

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)

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

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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.

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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.

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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.

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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.

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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.

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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.

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