authority may nevertheless apply paragraphs 1 and 2 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 EUR 3 million per year.

### *Article 6*

#### **Air operator certificate**

1 The granting and validity of an operating licence shall at any time 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.

### *Article 7*

#### **Proof of good repute**

1 Where, 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, the competent licensing authority shall accept as sufficient evidence in respect of nationals of Member States the production of documents issued by the competent authorities in the Member State of origin or the Member State where the person has his/her permanent residence showing that those requirements are met.

2 Where the Member State of origin or the Member State where the person has his/her permanent residence does not issue the documents referred to in 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 where the person has his/her permanent residence. Such authority, notary or qualified professional body shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

3 The 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.

### *Article 8*

#### **Validity of an operating licence**

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

A Community air carrier shall at all times be able on request to demonstrate to the competent licensing authority that it meets all the requirements of this Chapter.

2 The competent licensing authority shall closely monitor compliance with the requirements of this Chapter. It shall in any case review compliance with these requirements in the following cases:

- a two years after a new operating licence has been granted;
- b when a potential problem has been suspected; or
- c at the request of the Commission.

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

3 The operating licence shall be resubmitted for approval when a Community air carrier:

- a has not started operations within six months of the granting of an operating licence;
- b has ceased its operations for more than six months; or
- c which has been licensed on the basis of the first subparagraph of Article 5(3) 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.

4 A Community air carrier shall provide to 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.

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.

5 A Community air carrier shall notify the competent licensing authority:

- a in advance 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;
- b in advance of any intended mergers or acquisitions; and
- c within 14 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.

6 If the competent licensing authority deems the changes notified under paragraph 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 data referred to in point 2 of Annex I, in addition to the information to be provided under paragraph 4.

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.

7 In relation to Community air carriers licensed by it 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 a Community air carrier and, in particular, in the case of a merger or takeover.

8 Paragraphs 4, 5 and 6 shall not apply to Community air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOM 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 EUR 100 000 or to provide when required by the competent licensing authority the information relevant for the purposes of the assessment referred to in Article 9(2).

The competent licensing authority may nevertheless apply paragraphs 4, 5 and 6 to Community air carriers licensed by it that operate scheduled air services or whose turnover exceeds EUR 3 million per year.

### *Article 9*

#### **Suspension and revocation of an operating licence**

1 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. 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.

2 Whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened 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.

4 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 false information on an important point.

5 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.

6 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.

#### *Article 10*

### **Decisions on operating licences**

1 The 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. A refusal shall indicate the reasons therefor.

2 Procedures for granting, suspending and revoking operating licences shall be made public by the competent licensing authorities, which shall inform the Commission thereof.

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

#### *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.

#### *Article 12*

### **Registration**

1 Without prejudice to Article 13(3), 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.

2 In accordance with paragraph 1, the competent authority shall, subject to applicable laws and regulations, 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.

### *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 aircraft registered within the Community except where this would lead to endangering safety. The Commission shall 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.

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 demonstrates 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 a further period of up to seven months;
  - (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.

4 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.

#### Article 14

### 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.

## CHAPTER III

### ACCESS TO ROUTES

#### Article 15

### Provision of intra-Community air services

1 Community air carriers shall be entitled 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.

4 When operating intra-Community air services, a Community air carrier shall be permitted to combine air services 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.

#### *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 minimum provision of scheduled air services satisfying fixed standards of continuity, regularity, pricing or minimum capacity, which air carriers would not assume if they were solely considering their commercial interest.

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

2 In instances where other modes of transport cannot ensure an 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 State(s) 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.

5 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.

6 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.

7 When a public service obligation has been imposed in accordance with paragraphs 1 and 2 the 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.

8 When a public service obligation has been imposed in accordance with paragraphs 1 and 2, any other Community air carrier 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.

9 Notwithstanding paragraph 8, 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, 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 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 outermost region, referred to in Article 299(2) of the Treaty.

10 The right to operate the services referred to in paragraph 9 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.

11 A public service obligation shall be deemed to have expired if no scheduled air service has been operated during a period of 12 months on the route subject to such obligation.

12 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, 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 law.

### *Article 17*

#### **Public tender procedure for public service obligation**

1 The public tender required in Article 16(10) shall be conducted according to the procedure set out in paragraphs 2 to 10 of this Article.

2 The Member State concerned shall communicate the entire text of the invitation to tender to the Commission except where, in accordance with Article 16(5), 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 penalties 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(9), 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.

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.

8 The Member State concerned may compensate an air carrier, which has been selected under paragraph 7, for adhering to the standards required by a public service obligation imposed under Article 16. Such compensation 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.

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).

### *Article 18*

#### **Examination of public service obligations**

1 Member States shall take all necessary measures to ensure that any decision taken under 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.

2 At the request of a Member State which considers that the development of a route is being unduly restricted by the terms of Articles 16 and 17, or on its own initiative, the Commission shall carry out an investigation and, within 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 Articles 16 and 17 shall continue to apply in respect of the route concerned.

## 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.

2 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 airports 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 90 minutes including, where necessary, on a cross-border basis;
- c the airports are linked to one another and to the city or conurbation they 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 concerned shall respect the principles of proportionality and transparency, and shall be based on objective criteria.

3 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 of this Article and, within six months of receipt of the information from the Member State, 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.

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 on 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 20

### **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.

#### *Article 21*

### **Emergency measures**

1 A Member State may refuse, limit or impose conditions on the exercise of traffic rights to deal with sudden problems of short duration resulting from unforeseeable and unavoidable circumstances. Such action 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 or is otherwise contrary to Community law.

## CHAPTER IV

### **PROVISIONS ON PRICING**

#### *Article 22*

### **Pricing freedom**

1 Without prejudice to Article 16(1), Community air carriers and, on the basis of reciprocity, air carriers of third countries shall freely set air fares and air 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 carriers 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.

### Article 23

#### **Information and non-discrimination**

1 Air fares and air rates available to the general public shall include the applicable conditions when 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. The final price to be paid shall at all times be indicated and shall include the applicable air fare or air 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 air 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 air 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 shall be on an 'opt-in' basis.

2 Without prejudice to Article 16(1), access to air fares and air 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 24

#### **Penalties**

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

## CHAPTER V

### **FINAL PROVISIONS**

### Article 25

#### **Committee**

1 The Commission shall be assisted by a committee.

2 Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

## Article 26

### Cooperation and right to obtain information

1 Member States and the Commission shall cooperate in applying and in monitoring the application of this Regulation.

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

3 Member States shall, according to their national legislation, take the necessary measures to ensure appropriate confidentiality of the information received by them pursuant to this Regulation.

## Article 27

### Repeal

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

## Article 28

### Entry into force

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

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

Done at Strasbourg, 24 September 2008.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

J.-P. JOUYET

## ANNEX I

## INFORMATION TO BE PROVIDED PURSUANT TO 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 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 an application to the 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 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 relevant 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.

## ANNEX II

CORRELATION TABLE  
(Referred to in Article 27)

<b>Regulation (EEC) No 2407/92</b>	<b>This Regulation</b>
Article 1(1)	Article 1
Article 1(2)	Article 3(3)
Article 2	Article 2
Article 3(1)	Article 3(2)
Article 3(2)	the second subparagraph of Article 3(1)
Article 3(3)	the first subparagraph of Article 3(1)
Article 4(1)	Article 4
Article 4(2)	Article 4(f)
Article 4(3)	—
Article 4(4)	Article 4(f)
Article 4(5)	the second subparagraph of Article 8(1)
Article 5(1)	Article 5(1)
Article 5(2)	Article 5(2)
Article 5(3)	Article 8(5)
Article 5(4)	Article 8(6)
Article 5(5)	Article 9(1)
Article 5(6)	Article 8(4)
Article 5(7)	Article 5(3) and Article 8(8)
Article 6	Article 7

Article 7	Article 11
Article 8(1)	Article 4(c)
Article 8(2)	Article 12(1)
Article 8(3)	Article 13(2) and (3)
Article 8(4)	Article 12(2)
Article 9	Article 6
Article 10(1)	Article 13(2) and (3)
Article 10(2)	Article 13(2) and (3)
Article 11(1)	Article 8(1)
Article 11(2)	Article 8(3)
Article 11(3)	Article 8(7)
Article 12	Articles 9(2) to (6)
Article 13(1)	Article 10(2)
Article 13(2)	Article 10(1)
Article 13(3)	—
Article 13(4)	Article 10(3)
Article 14	—
Article 15	—
Article 16	—
Article 17	—
Article 18(1)	Article 26(1)
Article 18(2)	Article 26(3)
Article 19	—
ANNEX	ANNEX I
<b>Regulation (EEC) No 2408/92</b>	<b>This Regulation</b>
Article 1(1)	Article 1
Article 1(2)	Article 1(2)
Article 1(3)	—
Article 1(4)	—
Article 2	Article 2
Article 3(1)	Article 15(1) and (2)
Article 3(2)	—
Article 3(3)	—
Article 3(4)	—

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Article 4(1)(a)	Article 16(1)
Article 4(1)(b)	Article 16(3)
Article 4(1)(c)	Article 16(2)
Article 4(1)(d)	Article 16(9)
—	Article 17(1)
—	Article 17(2)
—	Article 17(4)
—	Article 17(5)
—	Article 17(6)
Article 4(1)(e)	Article 17(3)
Article 4(1)(f)	Article 17(7)
Article 4(1)(g)	—
Article 4(1)(h)	Article 17(8)
—	Article 17(9)
—	Article 17(10)
Article 4(1)(i)	Article 18(1)
Article 4(1)(j)	Article 16(7)
Article 4(1)(k)	—
Article 4(2)	—
Article 4(3)	Article 18(2)
Article 4(4)	—
Article 5	—
Article 6(1) and (2)	—
Article 7	Article 15(4) and (5)
Article 8(1)	Article 19(2)
Article 8(2)	Article 19(1)
Article 8(3)	Article 19(3)
Article 8(4)	—
Article 8(5)	—
Article 9(1)	Article 20(1)
Article 9(2)	Article 20(1)
Article 9(3)	Article 20(2)
Article 9(4)	Article 20(3)
Article 9(5)	Article 22(1)

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Article 9(6)	Article 22(2)
Article 9(7)	—
Article 9(8)	—
Article 10	—
Article 11	Article 25
Article 12(1)	Article 26(2)
Article 12(2)	—
Article 13	—
Article 14(1)	Article 26(1)
Article 14(2)	Article 26(3)
Article 15	—
Article 16	—
ANNEX I	—
ANNEX II	—
ANNEX III	—
—	ANNEX II
<b>Regulation (EEC) No 2409/92</b>	<b>This Regulation</b>
Article 1(1)	Article 1
Article 1(2)	Article 21(1)
Article 1(3)	—
Article 2	Article 2
Article 3	—
Article 4	Article 23
Article 5(1)	Article 22
Article 5(2)	—
Article 5(3)	—
Article 5(4)	—
Article 6	—
Article 7	—
Article 8	—
Article 9	—
Article 10(1)	Article 26(1)
Article 10(2)	Article 26(3)
Article 11	—

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Article 12	—
—	Article 27
—	Article 28

- (1) [OJ C 175, 27.7.2007, p. 85.](#)
- (2) [OJ C 305, 15.12.2007, p. 11.](#)
- (3) Opinion of European Parliament of 11 July 2007 ([OJ C 175 E, 10.7.2008, p. 371](#)), Council Common Position of 18 April 2008 ([OJ C 129 E, 27.5.2008, p. 1](#)) and Position of the European Parliament of 9 July 2008 (not yet published in the Official Journal).
- (4) [OJ L 240, 24.8.1992, p. 1.](#)
- (5) [OJ L 240, 24.8.1992, p. 8.](#)
- (6) [OJ L 240, 24.8.1992, p. 15.](#)
- (7) [OJ L 138, 30.4.2004, p. 1.](#)
- (8) [OJ L 184, 17.7.1999, p. 23.](#)