

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports.

(Official Journal L 272, 25/10/1996 p. 0036 – 0045)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 189c of the Treaty³,

Whereas the Community has gradually introduced a common air transport policy with the aim of completing the internal market in accordance with Article 7a of the Treaty as a lasting contribution to promoting economic and social progress;

Whereas the objective of Article 59 of the Treaty is to eliminate the restrictions on freedom to provide services in the Community; whereas, in accordance with Article 61 of the Treaty, that objective must be achieved within the framework of the common transport policy;

Whereas through Council Regulations (EEC) No 2407/92 ⁴, (EEC) No 2408/92 ⁵ and (EEC) No 2409/92 ⁶ that objective has been attained with regard to air transport services as such;

Whereas groundhandling services are essential to the proper functioning of air transport; whereas they make an essential contribution to the efficient use of air transport infrastructure;

Whereas the opening-up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users;

Whereas in the light of the principle of subsidiarity it is essential that access to the groundhandling market should take place within a Community framework, while allowing Member States the possibility of taking into consideration the specific nature of the sector;

¹ OJ No C 301, 13. 11. 1995, p. 28, OJ No C 56, 6. 3. 1995, p. 28

² OJ No C 301, 13. 11. 1995, p. 28, OJ No C 56, 6. 3. 1995, p. 28

³ OJ No L 240, 24. 8. 1992, p. 1, OJ No L 240, 24. 8. 1992, p. 1

⁴ OJ No L 240, 24. 8. 1992, p. 1, OJ No L 240, 24. 8. 1992, p. 1

⁵ OJ No L 240, 24. 8. 1992, p. 15, OJ No L 240, 24. 8. 1992, p. 15

⁶ OJ No L 240, 24. 8. 1992, p. 15, OJ No L 240, 24. 8. 1992, p. 15

Whereas in its communication of June 1994 entitled 'The way forward for civil aviation in Europe' the Commission indicated its intention of taking an initiative before the end of 1994 in order to achieve access to the groundhandling market at Community airports; whereas the Council, in its resolution of 24 October 1994 on the situation in European civil aviation ⁷, confirmed the need to take account of the imperatives linked to the situation of airports when opening up the market;

Whereas, in its resolution of 14 February 1995 on European civil aviation ⁸, the European Parliament repeated its concern that account should be taken of the impact of access to the groundhandling market on employment and safety conditions at Community airports;

Whereas free access to the groundhandling market is consistent with the efficient operation of Community airports;

Whereas free access to the groundhandling market must be introduced gradually and be adapted to the requirements of the sector;

Whereas for certain categories of groundhandling services access to the market and self-handling may come up against safety, security, capacity and available-space constraints; whereas it is therefore necessary to be able to limit the number of authorized suppliers of such categories of groundhandling services; whereas it should also be possible to limit self-handling; whereas, in that case, the criteria for limitation must be relevant, objective, transparent and non-discriminatory;

Whereas if the number of suppliers of groundhandling services is limited effective competition will require that at least one of the suppliers should ultimately be independent of both the managing body of the airport and the dominant carrier;

Whereas if airports are to function properly they must be able to reserve for themselves the management of certain infrastructures which for technical reasons as well as for reasons of profitability or environmental impact are difficult to divide or duplicate; whereas the centralized management of such infrastructures may not, however, constitute an obstacle to their use by suppliers of groundhandling services or by self-handling airport users;

Whereas in certain cases these constraints can be such that they may justify restrictions on market access or on self-handling to the extent that these restrictions are relevant, objective, transparent and non-discriminatory;

Whereas the purpose of such exemptions must be to enable airport authorities to overcome or at least reduce these constraints; whereas these exemptions must be approved by the Commission, assisted by an advisory committee, and must be granted for a specific period;

Whereas, if effective and fair competition is to be maintained where the number of suppliers of ground-handling services is limited, the latter need to be chosen

⁷ OJ No C 309, 5. 11. 1994, p. 2, OJ No C 309, 5. 11. 1994, p. 2

⁸ OJ No C 56, 6. 3. 1995, p. 28, OJ No C 56, 6. 3. 1995, p. 28

according to a transparent and impartial procedure; whereas airport users should be consulted when it comes to selecting suppliers of ground-handling services, since they have a major interest in the quality and price of the ground-handling services which they require;

Whereas it is therefore necessary to arrange for the representation of airport users and their consultation when authorized suppliers of ground-handling services are selected, by setting up a committee composed of their representatives;

Whereas it is possible in certain circumstances and under specific conditions, in the context of selecting suppliers of ground-handling services at an airport, to extend the public service obligation to other airports in the same geographical region of the Member State concerned;

Whereas the managing body of the airport may also supply ground-handling services and, through its decisions, may exercise considerable influence on competition between suppliers of ground-handling services; whereas it is therefore essential, in order to maintain fair competition, that airports be required to keep separate accounts for their infrastructure management and regulatory activities on the one hand and for the supply of ground-handling services on the other;

Whereas an airport may not subsidize its ground-handling activities from the revenue it derives from its role as an airport authority;

Whereas the same transparency requirements must apply to all suppliers wishing to offer ground-handling services to third parties;

Whereas, in order to enable airports to fulfil their infrastructure management functions and to guarantee safety and security on the airport premises as well as to protect the environment and the social regulations in force, Member States must be able to make the supply of ground-handling services subject to approval; whereas the criteria for granting such approval must be objective, transparent and non-discriminatory;

Whereas, for the same reasons, Member States must retain the power to lay down and enforce the necessary rules for the proper functioning of the airport infrastructure; whereas those rules must relate to the intended objective and must not in practice reduce market access or the freedom to self-handle to a level below that provided for in this Directive; whereas the rules must comply with the principles of objectivity, transparency and non-discrimination;

Whereas Member States must retain the power to ensure an adequate level of social protection for the staff of undertakings providing ground-handling services;

Whereas access to airport installations must be guaranteed to suppliers authorized to provide ground-handling services and to airport users authorized to self-handle, to the extent necessary for them to exercise their rights and to permit fair and genuine competition; whereas it must be possible however, for such access to give rise to the collection of a fee;

Whereas it is justified that the rights recognized by this Directive should only apply to third-country suppliers of ground-handling services and third-country airport users subject to strict reciprocity; whereas where there is no such reciprocity the Member State should be able to suspend these rights with regard to those suppliers and users;

Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

Whereas this Directive does not affect the application of the rules of the Treaty; whereas in particular the Commission will continue to ensure compliance with these rules by exercising, when necessary, all the powers granted to it by Article 90 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1 **Scope**

1. This Directive applies to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic in the following circumstances:
 - (a) The provisions of Article 7 (1) relating to categories of ground-handling services other than those referred to in Article 7 (2) shall apply to any airport regardless of its volume of traffic as from 1 January 1998.
 - (b) The provisions relating to the categories of groundhandling services referred to in Article 7 (2) shall apply as from 1 January 1998 to airports whose annual traffic is not less than 1 million passenger movements or 25 000 tonnes of freight.
 - (c) The provisions relating to the categories of groundhandling services referred to in Article 6 shall apply as from 1 January 1999 to airports:
 - whose annual traffic is not less than 3 million passenger movements or 75 000 tonnes of freight;
 - or - whose traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight during the six-month period prior to 1 April or 1 October of the preceding year.
2. Without prejudice to paragraph 1, the provisions of this Directive shall apply as from 1 January 2001 to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic, whose annual traffic is not less than 2 million passenger movements or 50 000 tonnes of freight.
3. Where an airport reaches one of the freight traffic thresholds referred to in this Article without reaching the corresponding passenger movement threshold, the provisions of this Directive shall not apply to categories of groundhandling services reserved exclusively for passengers.

4. The Commission shall publish, for information, in the Official Journal of the European Communities a list of the airports referred to in this Article. The list shall first be published within three months following the entry into force of this Directive, and thereafter annually. Member States shall, before 1 July of each year, forward to the Commission the data required to compile the list.
5. Application of this Directive 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.
6. Application of this Directive to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

Article 2
Definitions

For the purposes of this Directive:

- (a) '*airport*' means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;
- (b) '*airport system*' means two or more airports grouped together to serve the same city or conurbation, as referred to in Annex II to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes;
- (c) '*managing body of the airport*' means a body which, in conjunction with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport or airport system concerned;
- (d) '*airport user*' means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from, or to the airport in question;
- (e) '*groundhandling*' means the services provided to airport users at airports as described in the Annex;
- (f) '*self-handling*' means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall not be deemed to be third parties where:
 - one holds a majority holding in the other; or
 - a single body has a majority holding in each;
- (g) '*supplier of groundhandling services*' means any natural or legal person supplying third parties with one or more categories of groundhandling services.

Article 3

Managing body of the airport

1. Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of these bodies shall be considered part of the managing body of the airport for the purposes of this Directive.
2. Similarly, where only a single managing body is set up for several airports or airport systems, each of those airports or airport systems shall be considered separately for the purposes of this Directive.
3. If the managing bodies of airports are subject to the supervision or control of a national public authority, that authority shall be obliged, in the context of the legal obligations devolving upon it, to ensure that this Directive is applied.

Article 4

Separation of accounts

1. Where the managing body of an airport, the airport user or the supplier of groundhandling services provide groundhandling services, they must rigorously separate the accounts of their groundhandling activities from the accounts of their other activities, in accordance with current commercial practice.

2. An independent examiner appointed by the Member State must check that this separation of accounts is carried out. The examiner shall also check the absence of financial flows between the activity of the managing body as airport authority and its groundhandling activity.

Article 5

Airport Users' Committee

1. Twelve months at the latest following the entry into force of this Directive, Member States shall ensure that, for each of the airports concerned, a committee of representatives of airport users or organizations representing airport users is set up.
2. All airport users shall have the right to be on this committee, or, if they so wish, to be represented on it by an organization appointed to that effect.

Article 6

Groundhandling for third parties

1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties. Member States shall have the right to require that suppliers of groundhandling services be established within the Community.

2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services:
 - baggage handling,
 - ramp handling,
 - fuel and oil handling,
 - freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.

They may not, however, limit this number to fewer than two for each category of groundhandling service.

- 3) Moreover, as from 1 January 2001 at least one of the authorized suppliers may not be directly or indirectly controlled by:
 - the managing body of the airport,
 - any airport user who has carried more than 25 % of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected,
 - a body controlling or controlled directly or indirectly by that managing body or any such user.

However at 1 July 2000, a Member State may request that the obligation in this paragraph be deferred until 31 December 2002.

The Commission, assisted by the Committee referred to in Article 10, shall examine such request and may, having regard to the evolution of the sector and, in particular, the situation at airports comparable in terms of traffic volume and pattern, decide to grant the said request.

- 4) Where pursuant to paragraph 2 they restrict the number of authorized suppliers, Member States may not prevent an airport user, whatever part of the airport is allocated to him, from having, in respect of each category of groundhandling

service subject to restriction, an effective choice between at least two suppliers of groundhandling services, under the conditions laid down in paragraphs 2 and 3.

Article 7 *Self-handling*

1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure the freedom to self-handle.
2. However, for the following categories of groundhandling services:
 - baggage handling,
 - ramp handling,
 - fuel and oil handling,
 - freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft, Member States may reserve the right to self-handle to no fewer than two airport users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

Article 8 *Centralized infrastructures*

1. Notwithstanding the application of Articles 6 and 7, Member States may reserve for the managing body of the airport or for another body the management of the centralized infrastructures used for the supply of groundhandling services whose complexity, cost or environmental impact does not allow of division or duplication, such as baggage sorting, de-icing, water purification and fuel-distribution systems. They may make it compulsory for suppliers of groundhandling services and self-handling airport users to use these infrastructures.
2. Member States shall ensure that the management of these infrastructures is transparent, objective and non-discriminatory and, in particular, that it does not hinder the access of suppliers of groundhandling services or self-handling airport users within the limits provided for in this Directive.

Article 9 *Exemptions*

1. Where at an airport, specific constraints of available space or capacity, arising in particular from congestion and area utilization rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Directive, the Member State in question may decide:
 - (a) to limit the number of suppliers for one or more categories of groundhandling services other than those referred to in Article 6 (2) in all or part of the airport; in this case the provisions of Article 6 (2) and (3) shall apply;

- (b) to reserve to a single supplier one or more of the categories of groundhandling services referred to in Article 6 (2);
 - (c) to reserve self-handling to a limited number of airport users for categories of groundhandling services other than those referred to in Article 7 (2), provided that those users are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria;
 - (d) to ban self-handling or to restrict it to a single airport user for the categories of groundhandling services referred to in Article 7 (2).
2. All exemptions decided pursuant to paragraph 1 must:
- (a) specify the category or categories of groundhandling services for which the exemption is granted and the specific constraints of available space or capacity which justify it;
 - (b) be accompanied by a plan of appropriate measures to overcome the constraints.

Moreover, exemptions must not:

- (i) unduly prejudice the aims of this Directive;
 - (ii) give rise to distortions of competition between suppliers of groundhandling services and/or self-handling airport users;
 - (iii) extend further than necessary.
3. Member States shall notify the Commission, at least three months before they enter into force, of any exemptions they grant on the basis of paragraph 1 and of the grounds which justify them. The Commission shall publish a summary of the decisions of which it is notified in the Official Journal of the European Communities and shall invite interested parties to submit comments.
4. The Commission shall examine closely exemption decisions submitted by Member States. To that end the Commission shall make a detailed analysis of the situation and a study of the appropriate measures submitted by the Member State to check that the alleged constraints exist and that it is impossible to open up the market and/or implement self-handling to the degree provided for in this Directive.
5. Further to that examination and after consulting the Member State concerned, the Commission may approve the Member State's decision or oppose it if it deems that the alleged constraints have not been proved to exist or that they are not so severe as to justify the exemption. After consulting the Member State concerned the Commission may also require the Member State to amend the extent of the exemption or restrict it to those parts of an airport or airport system where the alleged constraints have been proved to exist. The Commission's decision shall be taken no later than three months after notification by the Member State and shall be published in the Official Journal of the European Communities.
6. Exemptions granted by Member States pursuant to paragraph 1 may not exceed a duration of three years except for exemptions granted under paragraph 1 (b). Not later than three months before the end of that period the Member State must take a new decision on any request for exemption, which will also be subject to the procedure laid down in this Article. Exemptions under paragraph 1 (b) may not

exceed a duration of two years. However, a Member State may on the basis of the provisions of paragraph 1 request that this period be extended by a single period of two years. The Commission, assisted by the Committee referred to in Article 10, shall decide on such request.

Article 10

Advisory Committee

1. The Commission shall be assisted by an advisory committee made up of representatives of the Member States and chaired by the representative of the Commission.
2. The Committee shall advise the Commission on the application of Article 9.
3. The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Directive.
4. The Committee shall establish its own rules of procedure.

Article 11

Selection of suppliers

1. Member States shall take the necessary measures for the organization of a selection procedure for suppliers authorized to provide groundhandling services at an airport where their number is limited in the cases provided for in Article 6 (2) or Article 9. This procedure must comply with the following principles:
 - (a) In cases where Member States require the establishment of standard conditions or technical specifications to be met by the suppliers of groundhandling services, those conditions or specifications shall be established following consultation with the Airport Users' Committee. The selection criteria laid down in the standard conditions or technical specifications must be relevant, objective, transparent and non-discriminatory. After having notified the Commission, the Member State concerned may include among the standard conditions or technical specifications with which suppliers of groundhandling services must comply a public service obligation in respect of airports serving peripheral or developing regions which are part of its territory, which have no commercial interest but which are of vital importance for the Member State concerned.
 - (b) An invitation to tender must be launched and published in the Official Journal of the European Communities, to which any interested supplier of groundhandling services may reply.
 - (c) Suppliers of groundhandling services shall be chosen:
 - (i) following consultation with the Airport Users' Committee by the managing body of the airport, provided the latter:
 - does not provide similar groundhandling services; and
 - has no direct or indirect control over any undertaking which provides such services; and - has no involvement in any such undertaking;

- (ii) in all other cases, by competent authorities of the Member States which are independent of the managing body of the airport concerned, and which shall first consult the Airport Users' Committee and that managing body.
 - (d) Suppliers of groundhandling services shall be selected for a maximum period of seven years.
 - (e) Where a supplier of groundhandling services ceases his activity before the end of the period for which he was selected, he shall be replaced on the basis of the same procedure.
2. Where the number of suppliers of groundhandling services is limited in accordance with Article 6 (2) or Article 9, the managing body of the airport may itself provide groundhandling services without being subject to the selection procedure laid down in paragraph 1. Similarly, it may, without submitting it to the said procedure, authorize an undertaking to provide groundhandling services at the airport in question:
- if it controls that undertaking directly or indirectly; or
 - if the undertaking controls it directly or indirectly.
3. The managing body of the airport shall inform the Airport Users' Committee of decisions taken under this Article.

Article 12

Island airports

In the context of the selection of suppliers of groundhandling services at an airport as provided for in Article 11, a Member State may extend the obligation of public service to other airports in that Member State provided:

- those airports are located on islands in the same geographical region; and
- such airports each have a traffic volume of no less than 100 000 passenger movements per year; and - such an extension is approved by the Commission with the assistance of the Committee referred to in Article 10.

Article 13

Consultations

Member States shall see to it that a compulsory consultation procedure relating to the application of this Directive is organized between the managing body of the airport, the Airport Users' Committee and the undertakings providing groundhandling services. This consultation shall cover, inter alia, the price of those groundhandling services for which an exemption has been granted pursuant to Article 9 (1) (b) and the organization of the provision of those services. Such consultation shall be organized at least once a year.

Article 14

Approval

1. Member States may make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport. The criteria for such approval must relate to a sound financial situation and sufficient insurance cover, to the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and compliance with the relevant social legislation. The criteria must comply with the following principles:
 - (a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;
 - (b) they must relate to the intended objective;
 - (c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Directive.

These criteria shall be made public and the supplier of groundhandling services or self-handling airport user shall be informed in advance of the procedure for obtaining approval.

2. The approval may be withheld or withdrawn only if the supplier of groundhandling services or self-handling airport user does not meet, for reasons of his own doing, the criteria referred to in paragraph 1. The grounds for withholding or withdrawal must be communicated to the supplier or user concerned and to the managing body of the airport.

Article 15 *Rules of conduct*

A Member State may, where appropriate, on a proposal from the managing body of the airport:

- prohibit a supplier of groundhandling services or an airport user from supplying groundhandling services or self-handling if that supplier or user fails to comply with the rules imposed upon him to ensure the proper functioning of the airport; Those rules must comply with the following principles:
 - (a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;
 - (b) they must relate to the intended objective;
 - (c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Directive;
- in particular require suppliers of groundhandling services at an airport to participate in a fair and non-discriminatory manner in carrying out the public service obligations laid down in national laws or rules, including the obligation to ensure continuous service.

Article 16 *Access to installations*

1. Member States shall take the necessary measures to ensure that suppliers of groundhandling services and airport users wishing to self-handle have access to

airport installations to the extent necessary for them to carry out their activities. If the managing body of the airport or, where appropriate, the public authority or any other body which controls it places conditions upon such access, those conditions must be relevant, objective, transparent and non-discriminatory.

2. The space available for groundhandling at an airport must be divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on the basis of the relevant, objective, transparent and non-discriminatory rules and criteria.
3. Where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

Article 17

Safety and security

The provisions of this Directive in no way affect the rights and obligations of Member States in respect of law and order, safety and security at airports.

Article 18

Social and environmental protection

Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States may take the necessary measures to ensure protection of the rights of workers and respect for the environment.

Article 19

Compliance with national provisions

A supplier of groundhandling services at an airport in a Member State shall be required to comply with the provisions of national law which are compatible with Community law.

Article 20

Reciprocity

1. Without prejudice to the international commitments of the Community, whenever it appears that a third country, with respect to access to the groundhandling or self-handling market:
 - (a) does not, de jure or de facto, grant suppliers of groundhandling services and self-handling airport users from a Member State treatment comparable to that granted by Member States to suppliers of groundhandling services and self-handling airport users from that country; or
 - (b) does not, de jure or de facto, grant suppliers of groundhandling services and self-handling airport users from a Member State national treatment; or

- (c) grants suppliers of groundhandling services and self-handling airport users from other third countries more favourable treatment than suppliers of groundhandling services and self-handling airport users from a Member State; A Member State may wholly or partially suspend the obligations arising from this Directive in respect of suppliers of groundhandling services and airport users from that third country, in accordance with Community law.
2. The Member State concerned shall inform the Commission of any withdrawal or suspension of rights or obligations.

Article 21

Right of appeal

Member States or, where appropriate, managing bodies of airports shall ensure that any party with a legitimate interest has the right to appeal against the decisions or individual measures taken pursuant to Articles 7 (2) and 11 to 16. It must be possible to bring the appeal before a national court or a public authority other than the managing body of the airport concerned and, where appropriate, independent of the public authority controlling it.

Article 22

Information report and revision

Member States shall communicate to the Commission the information required by it to draw up a report on the application of this Directive. The report, accompanied by any proposals for revision of the Directive, shall be drawn up not later than 31 December 2001.

Article 23

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of its publication in the Official Journal of the European Communities. They shall forthwith inform the Commission thereof. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 24

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Communities.

Article 25
Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 15 October 1996.

For the Council The President B. HOWLIN

ANNEX

LIST OF GROUNDHANDLING SERVICES

1. Ground administration and supervision comprise:
 - 1.1. representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;
 - 1.2. load control, messaging and telecommunications;
 - 1.3. handling, storage and administration of unit load devices;
 - 1.4. any other supervision services before, during or after the flight and any other administrative service requested by the airport user.
2. Passenger handling comprises any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.
3. Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.
4. Freight and mail handling comprises:
 - 4.1. for freight: physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;
 - 4.2. for mail: physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.
5. Ramp handling comprises:
 - 5.1. marshalling the aircraft on the ground at arrival and departure (*;;
 - 5.2. assistance to aircraft packing and provision of suitable devices (*;;
 - 5.3. communication between the aircraft and the air-side supplier of services (*;;
 - 5.4. the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal;
 - 5.5. the provision and operation of appropriate units for engine starting;
 - 5.6. the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;
 - 5.7. the transport, loading on to and unloading from the aircraft of food and beverages.
6. Aircraft services comprise:
 - 6.1. the external and internal cleaning of the aircraft, and the toilet and water services;
 - 6.2. the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft;
 - 6.3. the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.
7. Fuel and oil handling comprises:

- 7.1. the organization and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries;
 - 7.2. the replenishing of oil and other fluids.
8. Aircraft maintenance comprises:
 - 8.1. routine services performed before flight;
 - 8.2. non-routine services requested by the airport user;
 - 8.3. the provision and administration of spare parts and suitable equipment;
 - 8.4. the request for or reservation of a suitable parking and/or hangar space.
9. Flight operations and crew administration comprise:
 - 9.1. preparation of the flight at the departure airport or at any other point;
 - 9.2. in-flight assistance, including re-dispatching if needed;
 - 9.3. post-flight activities;
 - 9.4. crew administration.
10. Surface transport comprises:
 - 10.1. the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;
 - 10.2. any special transport requested by the airport user.
11. Catering services comprise:
 - 11.1. liaison with suppliers and administrative management;
 - 11.2. storage of food and beverages and of the equipment needed for their preparation;
 - 11.3. cleaning of this equipment;
 - 11.3. preparation and delivery of equipment as well as of bar and food supplies.

Information from the Commission

List of airports corresponding to the definition of 'International Community Airport' given in article 197 of Commission Regulation (EEC) No 2454

Official Journal C 168 , 16/06/1999 p. 0005 - 0008

BELGIË/BELGIQUE	Antwerpen (Deurne) Brussel - Bruxelles Charleroi (Gosselies) Liège (Bierset) Oostende
DANMARK	Billund Lufthavn Bornholms Lufthavn Esbjerg Lufthavn Københavns Lufthavn, Kastrup Roskilde Lufthavn Århus Lufthavn Aalborg Lufthavn
DEUTSCHLAND	Flughafen Augsburg Flughafen Bayreuth Flughafen Berlin-Schönefeld Flughafen Berlin-Tegel Zentralflughafen Berlin-Tempelhof Flughafen Bremen Flughafen Dortmund Flughafen Dresden Flughafen Düsseldorf Landeplatz Egelsbach (Hessen) Flughafen Erfurt Flughafen Frankfurt Main Flughafen Friedrichshafen Flughafen Hamburg Flughafen Hannover Flughafen Hof Flughafen Karlsruhe Flughafen Kiel Flughafen Köln/Bonn Flughafen Leipzig/Halle Flughafen Mannheim Flughafen Mönchengladbach Flughafen München Flughafen Münster/Osnabrück Flughafen Nürnberg Flughafen Paderborn/Lippstadt Flughafen Rostock Flughafen Saarbrücken Flughafen Stuttgart
GREECE	>ISO_1>Athinon

	<p> Makedonia (Thessaloniki) N. Kazantzakis (Heraklio) I. Kapodistrias (Kerkyra) Diagoras (Rodos) Araxos Mytilini + Limnos Dimokritos (Alexandropoulis) Zakinthos Kalamata Kefalonia Kos Samos Chania M. Alexandros (Kavala) Ioannina Mikonos Preveza Skiathos Santorini Milos Paros Karpathos Chios Naxos N. Aghialos Sitia </p>
ESPAÑA	<p> Alicante Almería Arrecife (Lanzarote) Avilés (Asturias) Barcelona Bilbao Gerona-Costa Brava Granada Ibiza Jerez La Coruña Las Palmas de Gran Canaria Madrid-Barajas Mahón-Menorca Málaga Melilla Murcia-San Javier Palma de Mallorca Puerto de Rosario-Fuerteventura Reus Sabadell San Sebastián Santa Cruz de la Palma Santander </p>

	<p>Santiago Sevilla Tenerife-Norte Tenerife-Sur Valencia Villanubla-Valladolid Vigo Vitoria Zaragoza</p>
FRANCE	<p>Abbeville Agen Ajaccio-Campo dell'oro Albi Amiens Angers Angoulême Annecy Annemasse Auxerre Avignon Bâle-Mulhouse Bastia-Poretta Beauvais-Tillé Bergerac Besançon Béziers Biarritz-Bayonne-Anglet Bordeaux-Mérignac Bourges Brest-Guivapas Caen-Carpiquet Cahors Calais Calvi - Sainte-Catherine Cannes-Mandelieu Carcassonne Castres Cayenne-Rochambeau Chambéry Charleville Châteauroux Cherbourg Clermont-Ferrand - Aulnat Colmar Courchevel Deauville Dieppe Dijon Dinard Dôle</p>

Épinal
Figari
Fort-de-France - Le Lamentin
Fréjus
Gap
Granville
Grenoble - Saint-Geoirs
Issy-les-Moulineaux
La Mole
La Rochelle
Lannion
Laval
Le Bourget
Le Castelet
Le Havre
Le Mans
Le Touquet
Lille-Lesquin
Limoges
Lognes
Lorient - Lann-Bihoué
Lyon-Bron
Lyon-Satolas
Marseille-Provence
Meaux
Megève
Metz-Nancy-Lorraine
Montbéliard
Montpellier-Fréjorgues
Morlaix
Nancy-Essey
Nantes-Atlantique
Nevers
Nice-Côte d'Azur
Nîmes-Garons
Orléans-Bricy
Orléans - Saint-Denis-de-l'Hôtel
Orly
Pau-Pyrénées
Périgueux
Perpignan-Rivesaltes
Pointe-à-Pitre - Le Raizet
Poitiers
Pontarlier
Pontoise
Quimper
Reims-Champagne
Rennes - Saint-Jacques
Roanne
Rodez

	<p>Roissy - Charles-de-Gaulle Rouen Saint-Brieuc Saint-Denis - Gillot Saint-Étienne Saint-Nazaire Saint-Yan Strasbourg-Entzheim Tarbes-Ossun-Lourdes Toulouse Blagnac Tours Toussus-le-Noble Troyes Valence Valenciennes Vannes Vesoul Vichy</p>
IRELAND/EIRE	<p>Dublin airport Cork airport Shannon airport</p>
ITALIA	<p>Aosta Albenga Alghero Fertilia Ancona Falconara Bari Palese Bergamo Orio al Serio Biella Bologna Borgo Panigale Bolzano Brindisi Casale Cagliari Elmas Catania Fontanarossa Firenze Peretola Forlì Ridolfi Genova C. Colombo Grosseto Lamezia Terme Marina di Campo Milano Linate Milano Malpensa Napoli Capodichino Olbia Costa Smeralda Padova Palermo Punta Raisi Pantelleria Parma Perugia S. Egidio Pescara Pisa</p>

	Reggio Calabria Rimini Miramare Roma Ciampino Roma Fiumicino Roma Urbe Ronchi dei Legionari Torino Caselle Trapani Birgi Treviso S. Giuseppe Venezia Lido Venezia Tessera Verona Villafranca
LUXEMBOURG	Luxembourg
NEDERLAND	Budel Eelde Eindhoven Gilze-Rijen Rotterdam Schiphol Seppe Soesterberg Hilversum Lelystad Maastricht Midden-Zeeland Teuge Texel Twente
ÖSTERREICH	Flughafen Wien Flughafen Linz Flughafen Salzburg Flughafen Graz Flughafen Klagenfurt Flughafen Innsbruck
PORTUGAL	Aeroporto de Lisboa Aeroporto Francisco Sá Carneiro (Porto) Aeroporto de Faro Aeroporto de Santa Catarina (Madeira) Aeroporto de Porto Santo (Madeira) Aeroporto de Ponta Delgada (Açores) Aeroporto de Santa Maria (Açores) Aeroporto das Lajes (Açores)
SUOMI	Helsinki-Vantaan lentoasema Ivalon lentoasema Joensuu lentoasema Jyväskylän lentoasema Kajaanin lentoasema Kemi-Tornion lentoasema Kruunupyyn lentoasema Kuopion lentoasema

	Lappeenrannan lentoasema Mariehamn flygplats Oulun lentoasema Porin lentoasema Rovaniemen lentoasema Savonlinnan lentoasema Tampere-Pirkkalan lentoasema Turun lentoasema Vaasan lentoasema Varkauden lentoasema
SVERIGE	Arlanda (Stockholm) Arvidsjaur Bromma Falun-Borlänge Göteborg-Säve Halmstad Helsingborg Heliport Jönköping Kalmar Karlstad Kiruna Kristianstad Landvetter (Göteborg) Linköping Luleå-Kallax Malmö Heliport Norrköping Nyköping (Stockholm-Skavsta) Örebro Östersund Ronneby Sturup (Malmö), including: Passenger Terminal in Malmö Sundsvall-Härnösand Umeå Visby Västerås Växjö
UNITED KINGDOM	Aberdeen (Dyce) Belfast (Aldergrove) Biggin Hill Birmingham Blackpool Bournemouth Bristol Cambridge Cardiff-Wales City-Airport-London Coventry East Midlands Airport Edinburgh

	Exeter Gatwick Airport-London Glasgow Heathrow Airport-London Humberside Isle of Man (Ronaldsway) Leeds Bradford Liverpool Luton Lydd Manchester Manston Newcastle Norwich Plymouth (Roborough) Prestwick Shoreham Southampton Southend Stansted Airport-London Sumburgh Teesside
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Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers

Official Journal L 240 , 24/08/1992 p. 0001 - 0007

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission¹ ,

Having regard to the opinion of the European Parliament² ,

Having regard to the opinion of the Economic and Social Committee³ ,

Whereas it is important to establish an air transport policy for the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty;

Whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas the application in the air transport sector of the principle of the freedom to provide services needs to take into account the specific characteristics of that sector;

Whereas in Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States⁴ the Council decided to adopt for implementation not later than 1 July 1992 common rules governing the licensing of air carriers;

Whereas, however, it is necessary to allow Member States a reasonable period, until 1 January 1993, for the application of this Regulation;

Whereas it is important to define non-discriminatory requirements in relation to the location and control of an undertaking applying for a licence;

Whereas in order to ensure dependable and adequate service it is necessary to ensure that an air carrier is at all times operating at sound economic and high safety levels;

Whereas for the protection of users and other parties concerned it is important to ensure that air carriers are sufficiently insured in respect of liability risks;

Whereas within the internal market air carriers should be able to use aircraft owned anywhere in the Community, without prejudice to the responsibilities of the licensing Member State with respect to the technical fitness of the carrier;

¹ OJ No C 258, 4. 10. 1991, p. 2.

² OJ No C 125, 18. 5. 1992, p. 140

³ OJ No C 169, 6. 7. 1992, p. 15

⁴ OJ No L 217, 11. 8. 1990, p. 8

Whereas it should also be possible to lease aircraft registered outside the Community for a short term or in exceptional circumstances, providing safety standards are equivalent to those applicable within the Community;

Whereas procedures for the granting of licences to air carriers should be transparent and non-discriminatory,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation concerns requirements for the granting and maintenance of operating licences by Member States in relation to air carriers established in the Community.
2. The carriage by air of passengers, mail and/or cargo, performed by non-power driven aircraft and/or ultra-light power driven aircraft, as well as local flights not involving carriage between different airports, are not subject to this Regulation. In respect of these operations, national law concerning operating licences, if any, and Community and national law concerning the air operator's certificate (AOC) shall apply.

Article 2

For the purposes of this Regulation :

- (a) '*undertaking*' means any natural person, any legal person, whether profit-making or not, or any official body whether having its own legal personality or not;
- (b) '*air carrier*' means an air transport undertaking with a valid operating licence;
- (c) '*operating licence*' means an authorization granted by the Member State responsible to an undertaking, permitting it to carry out carriage by air of passengers, mail and/or cargo, as stated in the operating licence, for remuneration and/or hire;
- (d) '*air operator's certificate (AOC)*' means a document issued to an undertaking or a group of undertakings by the competent authorities of the Member States which affirms that the operator in question has the professional ability and organization to secure the safe operation of aircraft for the aviation activities specified in the certificate;
- (e) '*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 market development and investments to be carried out, including the financial and economic implications of these activities;

- (f) '*management account*' means a detailed statement of income and costs for the period in question including a breakdown between air-transport-related and other activities as well as between pecuniary and non-pecuniary elements;
- (g) '*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.

Article 3

1. Without prejudice to Article 5 (5), Member States shall not grant operating licences or maintain them in force where the requirements of this Regulation are not complied with.
2. An undertaking meeting the requirements of this Regulation shall be entitled to receive an operating licence. Such licence does not confer in itself any rights of access to specific routes or markets.
3. Without prejudice to Article 1 (2), no undertaking established in the Community shall be permitted within the territory of the Community to carry by air passengers, mail and/or cargo for remuneration and/or hire unless the undertaking has been granted the appropriate operating licence.

Operating licence

Article 4

1. No undertaking shall be granted an operating licence by a Member State unless:
 - (a) its principal place of business and, if any, its registered office are located in that Member State; and
 - (b) its main occupation is air transport in isolation or combined with any other commercial operation of aircraft or repair and maintenance of aircraft.
2. Without prejudice to agreements and conventions to which the Community is a contracting party, the undertaking shall be owned and continue to be owned directly or through majority ownership by Member States and/or nationals of Member States. It shall at all times be effectively controlled by such States or such nationals.
3. (a) Notwithstanding paragraphs 2 and 4, air carriers which have already been recognized in Annex I to Council Regulation (EEC) No 2343/90 and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo

services between Member States⁵(5) shall retain their rights under this and associated Regulations as long as they meet the other obligations in this Regulation and they continue to be controlled directly or indirectly by the same third countries and/or by nationals of the same third country as those exercising such control at the time of adoption of this Regulation. Such control may, however, be transferred to Member States and/or to Member State nationals at any time.

(b) The possibility of buying and selling shares under subparagraph (a) does not cover nationals who have a significant interest in an air carrier of a third country.

1. Any undertaking which directly or indirectly participates in a controlling shareholding in an air carrier shall meet the requirements of paragraph 2.
2. An air carrier shall at all times be able on request to demonstrate to the Member State responsible for the operating licence that it meets the requirements of this Article. The Commission acting at the request of a Member State shall examine compliance with the requirements of this Article and take a decision if necessary.

Article 5

1. An applicant air transport undertaking to which an operating licence is granted for the first time must be able to demonstrate to the reasonable satisfaction of the competent authorities of the licensing Member State that:
 - (a) it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations; and
 - (b) it can meet its fixed and operational costs incurred from operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.
2. For the purpose of paragraph 1, each applicant shall submit a business plan for, at least, the first two 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 part A of the Annex.
3. An air carrier shall notify in advance to its licensing authority plans for: operation of a new scheduled service or a non-scheduled service to a continent or world region not previously served, changes in the type or number of aircraft used or a substantial change in the scale of its activities. It shall also notify in advance any intended mergers or acquisitions and shall notify its licensing authority within fourteen days of any change in the ownership of any single shareholding which represents 10 % or more of the total shareholding of the air carrier or of its parent or ultimate holding company. The submission of a 12 month business plan two

⁵ OJ No L 36, 8. 2. 1991, p. 1

months in advance of the period to which it refers shall constitute sufficient notice under this paragraph for the purpose of changes to current operations and/or circumstances which are included in that business plan.

4. If the licensing authority deems the changes notified under paragraph 3 to have a significant bearing on the finances of the 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 all the relevant information, including the data referred to in part B of the Annex, to assess whether the air carrier can meet its existing and potential obligations during that period of 12 months. The licensing authority shall take a decision on the revised business plan not later than three months after all the necessary information has been submitted to it.
5. Licensing authorities may, at any time and in any event whenever there are clear indications that financial problems exist with an air carrier licensed by them, assess its financial performance and may suspend or revoke the licence if they are no longer satisfied that the air carrier can meet its actual and potential obligations for a 12-month period. Licensing authorities may also grant a temporary licence pending financial reorganization of the air carrier provided safety is not at risk.
6. An air carrier shall provide to its licensing authority every financial year without undue delay the audited accounts relating to the previous financial year. At any time upon request of the licensing authority an air carrier shall provide the information relevant for the purposes of paragraph 5 and, in particular, the data referred to in part C of the Annex. 7. (a) Paragraphs 1, 2, 3, 4 and 6 of this Article shall not apply to air carriers exclusively engaged in operations with aircraft of less than 10 tonnes mto w (maximum take off weight) and/or less than 20 seats. Such air carriers shall at all times be able to demonstrate that their net capital is at least ECU 80 000 or to provide when required by the licensing authority the information relevant for the purposes of paragraph 5. A Member State may nevertheless apply paragraphs 1, 2, 3, 4 and 6 to air carriers licensed by it that operate scheduled services or whose turnover exceeds ECU 3 million per year.
 - (a) The Commission may, after consulting the Member States, increase as appropriate the values referred to in subparagraph
 - (b) if economic developments indicate the necessity of such a decision. Such change shall be published in the Official Journal of the European Communities.
 - (c) Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may in exceptional circumstances take a different decision within a period of one month.

Article 6

1. Where the competent authorities of a Member State require, for the purpose of issuing an operating licence, proof that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt, or suspend or revoke the licence in the

event of serious professional misconduct or a criminal offence, that Member State shall accept as sufficient evidence in respect of nationals of other Member States the production of documents issued by competent authorities in the Member State of origin or the Member State from which the foreign national comes showing that those requirements are met.

Where the competent authorities of the Member State of origin or of the Member State from which the foreign national comes do not issue the documents referred to in the first subparagraph, such documents shall be replaced by a declaration on oath - or, in Member States where there is no provision for declaration on oath, by a solemn declaration - made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State from which the person comes; such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

2. The competent authorities of Member States may require that the documents and certificates referred to in paragraph 1 be presented no more than three months after their date of issue.

Article 7

An air carrier shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties.

Article 8

1. Ownership of aircraft shall not be a condition for granting or maintaining an operating licence but a Member State shall require, in relation to air carriers licensed by it that they have one or more aircraft at their disposal, through ownership or any form of lease agreement.
2. (a) Without prejudice to paragraph 3, aircraft used by an air carrier shall be registered, at the option of the Member State issuing the operating licence, in its national register or within the Community.
(b) If a lease agreement for an aircraft registered within the Community has been deemed acceptable under Article 10, a Member State shall not require the registration of that aircraft on its own register if this would require structural changes to the aircraft.
3. In the case of short-term lease agreements to meet temporary needs of the air carrier or otherwise in exceptional circumstances, a Member State may grant waivers to the requirement of paragraph 2 (a).
4. When applying paragraph 2 (a) a Member State shall, subject to applicable laws and regulations, including those relating to airworthiness certification, accept on its national register, without any discriminatory fee and without delay, aircraft owned by nationals of other Member States and transfers from aircraft registers of

other Member States. No fee shall be applied to transfer of aircraft in addition to the normal registration fee.

Air operator's certificates (AOC)

Article 9

1. The granting and validity at any time of an operating licence shall be dependent upon the possession of a valid AOC specifying the activities covered by the operating licence and complying with the criteria established in the relevant Council Regulation.
2. Until such time as the Council Regulation referred to in paragraph 1 is applicable, national regulations concerning the AOC, or equivalent title concerning the certification of air transport operators, shall apply.

Article 10

1. For the purposes of ensuring safety and liability standards an air carrier using an aircraft from another undertaking or providing it to another undertaking shall obtain prior approval for the operation from the appropriate licensing authority. The conditions of the approval shall be part of the lease agreement between the parties.
2. A Member State shall not approve agreements leasing aircraft with crew to an air carrier to which it has granted an operating licence unless safety standards equivalent to those imposed under Article 9 are met.

General provisions

Article 11

1. An operating licence shall be valid as long as the air carrier meets the obligations of this Regulation. However, a Member State may make provision for a review one year after a new operating licence has been granted and every five years thereafter.
2. When an air carrier has ceased operations for six months or has not started operations for six months after the granting of an operating licence, the Member State responsible shall decide whether the operating licence shall be resubmitted for approval.
3. In relation to air carriers licensed by them, Member States 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 the undertaking and, in particular, in the case of mergers or takeovers. The air carrier(s) in question may continue its (their) operations unless the licensing authority decides that safety is at risk, stating the reasons.

Article 12

An air carrier against which insolvency or similar proceedings are opened shall not be permitted by a Member State to retain its operating licence if the competent body in that Member State is convinced that there is no realistic prospect of a satisfactory financial reconstruction within a reasonable time.

Article 13

1. Procedures for the granting of operating licences shall be made public by the Member State concerned and the Commission shall be informed.
2. The Member State concerned shall take a decision on an application as soon as possible, and not later than three months after all the necessary information has been submitted, taking into account all available evidence. The decision shall be communicated to the applicant air transport undertaking. A refusal shall indicate the reasons therefor.
3. An undertaking whose application for an operating licence has been refused may refer the question to the Commission. If the Commission finds that the requirements of this Regulation have not been fulfilled it shall state its views on the correct interpretation of the Regulation without prejudice to Article 169 of the Treaty.
4. Decisions by Member States to grant or revoke operating licences shall be published in the Official Journal of the European Communities.

Article 14

1. In order to carry out its duties under Article 4 the Commission may obtain all necessary information from the Member States concerned, which shall also ensure the provision of information by air carriers licensed by them.
2. When the information requested is not supplied within the time limit fixed by the Commission, or is supplied in incomplete form, the Commission shall by decision addressed to the Member State concerned require the information to be supplied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.
3. If the information required under paragraph 2 is not provided by the time limit set or the air carrier has not otherwise demonstrated that it meets the requirements of Article 4, the Commission shall, except where special circumstances exist, forthwith inform all Member States of the situation. Member States may, until notified by the Commission that documentation has been provided to demonstrate the fulfilment of the requirements in question, suspend any market access rights to

which the air carrier is entitled under Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes⁶(6) .

Article 15

In addition to the rules of this Regulation the air carrier shall also respect the requirements of national law compatible with Community law.

Article 16

Notwithstanding Article 3 (1), operating licences in force in a Member State at the date of entry into force of the Regulation shall remain valid, subject to the laws on the basis of which they were granted, for a maximum period of one year except in the case of Article 4 (1) (b) for which a maximum period of three years shall apply, during which periods the air carriers holding such licences shall make the necessary arrangements to conform with all the requirements of this Regulation. For the purposes of this Article, carriers holding operating licences shall be deemed to include carriers legitimately operating with a valid AOC at the date of entry into force of this Regulation but without holding such licences.

This Article shall be without prejudice to Article 4 (2) (3) (4) and (5) and Article 9, except that air carriers which operated by virtue of exemptions prior to the entry into force of this Regulation may continue to do so, for a period not exceeding the maximum periods specified above, pending enquiries by Member States as to their compliance with Article 4.

Article 17

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

Article 18

1. Member States and the Commission shall cooperate in implementing this Regulation.
2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 19

This Regulation shall enter into force on 1 January 1993.

⁶ See page 8 of this Official Journal

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

Done at Brussels, 23 July 1992

For the Council

The President

J. COPE

ANNEX

Information for use in association with Article 5 of financial fitness of air carriers

A. Information to be provided by a first-time applicant from a financial fitness point of view

1. The most recent internal management accounts and, if available, audited accounts for the previous financial year.
2. A projected balance sheet, including profit and loss account, for the following two years.
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, insurance, etc. Traffic/revenue forecasts.
4. Details of the start-up costs incurred in the period from submission of application to commencement of operations and an explanation of how it is proposed to finance these costs.
5. Details of existing and projected sources of finance.
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.
7. Projected cash-flow statements and liquidity plans for the first two years of operation.
8. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

B. 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

1. If necessary, the most recent internal management balance sheet and audited accounts for the previous financial year.
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.
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.
4. Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.
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.
6. Details of the financing of aircraft purchase/leasing including, in the case of leasing, the terms and conditions of contract.

C. Information to be provided for assessment of the continuing financial fitness of existing licence holders

1. Audited accounts not later than six months after the end of the relevant period and, if necessary, the most recent internal management balance sheet.
2. A projected balance sheet, including profit and loss account, for the forthcoming year.
3. Past and projected expenditure and income figures on such items as fuel, fares and rates, salaries, maintenance, depreciation, exchange rate fluctuations, airport charges, insurance, etc. Traffic/revenue forecasts.

Cash-flow statements and liquidity plans for the following year