

Guide to European Community legislation in the field of civil aviation

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IMPLEMENTATION OF COMMUNITY LEGISLATION

1 BACKGROUND

The objective of this paper is to provide information on European Community legislation in the field of civil aviation.

EU air transport legislation is composed of rules in several subject areas: :

1. Economic policy
2. Air Traffic Management
3. Safety
4. Security
5. Environmental matters
6. Social matters
7. Passenger Protection
8. External Relations.

Each subject area is constituted of several legal measures and this paper will introduce each of these measures. The information for each of the legal measures will:

- explain the philosophy of the different legal measures
- identify the most important elements.

The air transport policy was developed by the European Community (EC) from 1977 until the present. This process is unique since it is the first time that a group of countries together has developed a comprehensive mandatory air transport policy. It is different from the ICAO approach in the sense that particular importance has been attached to the economic aspects of such a policy, and in that the rules are mandatory without the possibility of Member States filing differences: the EU rules are there to be applied with the force of national and European law as appropriate.

Because of its specific nature, both from a public and a commercial point of view, it must be underlined that safety has to be a vital element of any air transport policy.

The Community's air transport policy is a policy for the whole of the air transport sector, composed primarily of air carriers, airports and air traffic control (ATC) services. The Community's policy has been defined by looking first at the needs of the sector itself, and secondly but most importantly, to the needs of the whole society, as in many ways air transport is essential for the fabric of a modern well functioning society, such as for trade and tourism.

2 BASIC FACTS

The legal instruments used to establish EU air transport legislation are Regulations and Directives. There is a difference in the approach to be taken when implementing a Regulation compared to the implementation of a Directive. A Regulation is intended to be applied directly. This means that the text is given the power of national law basically as it stands. Regulations therefore lend themselves to incorporation (implementation) by reference. Some Directives may also be handled in this way but most would probably have to be incorporated in national law by using the form and method of implementation which is most appropriate, taking into account the relevant national legislation. It is in fact possible to implement a Directive by partial changes to several national legal measures. However, the legal effect of the implementation, whatever the form and method chosen, must correspond to the original Directive.

It should also be noted that nearly all the Regulations and Directives contain provisions for cooperation and access to information. These provisions will not be mentioned in relation to the individual legal measures.

It is also necessary to pay attention to the fact that the definitions of aviation terms are in most instances the same for all the Regulations and Directives. There are some exceptions to this approach and the nuance of meaning should therefore also be carried over into the national law.

3 COMPETITION RULES (ARTICLES 81 & 82 OF THE TREATY)¹

The competition rules are important and constitute the major tool and deterrent against anti-competitive behaviour. These rules have been used in a general way and on a case-by-case basis. Certain types of co-operation between companies are permitted but cartels and other agreements of that nature as well as abuse of dominant positions are forbidden. In fact, while the competition rules recognise the importance of economies of scale they are concerned about economies of scope². Until now, the competition rules have been administered by the Commission but with EU Regulation 1/2003 a new division of labour between the European Commission and the Member States has been adopted. It is therefore important to understand which elements of air transport the competition rules would focus on.

The controls and safeguards represented by the competition rules have been supplemented in 1992 by the "third package"³ of measures for the liberalisation of the air transport market within the Community, with the possibility of acting in case of catastrophic developments. For instance, in such cases, it is possible to freeze capacity to a country for a limited time. The same is possible in order to deal with persistent downward price spirals. In both instances, such freezes are intended to give the airlines time to restructure rather than receive state aid. The EU system has so far been so stable that these safeguards have not had to be applied.

¹ Rules on competition in the Treaty of the European Communities

Article 81

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

² See Annex 43 for a definition.

³ Specifically Regulations 2408/92 and 2409/92.

3.1 Alliances

Alliances are a type of market practice that *ab initio* is forbidden. However, Article 81 paragraph 3 opens the possibility of declaring them acceptable if they do not eliminate competition, have positive economic effects and benefit the consumer. All the alliances that are now in the market have been approved in this way through individual exemptions but with conditions in particular to make it possible for competitors to enter the market. Such conditions may include a freezing of capacity, the giving up of slots, restrictions on code sharing and acceptance of interlining with competitors. In the 1980s and the 1990s, airline alliances came to dominate the European market so much that serious concern existed as to whether real competition existed since the traditional flag carriers were hesitant to enter each other's markets. However, low cost air carriers entering the market have changed this trend and exposed traditional flag carriers to more competition.

Another way to approve co-operation is to grant a so-called 'block exemption'. In this way the type of co-operation is defined in detail with a number of detailed restrictions, so that it does not need any further approval. Block exemptions have been granted for certain airline practices such as slot allocation and ownership of computerised reservation systems (CRS), which are deemed to be both in the airline and consumer interest.

3.2 Abuse of dominant positions

Article 82 deals with individual cases concerning abuse of a dominant position for example in respect of predatory behaviour, interlining and the effect of alliances including code sharing with or without frequent flyer programmes. A number of cases have been looked at, such as when Sabena conditioned access to its CRS only upon use of its ground handling services. This constituted 'tied selling'⁴ and Sabena was given a fine.

3.3 Code sharing

The practice of code sharing has not yet been fully dealt with under the competition rules. Some studies on the effects of code sharing with or without frequent flyer programmes have been carried out and there is no doubt that these practices have an effect on competition.

Exclusion from code sharing possibilities can be a threat to small and mid-sized air carriers who wish to find a partner to create links to the rest of the world, especially to markets where they do not have traffic rights.

A code sharing arrangement may also allow more effective accommodation of passengers of the code share partners in the same airport terminal (easier transfers for passengers and baggage and common lounges), common scheduling, common marketing, mutual participation in each other's frequent flyer programmes etc.

Whether or not a code-sharing arrangement is anti-competitive depends to a large extent on the supplementary arrangements, such as a franchising type of code sharing arrangement, which eliminates competition between partners.

On the other hand, in a market where many air carriers are present, code sharing would strengthen the competitive position of the partners and might lead to a more effective competition in the market.

3.4 Interlining

It is clear that interlining is critical to allow many smaller carriers to compete. Competition

⁴ It is an abuse if a company is only willing to sell products where it has a dominant position if the buyer is also willing to purchase other products of the seller.

rules have already been used to ensure that smaller carriers can interline with bigger carriers.

3.5 FFP (Frequent Flier Programmes)

A consultation has been carried out with interested parties. On the basis of its findings it would seem that these programmes will have to be characterised as normal competitive practices. There would therefore not seem to be any reason to regulate these activities except to avoid predatory behaviour and to ensure that smaller air carriers can associate themselves with such a programme on reasonable economic conditions. This in fact is a normal condition for approving alliances.

4 STATE AID (ARTICLE 87 OF THE TREATY)

State aid, which distorts or threatens to distort competition by favouring certain undertakings or certain products (Art. 3, para. 1. (iii) of Annex III), is incompatible with the proper functioning of the internal market. The aid in question can take a variety of forms as, for instance:

- state grants
- interest relief
- tax relief or relief of airport charges
- state guarantee or holding
- provision by the state of goods and services on preferential terms.

However, in certain situations such state aid can be approved if, for example, it is part of a regional development programme where other companies can get similar support. Other possibilities exist but it becomes more and more restrictive the more the aid is focused only on one company, i.e. the air carrier – most often owned by the state.

If an air carrier is owned by the state, the possibility of financial support is not prohibited. However, it has to be assessed as an investment and is allowable if it is considered that a private investor would have behaved in the same way.

In this context it is important to note that state aid includes not only aid from the state in the form of central government, but also aid from other public entities, e.g. local authorities or companies owned by the public such as an airport.

Information and consultation on this issue will be provided by the Commission.⁵

⁵ See amongst others the website of the EU on

- Citizen's Guide to Competition Policy – State aid control in the European Union (http://europa.eu.int/comm/competition/citizen/citizen_stateaid_en.html),
- Council regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty,
- Air transport – Strict control on state aid (http://europa.eu.int/comm/transport/air/rules/state_aid_en.htm),
- Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to state aid in the aviation sector (http://europa.eu.int/comm/competition/state_aid/legislation/94c350_en.html),
- Community guidelines on financing of airports and start-up aid to airlines departing from regional Airports (http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!JO_RefPub&lq=en&serie_jo=C&an_jo=2004&pg_jo=3&nu_jo=13).

ANNEXES

A ECONOMIC POLICY ANNEXES

A1 REGULATION 2407/92 ON LICENSING OF AIR CARRIERS

1. Aim of the legal instrument

This Regulation together with Regulation 2408/92⁶ and 2409/92⁷ create a unified air transport market. Within this market it is possible for a person (an individual or a company) irrespective of nationality⁸ to create an air carrier anywhere within the single EU market and from there to operate wherever opportunities might exist within the single market. Certified and licensed air carriers are entitled to operate without having to be designated by a government.

The present Regulation specifically deals with the right of establishment and the granting of an Operating Licence. . The main principle of the Regulation is that when a company meets a number of criteria in respect of economic and technical fitness then it is entitled to be granted an Operating Licence. The Operating Licence (hereinafter called the OL) cannot be granted unless the company also has an AOC, which guarantees the technical fitness.

2. The substantial elements of the instrument

Article 3

Article 3 of this Regulation is crucial because it lays down that States can only grant an operating licence when the conditions of the Regulation are complied with. This is not unusual but nevertheless important since a Regulation has the force of national law and can be used directly in legal proceedings in the Member States. The second element of Article 3 is revolutionary since it states that when the conditions of the Regulation are complied with then the air carrier is entitled to be granted an OL. Before this element was introduced, the States had total freedom to decide in a discretionary manner whether they needed a new air carrier or not; many in fact had decided not to approve any new air carrier which directly or indirectly threatened their national flag carrier (normally state owned). This possibility of protectionism is completely eliminated by this second element of Article 3. The third element of Article 3 is also important since it closes the circle. It states that no air carrier without an appropriate OL may carry out commercial operations within the single EU market or elsewhere.

Article 4

Article 4 contains a liberalising provision. The Article makes it clear that any EU national can own and control a Community Air Carrier. Before this the States basically reserved ownership of air carriers to their own nationals; national ownership was in fact built into international bilateral agreements. The new situation means that EU nationals now have the same opportunities or, in other words, that the principle of non-discrimination can be applied. However, the Article also states that Community Air Carriers must be majority owned and controlled by EU nationals unless the EU has reached an understanding with one or more third countries.

Article 5

Article 5 makes it clear that financial fitness of air carriers is of the greatest importance. Normal commercial conditions are not possible if air carriers, when exposed to market risks, are not able to take normal commercial decisions. If air

⁶ See Annex 3

⁷ See Annex 5

⁸ But limited to EU member states.

carriers are not financially fit, or receive state aid, they might take decisions that are not market based. Air carriers like other commercial enterprises in normal circumstances should face the risk of going bankrupt. The aviation authorities are therefore obliged to ensure that an air carrier is able to produce a realistic business plan for two years and that it is able to operate for three months without any income before they can grant an operating licence to the air carrier. The authorities are also obliged to check a carrier's economic fitness regularly. If an air carrier becomes insolvent (Article 12) the operating licence must be withdrawn. This also means that state aid cannot be tolerated. Article 5, together with the Annex to the Regulation, is exhaustive in respect of financial fitness conditions.

Article 7

Article 7 makes it clear that an air carrier must be insured to cover liability in respect of passengers, luggage, cargo, mail and third parties. The article does not specify to which extent the air carrier should be insured but leaves it to the Member State. Naturally, considerable consultation took place between member states to reach an acceptable level. For example, it is evident that if an air carrier only carries business class passengers it will have to expect to pay more in compensation per passenger compared to low cost air carriers. In later Regulations, the level of insurance was further specified. Firstly in Regulation 2027/97 which set a minimum threshold at 100.000 SDRs and lately in Regulation 785/2004 (see Annex A2) which sets out quite detailed insurance requirements.

Article 8

This article sets conditions for ownership and registration of aircraft. It clearly avoids the creation of virtual air carriers (i.e. air carriers only in name) by requiring that an air carrier must have at least one aircraft at its disposal. This means that the air carrier must have a safety organisation and not just a sales and marketing organisation. In practice, "disposal" normally means either ownership of an aircraft or dry leasing one.

The article also recognises that the registration of aircraft owned or leased by an air carrier should be registered in the country that has issued the OL.

Article 9

Article 9 contains the general principle that technical fitness of an air carrier i.e. safety must be safeguarded in the interests of passengers. An air carrier must therefore not be able to improve its competitive position by cutting corners in the technical field. A very thorough monitoring of the safety level of equipment, staff and operational methods of an air carrier is therefore carried out regularly by the authorities. It is clear that one cannot depend on self-control by the air carriers. However, Article 9 does not directly contain any detailed conditions but only the principle of future harmonisation in this area.

Article 10

This article deals with leases and requires that the state responsible for the lessor and the state responsible for the lessee must both⁹ approve the transaction. This is to avoid a gap in safety oversight being created.

Article 11

An OL will in principle remain valid as long as the air carrier meets the requirements specified in this Regulation or until it ceases operations. The article specifies a

⁹ Naturally, it might be the same state but both sides of the contract must still be checked.

number of cases where the issuing state can take action. It must be read together with Article 12 where the state must act in the case of insolvency.

Article 13

This article makes certain that the whole procedure of licensing (incl. AOC) is transparent and proceeds without undue delay.

Article 16

This article makes it clear that on the one hand air carriers already operating may continue but on the other hand that they will have to be granted an OL within a year of the implementation of this Regulation. New entries after the entry into force of this Regulation will need to get an OL before they can commence operations.

The articles mentioned above are arguably the most important articles in this Regulation but other supplementary articles are also important in order to ensure fair competition and transparency.

3. Paperwork and tasks created by the instrument

Although this is a Regulation, the implementation does require considerable practical work to be undertaken.

The most fundamental is the collection and processing of economic information. The bureaucracy in this context can probably be reduced significantly by including the request for information, both technical and economical, in the same document as that used traditionally for the AOC. An example as used by an EU Member State can be found in Annex H5.

Subsequent to the collection of the information and in addition to the normal work carried out in connection with the AOC, it is necessary to analyse the economic information. Can a new airline realistically stay in business for the next 2 years or for an established air carrier 1 year? In this context it is important to note that the air carrier does not necessarily have to show a surplus. However, if it shows a deficit it must then demonstrate that in one way or another it has sufficient economic reserves to cover the deficit.

Article 7 of this Regulation requires that the air carrier must hold sufficient insurance. This article is fairly general in its wording because naturally the type of operation of an air carrier varies as a consequence of the type of route being operated, the passengers carried, the operating conditions etc. However, it was felt that a somewhat firmer set of guidelines should be established. This was accomplished with a supplementary Regulation which can be found in Annex A2. It should be noted that the insurance requirements relate to passengers, freight and mail and third parties while, for example, hull insurance is not included. This is due to the fact that other types of insurance are normally contracted for under a commercial decision of the air carrier itself. Nevertheless, the economic analysis would need to take into account whether such additional insurance has been established.

At the end of the process, and assuming that the air carrier has been successful in demonstrating its technical and economic fitness, the AOC and the OL will have to be granted. This can take the form of two separate documents, one for the AOC and one for the OL. However, it might also be done in one document, which would have to show that it is a consolidation of an AOC and an OL. The OL must make a very clear reference to Regulation 2407/92.

4. Creation of new or modification of existing institutions

This Regulation adds new tasks to any administration, which until now has based its certification activities on the Chicago Convention. It is, however, possible to carry out these tasks within the existing administration such as a CAA.

However, it is also possible to make a separation between the technical and the economic side of air carrier certification in the sense that the CAA would continue to concentrate on the AOC while a Ministry could carry out work related to the OL. This is a logical arrangement in countries where the Ministry, generally speaking, is responsible for the economic elements of air transport such as control of airfares. In the EU examples of different approaches exist including establishing the CAA as an independent organisation, or maintaining it as part of the Ministry of Transport. However, it is advisable that it should be as independent as possible, in particular in the budgetary sense since it is evident that there may well be a need to pay certain technical staff higher salaries that are otherwise not possible under the normal government pay scale. In order to ensure safety, it is also recommended that a certain independence of executive decisions by the CAA must be assured.

5. Possibilities of and/or need for cooperation and consultation

Some EU Member States have entered into practical cooperation where necessary expertise is shared. Article 83bis of the Chicago Convention has facilitated this kind of cooperation. Furthermore, in time it is likely that the EASA (European Aviation Safety Agency) will be able to offer advice and assistance.

A2 REGULATION 785/2004 ON INSURANCE REQUIREMENTS FOR AIR CARRIERS AND AIRCRAFT OPERATORS

1. Aim of the legal instrument

With the Montreal Convention of 1999 air carrier liability became unlimited up to a threshold of 100.000 SDR. It was therefore felt that more precision should be given to Article 7 in Regulation 2407/92 (Annex A1) especially since EU Member States had found it somewhat difficult to administer the very flexible wording of that Article.

It is important to note that the Regulation goes further than the Montreal Convention because it introduces insurance requirements also in respect of third parties and for any operator of aircraft.

2. The substantial elements of the instrument:

Article 1

This article sets the scope of the Regulation. It is important to note that it applies not only to air carriers but also to any aircraft operator. So the scope is much larger than Article 7 of Regulation 2407/92. In fact, it applies to aircraft operators, which in most instances do not need to be granted an OL because they are not carrying out commercial operations. This is further confirmed in Article 6 (see below). It is furthermore important to note that the application of this Regulation concerns not only Community Air Carriers and Aircraft Operators but also those from third countries.

It should be noted that there are a number of exceptions to the requirements listed in paragraph 2 of this Article. Also Article 6, paragraph 4 lists a number of exceptions.

Article 4

Article 4 sets out the basic terms of the insurance coverage required, and many aircraft operators may find that this constitutes a substantial increase in their insurance costs.

Article 5

Article 5 makes it clear that air carriers and aircraft operators must demonstrate to the authorities by an insurance certificate or other evidence that sufficient insurance exists.

The Article links this activity to the issuance of an OL but this is not very practical since aircraft operators which do not carry out commercial operations do not need an OL but still need to demonstrate the insurance coverage. It would therefore be reasonable to tie the control of the insurance to the procedures involved in granting an AOC. However, the scope of the Regulation includes aircraft operators which may not even need an AOC.

Article 6

Article 6 sets out the insurance framework in respect of passengers, baggage and cargo for all air carriers and aircraft operators, irrespective of nationality, which lands and takes off at EU airports.

Paragraph 1 states that for non-commercial operations with small aircraft the coverage may be set at lower levels but not below 100.000 SDR.

Paragraph 4 exempts non-Community Air Carriers and non-Community aircraft operators from this Article when they only overfly the territories of EU member states with aircraft which are not registered in an EU member state.

Article 7

Article 7 sets the insurance requirements in respect of liability vis-à-vis third parties. There are no specific exemptions to these requirements so only the general exceptions in Article 1 will apply.

Article 8

Article 8 sets out the responsibilities of the individual states. Further explanation of this issue is found under point 4 of this Annex.

3. Paperwork and tasks created by the instrument

This Regulation creates considerable paperwork since nearly all aircraft operators including general aviation (GA) operators must be checked for compliance with the insurance requirements¹⁰. This should be done by the CAA whether the CAA issues the OL or not. This is because the scope goes far beyond air carriers with an OL and includes nearly all other commercial and non-commercial aircraft operators.

It cannot be assumed that the Regulation will obviate the need for a direct application of Article 7 of Regulation 2407/92 since a closer analysis may lead to higher requirements. This Regulation in fact only sets minimum requirements.

The authorities responsible for approving flight plans will need a database with the names of aircraft operators which have been approved under this Regulation. Furthermore according to Article 8.2 of this Regulation they will need guidelines for the situations in which they will have to request information on overflying aircraft from the aircraft operator.

¹⁰ There are no exemptions for historical aircraft either.

A3 REGULATION 2408/92 ON ACCESS TO AIR ROUTES

1. Aim of the legal instrument

This Regulation is part of a set of three Regulations¹¹, which together define the liberalised market structure within the EU.

This Regulation first of all ensures open access to air routes within the EU for any Community Air Carrier. It also includes provisions for dealing with situations where the open market does not provide satisfactory service (“public service obligation”).

2. The substantial elements of the instrument

Establishment has been liberalised by Regulation 2407/92 as seen in Annex A1. This Regulation therefore ensures that market access is also liberalised.

Article 3

Free market access is established very succinctly and directly in Article 3. The first paragraph in this Article opens up market access completely by stipulating that an Community Air Carrier shall be permitted to operate between any two airports within the EU. This covers all situations including, for example, where another air carrier is already present. The distinction between scheduled and non-scheduled air services has been eliminated in a regulatory sense. This means that it is up to the air carriers themselves to decide in which mode, scheduled or non-scheduled, or mix of modes they will operate. It covers the different freedoms of the air from the 3rd to the 9th freedom services. The rest of Article 3 concerns some transitional measures.

Article 4

Competition may not in all instances provide air services where they are needed. To deal with such situations, the possibility of public service obligations (PSO) has been introduced not only within states but also between them. Such PSOs can be established to and from category 1 airports but not between them. A list of category 1 airports is found in Annex I of the Regulation. A PSO basically amounts to an obligation to operate at a certain quality level of service. However, if this leads to a situation which is not commercially interesting to operators then, on the basis of a tender process, compensation can be paid. Any Community air carrier can submit offers in response to such a tender. So, even where a single concession would be the result, the selection of the airline to provide PSO services will be based on a competitive procedure.

Paragraph 2 stipulates cases where the PSO cannot be followed up by a call for tender.

Article 5

This Article sets out what happens to domestic routes where an exclusive concession exists at the time of entry into force of the Regulation. Such a concession can run until its expiry but for no longer than three years. If other modes of transport already provide an adequate and uninterrupted service the exclusive concession will expire immediately.

Article 6

This article sets out another exception by opening the possibility to protect a domestic service with small aircraft (80 seats at most) from being swamped by a new

¹¹ See also annexes 1 and 5

air service with larger aircraft. In other words, the route is in any case open for access but only with small aircraft.

Article 7

This article together with Article 10.1 makes it clear that air carriers have operational freedom.

Article 8

While air carriers have operational freedom, they must at the same time respect published operational rules relating to safety, environment and slot allocation.

The article also makes it clear that this includes the right for states to manage an airport system, and opens the possibility of creating new airport systems. Existing airport systems are listed in Annex II.

Article 9

It is only realistic to recognise that capacity problems exist and may become more of a problem in the future. While the Regulation on slot allocation is the immediate tool to handle such situations, Article 9 here opens possibilities for invoking more drastic remedies such as refusing traffic rights.

The refusal of a traffic rights should not be done lightly, and the article contains a number of safeguards such as non-discrimination, limitation in time etc.

Article 10

Article 10 makes it possible to apply capacity limitations when serious negative market developments occur for all scheduled air services. This may appear to indicate that some intervention by states is still possible. However, this is not in fact the case: this has been clearly demonstrated during the last three years in the face of a very difficult traffic situation and the onslaught of the low cost air carriers on traditional airlines' markets. Such action can only be undertaken if all scheduled air carriers suffer. If only some suffer because of the entry of new competitors, for example a low cost carrier, then action to limit capacity is excluded.

Article 11

This article creates an advisory committee of participating states to advise on the operation of this Regulation. This committee is also used in other contexts such as for example Regulation 785/2004.

http://europa.eu.int/eur-lex/en/lif/reg/en_register_07402020.html

3. Paperwork and tasks created by the instrument

The Regulation will simplify the situation because no authorisations are necessary for air carriers when they want to start up a new service or modify an existing service. EU Member States may ask schedules and information on the equipment to be filed so that they can check conformity with operational rules, but no approval as such is needed.

A4 REGULATION 95/93 ON SLOT ALLOCATION

1. Aim of the legal instrument

It is unlikely that congestion problems will disappear. This means that the liberal air transport policy may not achieve one of its key objectives, namely to create a situation where the air transport sector would adapt easily to market developments.

The historical system of schedule co-ordination and slot allocation has proved to be very useful. The problem is that the slot allocation procedures risk becoming a kind of “closed shop” where the element of historic rights (“grandfather rights”) has a built in tendency to freeze market access. This works against market change and in particular, change brought about by newcomers. Air carriers with new ideas and good products should be able to enter the market.

The Regulation takes the slot allocation itself out of the hands of air carriers and makes it the responsibility of slot co-ordinators, which are designated by the Member States. Furthermore, the air carrier international scheduling conferences enjoy the benefits of exemption from the competition rules. This should ensure continuity.

In addition, the Regulation contains rules to ensure that the slot allocation system works in a transparent and non-discriminatory way. The procedures which are prescribed should ensure the best possible use of capacity with a certain priority for new entrants.

The procedures in the Regulation are compatible with the international system of schedule conferences and the coordinators are strongly encouraged to participate in them.

Nevertheless, the slot allocation process introduces a certain bureaucracy and rigidity in the air transport market. The Regulation therefore underlines that slot allocation should only be introduced in situations where capacity problems are so serious that traffic cannot be accommodated without serious operational problems. For most airports no formal slot allocation is necessary and most operational difficulties can be overcome by a slot facilitator. In fact, based on the Assessment visits in 2005, it would seem that only one or two of the airports should contemplate slot allocation and this is only because of a very specific bottleneck such as lack of apron space. The existing capacity limitations at airports, which were visited by the assessment teams in 2005, do not derive from runway capacity shortcomings.

2. The substantial elements of the instrument

Article 2

The default situation is free market access i.e. air carriers are entitled to operate on the route. If congestion develops an airport may become “facilitated” which means that a facilitator will have to be designated. However, if an air carrier is not willing to follow the advice of the facilitator it is still entitled to operate when it wants. Only in the worst cases of congestion will an airport be designated as “coordinated”, and a coordinator designated (appointed). At coordinated airports an air carrier must secure a slot – a process managed by the coordinator – before it can operate a landing or a take-off. In other words, free market access has to some extent become restricted. It is necessary to read the definitions carefully in this Article before this structure becomes apparent.

Article 3

This Article sets out the procedures for deciding whether an airport should be slot allocated or not. The basic situation is that slot allocation should ideally not exist since any slot allocation by itself is an infringement on the free exercise of the traffic rights created by Article 3 of Regulation 2408/92. If operational problems occur a schedules facilitator may be designated who can give advice on the most advantageous scheduling for all the air carriers without disturbing their basic operational intentions. A schedules facilitator can only give advice, and air carriers may choose not to accept it but to maintain their original schedules.

If the operational problems become serious the state responsible for the airport must carry out a capacity analysis. The analysis can only be finalised after it has been discussed with all interested parties. If the analysis and the consultation show that serious difficulties exist which cannot be resolved in the short term, for example through schedule facilitation, only then shall the airport be designated as coordinated by the state. This procedure does not prevent a state from designating the airport as coordinated for a short period of time if specific circumstances should occur, like for example a major sports event or a large exhibition.

Paragraph 7 is important in the sense that it makes it clear that if sufficient capacity exists any designation of the airport as coordinated must be lifted.

Article 4

This Article defines the behaviour and setup of the coordinator and the schedules facilitator. It is clear that both of them must act independently and in a neutral, non-discriminatory and transparent manner. Furthermore, the coordinator must be set up in an independent way so that the necessary resources are available and nobody can influence the decisions of the coordinator. The state responsible shall ensure that this is the case. In many instances an independent organisation or company is set up, financed by air carriers and the airport. However, the air carriers and the airport must be legally committed to providing the funds and other resources in order to prevent the possibility of pressure being brought to bear on the coordinator.

The Article also sets out the information the coordinator shall make available free of charge to any interested party and the timing of this information.

Article 5

The coordinator is assisted by a Coordination Committee. This Committee is composed of all air carriers at the airport. Some or all air carriers may be represented by an organisation that they recognise as representing them. The Committee can discuss any problem and procedure related to coordination and provide advice, but the coordinator is free to decide whether to follow the advice or not.

One of the tasks of the Committee is to make proposals for local slot allocation guidelines. If the state confirms these guidelines they become binding on the coordinator, if they are not in conflict with the guidelines in the Regulation or international guidelines established by the air transport industry world-wide or community-wide.

The Committee has a special role as mediator between the coordinator and individual air carriers when these have submitted a complaint.

Article 6

On the basis of the recognised capacity of the airport the State is responsible for fixing a number of key figures which permit the coordinator to carry out practical coordination.

These key figures must also be available for consultation with the Coordination Committee.

Article 7

Air carriers are obliged to provide specific information to the coordinators and facilitators. If the coordinator does not receive this information he can refuse to allocate any slots to the air carrier in question which basically would prevent that air carrier from operating to the airport.

Article 8

This Article sets out the framework for the actual slot allocation process. Grandfather rights are defined in operational terms. However, Article 10 further develops rules about the admissibility of claims for grandfather rights.

Retiming is permitted in certain circumstances. Permissible guidelines for the coordination are defined. Priority for new entrants in this context is set out in Article 10.

Article 8a

When an air carrier has received a slot it is basically possible to freely exchange that slot against another and in limited circumstances to transfer a slot to another air carrier.

However, before any such transaction can take place the coordinator must confirm that the transaction is in conformity with the Regulation and that it does not prejudge airport operations.

Article 8b

This Article makes clear that the entitlement of grandfather rights cannot stand in the way of the need of regulatory intervention and that no compensation claims can be sustained.

Article 9

This Article builds a bridge to Article 4 in Regulation 2408/92 in respect of slots reserved for carrying out a PSO.

Article 10

Certain limitations on the admissibility of grandfather right claims are set out in this Article. NB: it is necessary to read this text very carefully because the distinctions can be very fine.

The Article also sets out the structure for giving priority to new entrants. It is important to note that certain operational parameters are also included in the definition of new entrants in Article 2.

Article 14

The increasing difficulty in obtaining suitable slots to expand air services is creating mounting barriers to market entry. It is normal that air carriers in such a situation will only give up slots when they are legally obliged to do so, or when there is a clear incentive to do so. This distortion of the market prevents achieving the full benefits of liberalisation of air transport. It is therefore necessary to create a means to facilitate or encourage the reallocation of slots to improve the efficiency of the market and to avoid static and inflexible situations from developing at congested airports that would prevent airlines from entering the market or increasing frequencies to meet consumer demand.

A number of air carriers have tried in other ways to benefit from slot allocation while at the same time not complying with the provisions of the Regulation.

These effects became so serious because of the reduced use of airport capacity that sanctions had to be introduced. The slot coordinator can directly impose certain sanctions set out in this Article and the State is obliged to create a system of financial sanctions.

A consolidated version of the Regulation can be found at:

http://europa.eu.int/eur-lex/en/consleg/main/1993/en_1993R0095_index.html

3. Paperwork and tasks created by the instrument

For airports where serious capacity problems exist the state will have to ensure that appropriate capacity analyses are carried out.

In some cases the State will have to ensure the establishment of an independent organisation for slot coordination.

4. Possibilities of and/or need for cooperation and consultation

The coordinators and facilitators should participate in the international scheduling conferences.

A Coordination Committee will have to be set up in certain circumstances.

The coordinators and the facilitators should participate in the European Union Airport Coordinators Association (EUACA). Further information can be found at: www.eu.aca.org

A5 REGULATION 2409/92 ON FARES AND RATES FOR AIR SERVICES**1. Aim of the legal instrument**

The last Regulation of the Third Package¹² concerns air fares and rates charged by Community Air Carriers within the EU. Fares relate to passengers and rates to freight.

The aim of the Regulation is to make it clear that Community Air Carriers are able to set prices freely while nevertheless observing certain limitations.

In this context it is also important to note the existence of the competition rules which apply to cartel-like behaviour and abuse of dominant positions.

2. The substantial elements of the instrument*Article 3*

Article 3 makes it clear that there is freedom for charter pricing for passengers and cargo.

Article 5

This Article introduces pricing freedom also for airfares. However, in this instance the States can require the filing of fares with certain limitations. It should be noted that this is not a filing for approval but simply a filing for information. Many EU Member States have dispensed with this obligation.

Article 6

This Article makes it possible for a State to withdraw excessive basic airfares. A basic airfare is the lowest fully flexible airfare. However, such a decision shall be notified to other States concerned and to the Commission. If they react within a certain time limit they can block such a withdrawal.

It is also possible to stop a serious and persistent downward spiral of airfares. The above safeguards apply also in this case. However, too low prices can only be stopped if they have resulted in red figures (losses) for all airlines concerned. The present situation where some traditional air carriers are haemorrhaging money, for example, while the low cost air carriers are doing relatively well, cannot be stopped with this regulation and, in this example, the traditional air carriers will instead need to take their own action (as indeed they are – or are beginning – to do).

Article 7

This Article sets out what the Commission can do in the context of Article 6 and/or on the basis of a complaint. Within this procedure, the Commission has the same possibilities as set out in Article 6, paragraph 1. However, the decision of the Commission can be brought before the Council which may take a different decision within one month. This safeguard has not been used in the EU during the life of the Regulation.

¹² See Annexes 1 and 3.

A6 REGULATION 2299/1989 INTRODUCING A CODE OF CONDUCT FOR COMPUTER RESERVATION SYSTEMS

1. Aim of the legal instrument

Computerised Reservation Systems are a child of the age of the jet aircraft. As the air transport industry spread its wings and became an industry with many online and interlining connections and became geographically widespread, it also became impossible to make reservations by hand or by simple mechanical means. It quickly became apparent that these reservation systems could be used in the competition between air carriers. Information presented on the screens often favoured the owner of the CRS and information for competitors was often not present in the display, or not well presented or incorrect. As competition increased, so it was distorted by abuse of CRSs to an unacceptable degree.

Normally, CRS rules are mentioned as part of consumer protection but there are also quite a few concerns of air carriers in the context of CRSs. If there is only one reservation system in a market then an air carrier must be present in it. Unfortunately, there are many markets where only one or predominantly one CRS is present. Access therefore is one of the major concerns. Travel agents call up information about their airline client's schedules and prices. If an air carrier's services are not shown or are in some way only shown with a handicap then it serves little purpose to be in the system. With the old pool agreements this type of distortion was not used much but when competition occurred in the market it was sometimes used to a devastating effect. It is also important that new products are presented as soon as possible and without delay compared to the competition. In the traditional system where everything had to be approved before it could be implemented it was impossible to act quickly so this difference was not important, but with competition and frequency changes it is. The cost of a reservation, i.e. the fee paid for the use of CRSs, is also important and for that reason it is important to have competition between CRSs.

Whether or not there is competition among air carriers, consumers are interested in having services presented which are closest to their demands, whether in terms of schedules or price. The presentation must be as comprehensive as possible and accurate. In addition, consumers are concerned with data privacy.

In recent years the market situation has changed: air carriers are now offering on-line services for direct reservations; CRSs have largely gone into non-airline ownership. The Internet offers several new possibilities to get information about the choice of airfares available. These changes will probably mean that a simplification of the very detailed set of rules will be carried out.

2. The substantial elements of the instrument

Article 2

Article 2 defines a CRS. It is important to note that this includes reservation systems irrespective of whether they are owned or controlled by one or several air carriers or they are wholly independent of any air carrier.

Article 3

This Article makes it clear that CRSs cannot limit participation in their systems. They must be open for participation in a non-discriminatory manner to all air carriers.

The Article also specifies basic contractual provisions which are obligatory.

Article 3a

While air carriers are free to join a CRS, the same is not true for an air carrier that owns and/or controls a CRS even partially. Such an air carrier is obliged to accept a quasi participation where they have to provide data in the same manner as they provide them to their own system, and the air carrier has to accept reservations made on that basis.

Article 4

Data providers to the CRS shall make certain that the data are comprehensive and correct. The CRS shall not manipulate the data in its system in erroneous manner.

Article 4a

This Article contains further provisions to ensure that CRSs act in a non-discriminatory manner. Specifically, it must not be possible for an air carrier to gain access to the data of the CRS. In order to ensure equal functionality, the code specifies that there must be either a physical separation or a separation by way of software between private data and functions of air carriers and the data and functions which are used by the distribution system. A dehosting (physical separation), therefore, is not required but the private area must be distinct on a computer or computer system.

Furthermore, any communication between the private areas and the CRS area must be by way of common interfaces which must be available to all air carriers irrespective of the type of separation used. In other words, an owner cannot use an interface if it is not available to a participant located somewhere else. An interface is defined in terms of protocols and procedures as well as the data that can pass through it.

Article 5

This Article together with Annex I of the Regulation includes provisions which guarantee that the consumer will obtain good, correct and unbiased information.

A number of these provisions do not apply if a consumer goes into an air carrier office to buy a ticket because the consumer must understand that in that situation an air carrier wants to sell its own product. This principle is set out in Article 21.

Article 6

Data security in computerised reservation systems is of the utmost importance for ensuring fair competition between air carriers. The principle in the code is that an air carrier, whether parent or ordinary participant, may not have access to the confidential data of another air carrier or of individual passengers through the CRS.

However, this does not prevent certain data from being released for example in aggregate form. This information cannot be provided in a preferential way to any air carrier that owns or controls the CRS in question.

When fully adhered to, this Article ensures that CRSs respect the general data protection rules.

Articles 8 & 9

Normal, non-discriminatory contract terms apply between the CRS and air carriers. The same is true for the relationship between a CRS and its subscribers, who are normally travel agents.

Article 9a

The consumer receives his or her necessary information from the subscriber (travel agent), Article 9a therefore obliges the travel agent to provide the services based on the CRS in a non-discriminatory and unbiased manner. This is further taken care of in the contract between the CRS and the travel agent as set out in paragraph 5 of Article 9.

Article 10

This Article contains very detailed provisions concerning the cost relatedness of CRS fees and billing practices.

Articles 11-20

The CRSs are multinational companies and the ability to control them may, in many instances, go beyond the reach of individual states. The Regulation therefore provides a framework of control which takes its inspiration from the competition rules. This is true both in respect of access to information and the possibilities to sanction infringements.

Article 21a

The key issue is control: CRSs must contract for an outside audit for data security and equal functionality just as there are auditors for the accounts of a company. Such an EDP auditor must be independent and have access to all the operations of the CRS. The auditor must at least annually provide a report on the operation of the CRS stating whether or not he is convinced that the provisions on equal functionality and data security are being respected.

Article 21b

If a CRS allows for the possibility of railway companies participating, it must be on similar terms as those applicable to air carriers.

Code sharing

The CRS code has implications for code sharing in three respects.

- First of all, it obliges system vendors to present a display which is ordered with non-stop flights first, then other direct flights without change of aircraft, and finally connections. This means that a code-sharing arrangement with a change of aircraft, even though it might look like a non-stop or direct service, will have to be placed on the display for connections. Connections are ordered according to elapsed journey time, so if a code share arrangement includes co-ordinated scheduling it would probably be placed first in the connections group but no higher. If the code-sharing partners do not provide the vendor with sufficient information they would be in breach of the code.
- The CRS must also show who is actually operating the flight.
- Code share arrangements can only be shown twice which limits the exposure somewhat. If this were not the case the same flight could be shown several times with different flight numbers and could squeeze out the competition from the first page of the display.

3. Possibilities of implementation

This Regulation can easily be implemented ahead of the ratification of the ECAA Agreement. It represents the kind of legal measure which is covered by the general commitment to harmonise in the Stabilisation and Association Agreements. It might be beneficial to ensure that local air carriers, travel agents and consumers could

benefit from the principles of non-discrimination and non-bias even before the ECAA enters into effect.

A consolidated version can be found at:

http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989R2299_do_001.pdf

A7 DIRECTIVE 96/67 ON ACCESS TO THE GROUND HANDLING MARKET**1. Aim of the legal instrument**

Conditions for air carriers in respect of ground handling have attracted a lot of attention. The Regulation has introduced specific rules: air carriers generally find them too weak while airports try to maintain their dominant position.

It is necessary to ensure that ground handling, like CRS, is air carrier neutral i.e. that no air carrier is given a discriminatory advantage. It is also necessary to ensure the best possible interface between carriers and passengers. In other situations ground handling services should provide the necessary quality at reasonable costs and self-handling possibilities must be possible in order to serve as a benchmark.

2. The substantial elements of the instrument*Article 1*

This Article sets out the scope of the Regulation and includes certain thresholds for application of certain provisions and of the Regulation as a whole.

The Regulation as a whole applies at an airport when traffic reaches 2 million passengers per annum. However, certain self-handling activities are open irrespective of the size of the airport, typically passenger handling, aircraft services and catering.

Self-handling in the full sense must be available when the airport reaches 1 million passengers or 25,000 tonnes of cargo.

Self-handling is addressed in Article 7. All other Articles become effective when the airport reaches 2 million passengers or 50,000 tonnes of cargo.

If the threshold for cargo is reached before the threshold for passengers, only the cargo ground handling services will become available until the passenger threshold is reached.

Article 4

Accounts for ground handling must be separate from accounts for other activities that a company carries out. This is typically aimed at situations where an air carrier or the airport offers ground handling services. Cross-subsidisation between an airport authority's ground handling and other activities is forbidden.

Article 5

For airports with more than 2 million passengers an airport users committee must be set up.

Article 6

Access to offer ground-handling services is intended to be free. However, access for certain services (listed) may be limited to two providers of ground handling of which at least one must be independent of the airport or of any air carrier carrying 25% or more of the traffic at the airport.

Article 7

This article sets out the rules for self-handling. See the remarks for Article 1.

Article 8

Access to centralised infrastructure such as baggage sorting, de-icing etc. may be further limited to one provider. This is typically the airport but the state is expressly free to reserve it to another body.

Articles 9 & 11

Article 9 contains further exemptions from the free access to offer ground-handling services. The Article contains a number of safeguards and Article 11 sets out criteria and procedures for the selection of suppliers.

Articles 14 & 15

The possibilities to limit the number of suppliers on a non-discriminatory basis with appropriate selection procedures entail very cumbersome procedures and administration.

Article 14 contains a more general type of approval of suppliers based on a sound economy and good conduct. The approval of suppliers on this basis must be carried out by an organisation which is independent of the airport.

Furthermore, Article 15 opens the possibility of setting standards of good conduct for suppliers of ground handling. This can typically include a requirement that the provider of services must be open for business during all the hours at which the airport is open.

The intention of limiting access to ground handling to a restricted number of suppliers may be based on the wish to avoid companies which are only interested in providing services when traffic is dense and leaving the other uneconomic service demand to other providers. If this is so, application of Articles 14 and 15 may serve this purpose better than setting up a very cumbersome bureaucracy of selection.

A consolidated version can be found at:

http://europa.eu.int/eur-lex/en/consleg/pdf/1996/en_1996L0067_do_001.pdf

EU Member States have implemented the Directive directly or by incorporating provisions in other legal acts. It is also possible to find situations where access to the ground handling market is open and situations where there are restrictions on access.

3. Paperwork and tasks created by the instrument

Very cumbersome if airports exist with more than 2 million passengers and access is to be limited.

4. Possibilities of and/or need for cooperation and consultation

The Commission is carrying out a review of the Directive.

B AIR TRAFFIC MANAGEMENT ANNEXES

B1 REGULATION 549/2004 LAYING DOWN THE FRAMEWORK FOR THE CREATION OF THE SINGLE EUROPEAN SKY

1. Aim of the legal instrument

A legislative package¹³ was adopted in 2004 to establish the Single European Sky (SES). One of the aims of the SES is to ensure a harmonised regulatory framework for Air Traffic Management (ATM) in the EU and that should ensure application of the same standards in Europe.

Regulation 549/2004 sets out the framework of the SES. It includes a mechanism where decisions are made by the Commission with the assistance of the Single Sky Committee. The Commission issues mandates, mainly to Eurocontrol, to develop implementing rules falling within its remit, and these rules are finally adopted by the Commission assisted by the Single Sky Committee. It also provides for participation and consultation of stakeholders in the process of establishing the SES, and sets the principles of nomination of national supervisory authorities and their functional independence from air navigation service providers. One of the main principles contained in the regulation is that the sovereignty of a Member State is inviolate, and for that purpose the application of safeguard measures is expressly recognised.

2. The substantial elements of the instrument

Article 3

This Article establishes that the SES regulatory framework is composed of the four main Regulations (the framework, the airspace, the service provision and the interoperability regulations).

Article 4

This Article obliges states to set up a national supervisory authority which may or may not be a part of the CAA. However, at a functional level at least, it must be independent of the air navigation service provider. The national supervisory authority shall be responsible for the tasks emanating from the four Regulations.

In practical terms, if the air navigation service provider is already separated from the CAA and the CAA is responsible for the certification of the ATC system, the CAA should also be responsible for the tasks generated by the four Regulations.

On the other hand if the CAA were still responsible for providing air navigation services and for its certification, then one of two things would have to be done. Either a separate body would have to be set up to assume the responsibility for the tasks under the Regulations or the air navigation service provider functions would have to be at least functionally separated from the CAA, with the CAA retaining the certification function. The first solution risks creating a number of operational conflicts so the second solution is by far preferable.

Article 7

This Article sets out the goal that the SES should be extended to other European countries that are not members of the EU.

Article 8

¹³ Regulations 549-552/2004 as set out in Annex 8-11.

This Article is in fact a continuation of Article 3 in that it sets out procedures for developing new implementing rules. These would normally involve Eurocontrol for those rules that fall within its remit.

Article 13

Important safeguards protecting the right of action of the state in a number of circumstances are set out in this Article.

3. Paperwork and tasks created by the instrument

The individual states will according to Article 9 have to introduce sanctions for infringements of the rules by airspace users (aircraft operators) and air navigation service providers.

According to Article 12 the individual states will have to provide annual reports on the implementation of the actions to be taken pursuant to the Regulations

4. Creation of new or modification of existing institutions

See comment on Article 4.

5. Possibilities of and/or need for cooperation and consultation

The Regulations contains several forms of consultation where the states will have to participate in most of them.

B2 REGULATION 550/2004 ON THE PROVISION OF AIR NAVIGATION SERVICES IN THE SINGLE EUROPEAN SKY

1. Aim of the legal instrument

Regulation 550/2004 sets out criteria and standards for the provision of air navigation services in the Single European Sky. This is based on the present level of state involvement but opens the door to a more integrated system. The objective of the regulation is to establish common requirements for the safe and efficient provision of air navigation services in the EU. The requirements for air navigation service providers are set out but the regulation leaves total discretion to the member states to choose the provider at least at present.

2. The substantial elements of the instrument

Article 2

The Article lists the tasks of the national supervisory authorities, in particular the supervision of the application of the regulation, the organisation of inspections and surveys to verify compliance with the requirements of the regulation.

Article 4

The rulemaking procedure of Article 5 of Regulation 549/2004 within the Single Sky Committee must be used in the first instance to incorporate the Eurocontrol Safety Regulatory Requirements (ESARRs) into the EU body of law.

Article 5

This article obliges the Commission to present a proposal on the licensing of controllers. The Commission has already carried out this task and at a later stage therefore a legal measure in this respect will have to be incorporated into the EU body of law.

Article 6

It lists the common requirements for the provision of air navigation services to be established. The provisions contained in this regulation have been expanded and completed by Commission Regulation (EC) 2096/2005 laying down the common requirements.

Article 7

The principal task and responsibility of the supervisory body (see Article 4 of Regulation 549/2004, Annex B1 above) is the certification of air service providers. A certificate must be issued when the air navigation service provider in question complies with the elements listed in Article 6 of this regulation and with those laid down by Regulation 2096/2005.

The certificate confers to air navigation service providers the possibility of offering their services to other service providers, airspace users and airports in the EU.

Article 8

Member States will have to designate one provider of air traffic services for airspace blocks in their territory. They may choose air service providers at their discretion and there may be one provider for all airspace or one for each block or any combination. However, the service providers must be properly certificated under Article 7.

Article 12

Air service providers must have transparent accounts and publish an annual report.

Articles 14-16

Very detailed principles for charging for air navigation services are set out in Article 15. A review is prescribed in Article 16 which also opens the possibility of submitting complaints.

3. Possibilities of implementation

Should be implemented at the same time as Regulation 549/2004 (Annex B1).

4. Paperwork and tasks created by the instrument

According to Article 2 the national supervisory authority (see Article 3 in Regulation 549/2004 (Annex B1)) shall carry out a number of inspections and surveys. It might be necessary in a number of instances to conclude an agreement with neighbouring countries on joint inspections. It is possible to delegate the responsibility for the inspections and surveys to other bodies ("recognised organisations") but these must naturally still be independent of the air navigation service provider. These other bodies must respect a number of conditions set out in Annex I to the Regulation.

The present fees and charges may need to be brought into compliance with articles 14-16 of the Regulation.

5. Creation of new or modification of existing institutions

No, unless the supervisory body is associated with the provider

6. Possibilities of and/or need for cooperation and consultation

With other states of the EU, the European Commission and Eurocontrol.

B3 REGULATION 2096/2005 LAYING DOWN COMMON REQUIREMENTS FOR THE PROVISION OF AIR NAVIGATION SERVICES

1. Aim of the legal instrument

Regulation 550/2004 (Annex B2) lays down, in its Article 6, that the Commission shall establish requirements for the provision of air navigation services or, in other words, the requirements which must be respected by providers in order to be certified. The Regulation is firmly based on the procedures for the issuance of a certificate for the providers as set out in article 7 of Regulation 550/2004 and for this purpose it establishes a set of safety rules in the annex to the Regulation. On top of that the appropriate national authorities must systematically carry out regular inspections to check the conformity of the providers with the rules and the Commission will supervise the national authorities. This whole framework is set out in the present Regulation. This framework needs on the one hand to be sufficiently strict so to ensure safety but it must also be flexible in order to accommodate technical change and experience.

Elements of this Regulation are based on the Eurocontrol Safety Regulatory Requirements (ESARRs). The Regulation adopts the mandatory provisions of three ESARRs, 3, 4 and 5.

Annex I sets out general requirements for the provision of air navigation services. However, it is important to recall that air navigation services are composed of several areas of activity: air traffic services, meteorological services and aeronautical services. More specific requirements for these different services are therefore set out in Annexes II, III and IV respectively while Annex V contains specific requirements applicable to all three types of services.

It is vital that an air navigation service provider is fully conversant with the provisions in the Annex because they must all be taken into account in the quality management system to be communicated to the authorities as a basis for certification. Any summary of these requirements would therefore be misleading. Nevertheless it should be pointed out that while Annex I contains requirements as to the financial strength of providers it is necessary to look also at articles 14 to 16 of Regulation 550/2004 (Annex B2) in order to see the requirements for fees and charges.

It should be noted that this Regulation is placed within the framework of Regulations 549/2004 and 550/2004. Therefore it is necessary to be familiar with these two other Regulations in order to implement the present Regulation correctly.

2. The substantial elements of the instrument

Article 3

This article makes it clear that the requirements set out in the annexes are mandatory and not to be taken as recommendations.

Article 4

This article expands on article 7(5) of Regulation 550/2004 and states the possibility of derogations from the above article 3 and the scope or limits of such derogations.

Article 5

In the interest of ongoing control of compliance the providers are obliged to furnish relevant evidence which should demonstrate compliance whenever requested by the

authorities. In this context it should be noted that the providers will need to keep a number of logs to register activity and progress.

The provider will inform the authorities of any direct or indirect changes to its operations that might influence safety.

The article also sets out action that must be taken by the authorities if the provider cannot demonstrate that it complies fully with the requirements.

Article 6

A provider must facilitate inspection visits by the authorities.

Article 7

The authorities shall monitor the compliance of the provider annually. This should be taken to mean *at least* annually because monitoring would need to be more frequent if the authorities have any doubt about compliance.

In order to carry out this monitoring, the authorities must establish an indicative inspection programme. This programme must be available to the peer reviews carried out by the Commission according to Article 9.

Article 8

The authority shall take specific measures in order to ensure safety in respect of personnel who are undertaking operational safety related tasks.

Article 9

This article sets out rules for the peer review of the national authorities that the Commission shall carry out. This covers both the composition of the review teams and the information the EU state about a planned review. The EU state will need to approve the team of experts before the review can take place.

The article also specifies the follow-up to a peer review both with the state concerned and subsequently the Single Sky Committee.

3. Possibilities of implementation

Should be implemented at the latest at the same time as Regulation 550/2004.

4. Paperwork and tasks created by the instrument

Verification of compliance may be significant.

5. Creation of new or modification of existing institutions

Yes, in the case of non-compliance or if at present the supervisory authority is associated with the service provider

6. Possibilities of and/or need for cooperation and consultation

With other states of the EU, the European Commission and Eurocontrol.

B4 REGULATION 551/2004 ON THE ORGANISATION AND USE OF AIRSPACE IN THE SINGLE EUROPEAN SKY1. Aim of the legal instrument

Regulation 551/2004 concerns the organisation and use of airspace in the SES. The objective is basically to support the concept of a progressively more integrated operating airspace and to establish common procedures for design, planning, and management ensuring the efficient and safe performance of ATM. It entails the establishment and recognition by ICAO of a single European Upper Flight Information Region (EUIR) that will encompass the airspace falling under the responsibility of the EU Member States and may also include airspace of non-EU countries. For this reason, the EUIR will have to be done with the agreement of the individual states involved and within the ICAO framework. It requires that Member States should configure their upper airspace into functional airspace blocks.

2. The substantial elements of the instrument*Article 2*

The division level between upper and lower air space is set at flight level 285.

It is possible for a state to establish a different flight level through the rulemaking procedure in Article 5 of Regulation 549/2004 (Annex B1).

Article 3

As above stated the creation of a EUIR shall be recognised by ICAO and may also include airspace of non-EU countries. This must be done in coordination with the development of a single aeronautical information publication relating to the EUIR.

Article 5

Reconfiguration of the upper airspace into functional airspace blocks (FABs) is the key element of the regulation. The article sets the seven criteria that have to be necessarily taken into account for the establishment of FABs.

FABs are defined as airspace blocks based on operational requirements, reflecting the need to ensure more integrated management of the airspace regardless of existing boundaries.

It allows for the creation of inter-boundary FABs between two or more EU States by mutual agreement.

Article 7-8

EU Member States shall ensure the application within the SES of the concept of flexible use of airspace as described by the ICAO and developed by Eurocontrol in order to maximise civil-military coordination. EU Member States may temporarily suspend application of the flexible use of airspace where it gives rise to significant operational difficulties.

Commission Regulation 2150/2005 lays down the common rules for the flexible use of airspace.

3. Paperwork and tasks created by the instrument

See Annex B1.

4. Creation of new or modification of existing institutions

See Annex B1.

5. Possibilities of and/or need for cooperation and consultation

See Annex B1.

B5 REGULATION 2150/2005 LAYING DOWN COMMON RULES FOR THE FLEXIBLE USE OF AIRSPACE

1. Aim of the legal instrument

This Regulation expands on articles 7 and 8 of Regulation 551/2004 (Annex B4) and article 2(22) of Regulation 549/2004.

Flexible use of airspace is a concept according to which airspace should not be designated as either purely civil or purely military airspace. It should rather be considered as a common resource where all the users' requirements should be accommodated as far as possible. This is a concept which is still under development and the issues are naturally of a delicate nature. However, it is clear that co-operation is necessary within and between states.

This Regulation sets out the tasks to be performed in this context in particular by the states. It also organises the reporting of information about performance to be communicated to the Commission for the purpose of issuing an annual report on the application of the flexible use of airspace. The elements to be included in this report are listed in the annex to the Regulation.

The aim of this activity is to improve safety and capacity of the available airspace and to ensure flexibility and efficiency of its use to the benefit ultimately of the aircraft operations.

2. The substantial elements of the instrument

Article 3

This article sets out four principles of the concept of flexible use of airspace. These principles apply at three levels namely the strategic, pre-tactical and tactical levels of airspace management. These levels are further defined and developed in articles 4, 5 and 6 respectively.

The first principle states that there must be coordination between civil and military authorities.

There must also be consistency between airspace management, air traffic flow management and air traffic services at all levels of management.

Reservation of airspace for exclusive use by one or other category of user shall only be of temporary nature and only when it would actually be used. This would mean for example that the military is able to reserve airspace for its exclusive use but when the exercise would have finished the airspace would go back to general use unless other concerns take priority.

Co-operation – in particular cross-border – must be organised as relevant.

Article 4

At the level of strategic airspace management the EU member states shall perform a number of tasks as set out in this article. If necessary the state will have to ensure a joint civil military process.

States shall identify all the persons and organisations which will be responsible for the execution of one or more of the tasks set out in this article. This information must be communicated to the Commission for further publication and distribution.

Article 5

At the pre-tactical level EU member states shall ensure the creation of an airspace management cell with the necessary resources to allocate airspace as set out in article 4(1). If both civil and military authorities are involved a joint civil military cell would have to be established. Two or more EU member states may establish a joint airspace management cell.

Article 6

At the tactical level the EU member states shall ensure co-ordination in several ways as set out in this article. This is to make certain that co-ordination is not only possible but is also taking place between civil and military traffic service units.

Article 9

EU member states shall monitor the compliance with this Regulation in several ways.

3. Possibilities of implementation

Should be implemented at the same time as Regulation 551/2004.

4. Creation of new or modification of existing institutions

If a civil military airspace cell does not exist it may need to be set up.

5. Possibilities of and/or need for cooperation and consultation

With other EU member states, the European Commission and Eurocontrol.

B5 bis REGULATION 730/2006 ON AIRSPACE CLASSIFICATION AND ACCESS OF FLIGHTS OPERATED UNDER VISUAL FLIGHT RULES ABOVE FLIGHT LEVEL 195

1. Aim of the legal instrument

Regulation 551/2004 (Annex B4) lays down in its Article 4, that implementing rules may be established for the progressive harmonisation of airspace classification in accordance with ICAO standards.

2. The substantial elements of the instrument

This Regulation establishes a harmonised airspace classification to be applied above flight level 195 that shall be applied in the airspace within ICAO EUR and ICAO AFI regions where EU Member States are responsible for the provision of air traffic services.

All airspace above flight level 195 shall be classified as Class C Airspace. This class C airspace is modified from standard ICAO class C airspace (see ICAO annex 11 part 2.6 and appendix 4) in the sense that VFR access is limited depending on altitude flown. This limitation is an application of the ICAO rule, that VFR above FL 200 should not be applied.

The conditions of access of VFR flights are defined, so that in the RVSM airspace (above FL 285) VFR flights are only allowed in an airspace reservation. Between FL195 and FL 285 VFR flights may be allowed also with a normal ATC clearance, in accordance with ICAO rules. The procedures relating to granting access to VFR flights must be published in the national Aeronautical Information Publication (AIP).

3. Possibilities of implementation

The regulation applies from 1 July 2007.

4. Paperwork and tasks created by the instrument

Need to amend charts and include VFR entry rules in the AIP.

B6 REGULATION 552/2004 ON THE INTEROPERABILITY OF THE EUROPEAN AIR TRAFFIC MANAGEMENT NETWORK

1. Aim of the legal instrument

The final Regulation 552/2004 sets out what needs to be established in respect of air traffic management systems, their constituents and associated procedures. This last Regulation is very detailed and it is clear that the parents of this Regulation expect it to lead to operational results in the not too distant future. It is considerably more substantial than the other Regulations. It does not mention Eurocontrol but this is already done in Regulation 549/2004 (Annex B1).

The Regulation sets out to improve the interoperability of the European Air Traffic Management Network (EATMN). It specifies in Articles 3 (implementing rules) and 4 (Common specifications) the work that needs to be done to complement or refine the essential requirements for interoperability, which are defined by Annex II to the Regulation. It then contains a number of procedural rules to ensure that the requirements for interoperability are respected and applied.

2. The substantial elements of the instrument

Article 5

A declaration of conformity is created to be given for each constituent in the EATMN. The format for such a declaration is set out in Annex III of the Regulation. Manufacturers will have to issue such a declaration for their products.

Article 6

Systems to be used by air navigation service providers must be declared in accordance with the essential requirements by the service providers. The Format for this declaration¹⁴ is set out in Annex IV to the Regulation. The declaration must be submitted to the supervisory body responsible.

Annex II

The essential requirements for the EATMN are set out in Annex II to the Regulation.

3. Paperwork and tasks created by the instrument

See Annex B1.

4. Creation of new or modification of existing institutions

See Annex B1.

5. Possibilities of and/or need for cooperation and consultation

See Annex B1.

¹⁴ *The Declaration of Verification*

B7 REGULATION 1032/2006 ON THE NOTIFICATION, COORDINATION AND TRANSFER OF FLIGHTS BETWEEN AIR TRAFFIC CONTROL UNITS¹⁵**1. Aim of the legal instrument**

Regulation 552/2004 (Annex B6) lays down, in its Article 3, that implementing rules may complement or refine the essential requirements for interoperability in particular in terms of safety, seamless operation and performance.

Regulation 1032/2006 lays down requirements for the automatic exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units and for the purpose of civil-military coordination.

This Regulation shall apply to flight data processing systems serving air traffic control units and also to flight data exchange systems supporting the coordination procedures between air traffic services units and controlling military units.

2. The substantial elements of the instrument*Article 3*

Air navigation service providers (ANSPs) shall implement in area control centres (ACCs) some coordination processes (notification, initial coordination, revision of coordination, abrogation of coordination, basic flight data and change to basic flight data), as specified in Annex I, Part B.

ANSPs may implement these coordination processes in air traffic control (ATC) units other than ACCs, as specified in Annex I, Part B.

ANSPs may also implement other coordination processes (pre-departure notification and coordination, change of frequency or manual assumption of communications), as specified in Annex I, Part C.

EU Member States shall ensure that controlling military units implements some coordination processes (basic flight data and change of basic flight data), as specified in Annex I, Part B.

When ATS units and controlling military units have implemented other coordination processes (crossing intention notification, crossing clearance request, crossing counter-proposal or crossing cancellation), it has to be done as specified in Annex I, Part C.

Article 4

The quality of service requirements are specified in Annex II.

Article 6

The safety requirements are specified in Annex III.

¹⁵ OJ L 186, 7.7.2006, p. 27.

Article 7

The conformity assessment (or suitability for use) of constituents has to be done by the manufacturer as specified in Annex IV, Part A.

Article 8

The verification procedures of systems have to be done by the ANSP, as specified in Annex IV, Part B (if the ANSP fulfils the conditions of Annex V) or as specified in Annex IV, Part C (with a notified body).

3. Possibilities of implementation

Should be implemented for new systems from 1 January 2009 and for existing systems from 31 December 2012.

4. Paperwork and tasks created by the instrument

Possible need to modify flight data processing systems and do the verification of the systems.

5. Creation of new or modification of existing institutions

Possible need to designate notified bodies for the verification of systems.

6. Possibilities of and/or need for cooperation and consultation

With other member states of the EU, the European Commission and Eurocontrol.

B8 REGULATION 1033/2006 ON FLIGHT PLANS IN THE PRE_FLIGHT PHASE¹⁶**1. Aim of the legal instrument**

Regulation 552/2004 (Annex B6) lays down, in its Article 3, that implementing rules may complement or refine the essential requirements for interoperability in particular in terms of safety, seamless operation and performance.

Regulation 1033/2006 lays down the requirements on procedures for flight plans in the pre-flight phase in order to ensure consistency of flight plans, repetitive flight plans and associated update messages between operators, pilots and air traffic services units through the Integrated Initial Flight Plan Processing System (IFPS).

This Regulation applies to all the parties involved in the submission, modification, acceptance and distribution of flight plans (operators and agents acting on their behalf, pilots and agents acting on their behalf, and air traffic services units).

2. The substantial elements of the instrument

Article 2(10)

The key items of the flight plan, relevant for the present Regulation, are defined.

Article 3

The originator, operators, IFPS and ATC units shall have the same flight plan in accordance with the relevant ICAO provisions and shall ensure consistency of the changes in particular concerning key items of the flight plan.

3. Possibilities of implementation

Should be implemented from 1 January 2009.

4. Paperwork and tasks created by the instrument

Ensure mutual information of the parties involved in the submission, modification, acceptance and distribution of flight plans.

5. Creation of new or modification of existing institutions

Exchange of information through IFPS.

6. Possibilities of and/or need for cooperation and consultation

With other member states of the EU, the European Commission and Eurocontrol.

¹⁶ OJ L 186, 7.7.2006, p. 46.

B9 EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2006/23 ON THE COMMUNITY AIR TRAFFIC CONTROLLER LICENCE

1. Aim of the legal instrument

The recommendations of the High Level Group on the Single European Sky of November 2000 included a call for harmonised training and agreed qualification levels for air traffic control staff. This call is reflected in Article 5 of Regulation 550/2004 urges the Commission to propose a Community air traffic controller licence.

This legal instrument deals with all aspects of licensing, from the format of the licence, over the competences required including language proficiency, to a certification of training providers to guarantee quality of competences.

The licence applies to all air traffic controllers, including students, who are exercising their functions under the responsibility of air navigations service providers which offer their services primarily to aircraft movement of general air traffic.

The harmonization of competences leads to mutual recognition of licences across Europe and hence will facilitate the cross-border management of human resources in view of the establishment of functional airspace blocks.

2. The substantial elements of the instrument

The instrument deals with the complete licensing cycle:

- Nomination of authorities to certify training providers and ensure oversight so to guarantee that standards are actually met;
- Content of training courses and articulation of responsibilities between training providers, which propose training manual, and authorities, which approve them;
- Structure of ratings and endorsements, to ensure that all required competencies and skills are regulated. Beyond the technical competences, the directive also regulates language proficiency requirements for the different languages used in the centre, and medical standards.
- It lays down conditions for format, issuance and renewal of the licence;
- As the licence harmonise competences, they are to be mutually recognised by Member States in order to contribute to the freedom of movement and the regional management of resources.

3. Possibilities of implementation

The provision of the directive must be transposed in national law by 17 May 2008. For the language proficiency requirements this transposition is set at 17 May 2010.

4. Paperwork and tasks created by the instrument

EU Member States are responsible for the management of the licensing system.

5. Creation of new or modification of existing institutions

These tasks are entrusted to the national supervisory authority, which may be the same as the one referred to in Article 4 of Regulation 549/2004 laying down the framework for the creation of the single European sky.

6. Possibilities of and/or need for cooperation and consultation

With other member states of the EU and the European Commission.

B10 COMMISSION REGULATION 1794/2006 LAYING DOWN A COMMON CHARGING SCHEME FOR AIR NAVIGATION SERVICES**1. Aim of the legal instrument**

This regulation is an implementing rule based on Article 15 of Regulation 550/2004 on the provision of air navigation services in the single European sky. It regulates the financing of the air navigation services through charges imposed upon users.

The charging scheme is consistent with the Eurocontrol Multilateral Agreement for route charges of 12 February 1981, but goes beyond and delivers a clear value added to the existing situation:

- International soft law is transformed into binding and enforceable law;
- All phases of flight are covered;
- Increased accountability of any organisation which originates costs through reinforced stakeholder consultation.
- Possibility of introduction of incentive schemes for users or providers and for the financing of collective air navigation infrastructure.

2. The substantial elements of the instrument

The Commission regulation deals with all costs generated by air navigation service provision, including regulation, for all phases of flight, including terminal services.

In order to respect proportionality and subsidiarity, EU Member States may decide to exempt airports with less than 50,000 commercial air transport movements per year or not to apply provisions with regard to terminal rates to airports with less than 150,000 commercial air transport movements per year, if certain conditions apply.

Charges are set per charging zone which may either be an en-route zone or an aerodrome/group of aerodromes. The charges cover all costs related to service provision. Every organisation which originates such costs is accountable and must organise appropriate consultation with stakeholders.

Air navigation services are financed through en-route or terminal charges. EU Member States must ensure that rates are set. For en-route rates, they may use the existing Eurocontrol arrangements. Also terminal rates must be set, but a single till may continue to be used. Member States are accountable for the setting unit rates.

3. Possibilities of implementation

The regulation applies from 1 January 2007. However, calculation of unit rates according to the provision of the regulation may be deferred until 2008 for en route charges and until 2010 for terminal charges.

4. Paperwork and tasks created by the instrument

EU Member States may continue to use the Eurocontrol route charges scheme, if they so wish.

5. Creation of new or modification of existing institutions

Consistency with the Eurocontrol Route Charging System is ensured. Arrangements for the terminal charges need to be established.

6. Possibilities of and/or need for cooperation and consultation

With other member states of the EU, Eurocontrol and the European Commission.

C SAFETY ANNEXES

C1 REGULATION 3922/91 ON THE HARMONISATION OF TECHNICAL PROCEDURES AND OPERATIONS

1. Aim of the legal instrument

The EU has been co-operating with the Joint Aviation Authorities (JAA) in particular by giving legal power to their recommendations for JARs and thereby ensuring that common airworthiness rules apply throughout the EU (Regulation 3922/91). This not only makes certain that safety is satisfactory in the whole of the EU but it also permits that aircraft can be bought and sold as well as leased freely. This part of the work has now been taken over by the European Air Safety Agency (EASA) (see Annex C4).

This means that the Regulation has been reduced to a state of transition and it is to be expected that it will gradually be taken over completely by legislation related to EASA. However, the scope of Regulation 3922/91 has been recently extended to cover commercial air operations by aeroplanes through Regulation 1899/2006. This latter Regulation has added a new Annex III (called EU-OPS) which corresponds almost completely to JAR-OPS 1 of the JAA.

2. The substantial elements of the instrument

Article 5

States must meet the conditions for membership of the JAA.

Article 6&7

These are a mutual recognition articles which oblige EU member states to recognise certification by other EU member states or bodies representing them such as EASA. This is currently only applying to operational issues covered by the referred Annex III since airworthiness certification matters have been moved to Regulation 1592/2002 (Annex C4).

Article 8

This article safeguards the possibility for an EU member state to act immediately in case of an acute safety problem.

Article 9

States shall coordinate their research programmes to improve the safety of civil aircraft and their operation.

A consolidated version is found at:

<http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1991/R/01991R3922-20070116-en.pdf>

This text is a bit confusing since it still makes reference to Annex II which has been repealed.

The consolidated text includes Regulations 2176/96, 1069/1999, 2871/2000 and 1592/2002, 1899/2006, 1900/2006.

3. Possibilities of and/or need for cooperation and consultation

See Annex C4

C2 DIRECTIVE 94/56 ESTABLISHING THE FUNDAMENTAL PRINCIPLES GOVERNING THE INVESTIGATIONS OF CIVIL AVIATION ACCIDENTS AND INCIDENTS

1. Aim of the legal instrument

Accidents and incidents should be avoided and therefore need to be investigated in order to fully understand the cause of the problem. Such investigation needs to be ensured throughout the whole of the EU and needs to live up to a number of principles in order to ensure that the results of the investigations are reliable and trustworthy. This is what the Directive sets out to do.

2. The substantial elements of the instrument

Article 4

Every accident and serious incident must be investigated!

Article 5

The investigators therefore must have access to all pertinent information.

Article 6

The investigating body must be set up so that it is independent of the bodies it will probably need to investigate such as the CAA, the Ministry of Transport, the airport, the air navigation service provider etc.

The body must have access to the necessary resources i.e. both money and expertise.

The responsibility can be transferred to another state (application of article 83bis of the Chicago Convention).

Article 7

An adequate accident report must be established as quickly as possible and published.

3. Possibilities of implementation

This Directive should be implemented as soon as possible. The assessment visits found several instances where the principles of this Directive were not followed, for example because the investigation organisation was not set up in an independent fashion. Several examples exist in the EU of a state setting up an independent organisation and/or counting on cooperation from another state.

4. Paperwork and tasks created by the instrument

Reliable investigation of accidents and incidents and reporting of the results.

5. Creation of new or modification of existing institutions

An independent accident investigation body.

6. Possibilities of and/or need for cooperation and consultation

Suitable contacts with EU Member States can be arranged by the Commission.

C3 DIRECTIVE 2003/42 ON OCCURRENCE REPORTING IN CIVIL AVIATION

1. Aim of the legal instrument

Accidents and serious incidents must be reported, investigated and conclusions drawn. This is the task of Directive 94/56 (above). However, incidents (which do not result in an accident) or occurrences as they are called are also important and changes may be made as a result of investigating them which will improve safety. It is therefore of great interest to ensure as far as possible that occurrences are also reported but without the formal follow-up given to accidents and serious incidents. On this basis it is then possible to see whether certain patterns or trends in occurrences may reveal areas where changes in procedures or equipment may be made in the interest of improving safety.

There is an added interest in such reporting from an air carrier point of view. From time to time an air carrier needs to show that a delay or a cancellation is due to technical reasons and not to a commercial decision. In such cases an occurrence report may be helpful in addition to the reporting of accidents and serious incidents (see Annex C2).

2. The substantial elements of the instrument

Article 4

Occurrences which have or may have endangered safety (examples can be seen in Annex I & II) shall be reported by the persons who are in a position of knowledge. Other persons may also make a report on a voluntary basis.

Article 5

The reported information is to be stored in a database which lends itself to evaluation and analysis of the data. Such a database should be established by the CAA or similar body. It should be the same database as where information on accidents and serious incidents are placed.

Articles 6 & 7

The information collected should be disseminated to interested parties but in such a way that confidentiality (see also Article 8) is maintained to a certain extent in order not to discourage the reporting. Software shall be developed by the Commission for the dissemination of the data and to facilitate analysis.

3. Paperwork and tasks created by the instrument

A database must be established or an existing one modified. The software developed by the Commission would be useful in this context. An additional budget may be necessary.

It should not be time consuming in view of the possibility to use the software developed by the Commission.

4. Possibilities of and/or need for cooperation and consultation

It will open the possibility to easily obtain information on occurrences from other European states.

C4 REGULATION 1592/2002 ON COMMON RULES IN THE FIELD OF CIVIL AVIATION AND ESTABLISHING A EUROPEAN AVIATION SAFETY AGENCY

1. Aim of the legal instrument

The liberalisation of the air transport market in the EU by virtue of the third package has contributed to the creation of many new air carriers and increased traffic much more rapidly than originally foreseen. This has exposed the need not only to ensure that safety rules must be harmonised but also that the implementation and application of these rules must be at a high level for all the participating states. In order to assure that the same high quality standards will be applied for rulemaking and safety oversight throughout the EU the creation of a European Air Safety Agency (EASA) was accomplished.

With increasing activity it is clear that self-control as such by the air carriers or any other organisation with responsibility for airworthiness is insufficient. On the other hand air carriers should not feel that their responsibility is being diminished when proper control is being imposed by the responsible national authorities. The air carriers must continue their own control and they must know that problems that come up are within their field of responsibility. They must therefore be told in no uncertain terms what they need to monitor and control on a regular basis.

In this context it might be wise to ask for an audit as soon as possible in order to establish what needs to be done. Furthermore, an audit inspection visit will offer the opportunity to discuss the situation with the members of the inspection team which would be useful for example with regard to priorities.

This Regulation will ensure that the EASA standards will be created and applied in equal measure to all EU member states. In the JAA framework the participating states could pick and choose to some extent. This is no longer the case and parts which are enacted will have legal power and must be respected in their totality

EASA is a specialised agency within the legal framework of the EU Treaty. It has legal personality which means, inter alia, that decisions taken by EASA can be challenged before the ECJ.

The Regulation is quite detailed on the tasks and responsibilities of the Agency. A full reading is necessary to fully comprehend this. It is important to note that the overall approach to control is that the organisations involved in airworthiness must set out in a safety control system how they themselves are going to control airworthiness of their activities be it design, production, maintenance or schooling. This quality control system will have to be approved by the regulatory authority that will subsequently check that it is being applied. The national authorities can only carry out this control if they have highly qualified inspectors and a high level of expertise. The national authorities for their part will be checked by EASA.

However, while the Regulation covers the full spectrum of aviation safety, at present the direct responsibilities of EASA are limited to the safety of aircraft themselves and their environmental impact. In practice this means that EASA at present is concerned with certification of airworthiness of aircraft. In other instances the national authorities will carry out necessary control of organisations (including air carriers).

This will be expanded to include certification of personnel and organisations involved in the operation of aircraft (Articles 1 & 7). In fact a proposal to extend the responsibilities in this sense has already been submitted by the Commission..

2. The substantial elements of the instrument

The following will concentrate on Articles where there is a direct impact on the states and refrain from discussing matters which concern solely the internal organisation of the EASA. In fact the provisions of articles 1-11 include both the EU member states and EASA while articles 12-53 specifically deal with EASA. Articles 54-58 contain final provisions.

Article 1

The Regulation shall apply to design, maintenance and operation of aeronautical products, parts and appliances, as well as personnel and organisations involved in these activities and in the operation of aircraft.

Military, customs, police and similar activities are not within the scope of the Regulation.

Article 2

This article sets out the aim of the legislation, namely to achieve a high level of safety and environmental protection for civil aviation.

The tools will be: high and uniform standards, mutual recognition, uniform implementation and application of the standards and the creation of EASA.

Article 4

All aircraft, which in one way or another fall within the responsibility of an EU member state or EASA in respect of safety or operational oversight, must comply with the Regulation.

Certain aircraft benefit from a derogation (set out in Annex II), for example historical aircraft.

Article 5

This is a central article for the Regulation.

Aircraft (and their constituent parts), which fall within the scope of article 4, must comply with essential airworthiness requirements as defined in Annex I.

This means that each type of aircraft (and their constituent parts) must have a type-certificate and each aircraft must have an individual airworthiness certificate.

Organisations involved in design, production and/or maintenance must have an organisation approval. In addition it is made clear that certain types of personnel may be required to have a specific certificate.

There are specific possibilities for dealing with temporary and/or special situations.

The Commission is charged with the responsibility to establish implementing rules for this article. This has been done and these rules can be found in Annex C5 and C6.

Article 6

The environmental requirements in Annex 16¹⁷ to the Chicago Convention shall be respected. If Annex 16 should be amended in the future this will be incorporated in the Regulation.

The Commission shall prescribe the implementation rules for the compliance with Annex 16 of the Chicago Convention. This has been done partially by Regulation 1702/2003 (See Annex C5).

¹⁷ Except for the appendices

Article 8

This article sets out the principle of mutual recognition of certificates.

Article 9

In certain circumstances certification by a third country may be recognised unless the Commission finds that the level of safety is not equivalent to the level specified by this Regulation.

Article 10

Force majeure and follow-up rules are contained in this Article. The article permits an EU member state to act immediately in case of an acute safety problem. In the first instance the Commission shall be informed about such action. In most instances, other EU member states and EASA will also be informed.

Article 11

An organised network for exchange and dissemination of information is created. This includes in the first instance the EU member states, EASA and the Commission but it includes also other interested parties.

The article also contains a confidentiality provision.

Finally the article obliges EASA to publish annually a review of the general safety level.

Article 12

EASA is intended as an organisation to further the implementation of the Regulation.

For this purpose this article sets out the field of competence of EASA under this Regulation by referring in the first instance to all matters covered by article 1(1) which in fact covers the whole scope of the Regulation.

In this context it shall assist the Commission as necessary and the Commission may not change certain rules without prior coordination with EASA.

EASA shall also carry out inspections as necessary. There are more detailed provisions on this subject in articles 16, 45 and 46.

One of the important issues to be the subject of these inspections is clearly whether individual EU member states live up to the objective as stated in article 2 of a uniform high safety level.

Article 13 & 14

EASA shall take the necessary decisions, issue specifications and guidance material. It shall in particular look after the application of articles 15, 45 and 46.

Article 15

EASA shall issue type, airworthiness and environment-certificates in relation to design approval of products¹⁸ and parts. It shall also ensure the continuing airworthiness functions for the products it has certified.

EASA shall certify design organisations and production and maintenance organisations located outside the territory of the state. In addition, a state may request EASA also to certify production organisations located within the State. This

¹⁸ This means aircraft including engines and propellers.

means that states will normally have to certify maintenance organisation located within the country.

Article 16

EASA shall conduct standardisation inspections in order to monitor the application of the Regulation by national authorities. It is important to understand that these inspections are not just polite visits but that real problems will be minuted.. On the other hand such an inspection should also be treated as an opportunity to discuss the possibilities for dealing with problems. Until an audit can be carried out it is worthwhile to reflect carefully on the safety chapter in the reports from the assessment visits which have been carried out.

EASA shall also give its opinion on issues arising in the course of the application of article 10.

Article 17

EASA may conduct research but it must be coordinated with research undertaken by the Commission and EU member states.

Article 18

EASA shall assist the Commission and EU member states in their relations with third countries and shall assist EU member states to respect their international obligations, in particular in respect of the Chicago Convention.

EASA may also itself enter into international cooperation with aeronautical authorities and international organisations on matters covered by this Regulation.

Article 45

EASA has the right to inspect states within the scope of the Regulation as set out in Article 1.1. EASA must be given access to relevant records for examination and/or copying and to premises and may ask for oral explanations on the spot. A report of each inspection must be drawn up and communicated to the state.

Article 46

In the context of Article 15, EASA may also inspect organisations directly or by proxy. In this context too, EASA must be given access to relevant records for examination and/or copying and to premises and may ask for oral explanations on the spot.

Article 53

EASA has a budget from the Commission and must otherwise finance its operations though fees and charges. The level of these fees and charges are fixed by the Commission, though Regulation 488/2005.

Articles 31-42

A very detailed appeals procedure has been set out for decisions taken in the context of Article 15, 46 and 53. Appeals can lead to direct changes in Decisions of EASA or they may go all the way through the appeal proceedings. A Decision by the Boards of Appeal can be challenged before the European Court of Justice (ECJ).

If this procedure seems to be too long, a state can lodge an appeal directly before the ECJ.

A consolidated version can be found at:

<http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/consleg/2002/R/02002R1592-20031001-en.pdf>

This text includes Regulations 1701/2003, 1643/2003 and 334/2007.

3. Paperwork and tasks created by the instrument

Implementation of the Regulation may include a modification of existing certification documents but should not entail the creation of new documents.

C5 REGULATION 1702/2003 LAYING DOWN IMPLEMENTING RULES FOR THE AIRWORTHINESS AND ENVIRONMENTAL CERTIFICATION OF AIRCRAFT AND RELATED PRODUCTS, PARTS AND APPLIANCES, AS WELL AS FOR THE CERTIFICATION OF DESIGN AND PRODUCTION ORGANISATIONS

1. Aim of the legal instrument

Regulation 1592/2002 (above) creating EASA provided in its Article 15 for the elaboration by the Commission of implementing rules for certification purposes. The present Regulation sets out such rules. The approach is based on the former JAR 21, which has been modified to fit into the regulatory framework created by Regulation 1592/2002 and then renamed to Part 21, which is found as Annex I to this Regulation.

As already explained in the context of Regulation 1592/2002, the starting point for monitoring of safety is the organisation carrying out design, production, maintenance or schooling. This organisation must set out how it will control safety. This description must be done in such detail that the certifying authority is assured that safety is guaranteed. The certifying authority will then approved this quality programme and regularly check that the organisation adheres to it, and that in fact the output is safe. The national authorities will be checked by EASA.

Part 21 includes all the procedures to follow for certification by either EASA or the states and the forms to use by either EASA or the states. As a follow-up to this EASA has issued

**DECISION NO. 2003/1/RM
OF THE EXECUTIVE DIRECTOR OF THE AGENCY
of 17 October 2003
on acceptable means of compliance and guidance material for the
airworthiness and environmental certification of aircraft and related
products, parts and appliances, as well as for the certification of design and
production organisations
("AMC and GM to Part 21")**

Both Part 21 and Decision 2003/1 are much too detailed for any interpretation in the context of this information paper. The CAA or any other certifying agency in a state will need to peruse these documents in detail.

However, it is useful to mention that the responsibility for control of design organisations is transferred to EASA. EASA may contract with national authorities so that they carry out these functions on behalf of EASA. The responsibility for control of production organisations remains with the national organisations. Type certificates are issued by EASA but EASA may contract with national authorities to involve them in this work.

The national authorities must be approved certified by EASA and they must therefore themselves develop a detailed quality system.

It should be recalled that EASA under article 46 of Regulation 1592/2003 has the right, and the duty, to inspect the situation of organisations with respect to compliance with Part 21.

Furthermore, EASA has the right and the duty to carry out standardisation inspections of EU member states in order to check whether the states conduct the necessary safety oversight. These inspections will be detailed, any shortcomings will be minuted and follow-up can be expected. On the other hand, the inspections will

also provide the possibility to discuss the situation and to benefit from the experience of other participating states.

The airworthiness certificate of an aircraft will follow that aircraft and is issued in accordance with the rules in Part 21. However, together with a valid certificate of airworthiness, issued according to Part M, (see Annex C6) it has become much less time consuming in the case of a change of ownership to move an aircraft from one EU member state to another. This is quite useful from a commercial point of view.

For any certifying authority that is used to the JAA approach adapting to the modified approach should not be difficult. Other authorities who have generally looked to ICAO for guidance (or maybe even to the US) the change will be more cumbersome.

2. The substantial elements of the instrument

The main business of the Regulation is to introduce Part 21 in the Annex and in the Regulation to indicate how to apply those rules and guidelines. The Regulation states that Part 21 must be applied. In this context it is important for the states to be fully conversant with Section B of the Annex since this contains action that the states must take.

Article 2

Regulation 1592/2002 (Annex C4) introduced certificates for various purposes. This Article sets out how to deal with existing certificates and ongoing certification procedures in respect of products, parts and appliances. If existing certificates have been based on the JAA approach then the certificate can continue, in other instances the state and EASA will have to enter into a detailed assessment exercise.

Article 3

Existing organisation approvals for design organisations also need to be assessed for compliance with EASA standards. This article sets out how to deal with this situation. Again it is clear that when JAA criteria have been used then the path into the EASA system is made easier. In other instances the Part 21 procedures will have to be followed.

Article 4

The same situation as mentioned in Article 3 is also valid for production organisations.

A consolidated version can be found at:

<http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/consleg/2003/R/02003R1702-20050308-en.pdf>

This version includes Regulation 381/2005.

3. Paperwork and tasks created by the instrument

Depending on whether JAA criteria have been used the forms for certification may need to be modified significantly.

This work, which consists of an assessment of the existing certificates, should be started as soon as possible.

The question of resources will need to be tackled.

4. Subsequent modifications of this Regulation

Commission Regulation (EC) No 706/2006 of 8 May 2006 amending Regulation (EC) No 1702/2003 as regards the period during which Member States may issue approvals of a limited duration (Text with EEA relevance) appeared in the *OJ L 122*, 9.5.2006, p. 16–16 and *OJ L 330M*, 28.11.2006, p. 391–391 (in *Maltese*).

Commission Regulation (EC) No 375/2007 of 30 March 2007 amending Regulation (EC) No 1702/2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations *OJ L 94*, 4.4.2007, p. 3–17.

C6 REGULATION 2042/2003 ON THE CONTINUING AIRWORTHINESS OF AIRCRAFT AND AERONAUTICAL PRODUCTS, PARTS AND APPLIANCES AND ON THE APPROVAL OF ORGANISATIONS AND PERSONNEL INVOLVED IN THESE TASKS

1. Aim of the legal instrument

The situation for continued airworthiness is basically the same as for certification of products etc (Annex C4). In this instance it is a matter of converting JAR M, 145, 66 and 147 into the EASA framework where they are then being renamed Parts M, 145, 66 and 147. Also in this instance EASA has issued AMC and GM¹⁹ Decisions.

This Regulation is important because it sets out procedures and responsibilities to be implemented and applied by the EU member states.

Again it can generally be said that a state that has used the JAA approach will find the transition much easier than those that have not.

It should be recalled that EASA under article 46 of Regulation 1592/2003 has the right and duty to inspect organisations with respect to the compliance with Parts M, 145, 66 and 147.

Furthermore, EASA has the right and duty to carry out standardisation inspections of EU member states to check whether the states carry maintain the necessary safety oversight.

2. The substantial elements of the instrument

The main impact of this Regulation is to ensure the implementation and application of Parts M, 145, 66 and 147. Certain derogations as to timing can be found in article 7.

Article 3

This article on continuing airworthiness requirements ensures the application of Part M which is found in annex I to the Regulation. All JAR certification in this respect will need to be redone in order to conform properly to the new rules and procedures.

Article 4

This article on maintenance organisation approvals ensures the application of Part 145, which is found in annex II to the Regulation. All JAR certification in this respect will need to be redone in order to conform properly to the new rules and procedures.

Article 5

This article on certifying staff ensures the application of Part 66, which is found in annex III to the Regulation. The structure of this Part and the derogations are significantly different from JAR-66. The change involved will probably demand considerable resources and changes in present procedures.

Article 6

This article on training organisation requirements ensures the application of Part 147, which is found in annex IV to the Regulation. There are very few changes compared to JAR-147.

Parts M, 145, 66 and 147 are much too detailed for any interpretation in the context of this information paper. The CAA or any other certifying agency in a state will need to peruse these documents in detail.

¹⁹ Acceptable means of compliance (AMC) and guidance material (GM)

3. Paperwork and tasks created by the instrument

The present forms for certification or approval may need to be modified significantly.

This work, which consists of an assessment of the existing certificates, should be started as soon as possible.

The question of resources will need to be tackled. The new structure of Part 66 in particular will need to be taken into account.

7. Subsequent modifications of this Regulation

Commission Regulation (EC) No 707/2006 of 8 May 2006 amending regulation (EC) No 2042/2003 as regards approvals of a limited duration and Annexes I and III (Text with EEA relevance) appeared in the *OJ L 122, 9.5.2006, p. 17-18* and *OJ L 330M, 28.11.2006, p. 392-393 (in Maltese)*.

Commission Regulation (EC) No 376/2007 of 30 March 2007 amending Regulation (EC) No 2042/2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks *OJ L 94, 4.4.2007, p. 18-19*.

C7 REGULATION 104/2004 LAYING DOWN RULES ON THE ORGANISATION AND COMPOSITION OF THE BOARD OF APPEAL OF THE EUROPEAN AVIATION SAFETY AGENCY**1. Aim of the legal instrument**

This is a purely organisational legal measure. It makes the practical arrangements for setting up the board of appeal to decide on challenges to decisions by EASA in respect of Articles 15, 46 and 53 of Regulation 1592/2002 (Annex C4).

2. The substantial elements of the instrument

Nothing in particular. It is an internal constitution of the Board of Appeal.

C8 REGULATION 593/2007 ON THE FEES AND CHARGES LEVIED BY THE EUROPEAN AVIATION SAFETY AGENCY**1. Aim of the legal instrument**

This Regulation sets out the principles for the fees and charges to be applied by EASA as foreseen in article 53 of Regulation 1592/2002 (Annex C4). The scope includes the matters for which fees and charges to EASA are due, the amount of the fees and charges and the way in which they are to be paid.

The principle here is one of cost based pricing. Furthermore, revenues should in principle balance the expenditure of EASA. When applying these principles, however, it should be taken into account that the Community will be paying a contribution to the budget of EASA.

It should also be noted that the EASA budget must be approved by the appropriate Community institutions and that the accounts will be properly audited. These procedures are set out in articles 48 to 52 of Regulation 1592/2002 (Annex C4).

2. The substantial elements of the instrument

This is an administrative Regulation. In fact article 9 states that fees and charges levied by EASA will be paid directly to EASA. If an EU member state is doing certification tasks on behalf of EASA the payments for this service will also have to be paid to EASA which will subsequently reimburse the state. With this in mind it is not appropriate to go into further detail in this information paper.

3. Subsequent modifications of this Regulation

Commission Regulation (EC) No 779/2006 of 24 May 2006 amending Regulation (EC) No 488/2005 on the fees and charges levied by the European Aviation Safety Agency *OJ L 137, 25.5.2006, p. 3–8 and OJ L 330M, 28.11.2006, p. 415–420 (in Maltese)*

Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency *OJ L 140, 1.6.2007, p. 3–20.*

C9 REGULATION 736/2006 ON WORKING METHODS OF THE EUROPEAN AVIATION SAFETY AGENCY FOR CONDUCTING STANDARDISATION INSPECTIONS**1. Aim of the legal instrument**

One of the Agency's tasks is to conduct inspections and investigations as necessary to fulfil its tasks. In particular, EASA's role is to assist the Commission in the monitoring of the application of the provisions of the common rules as well as the implementing rules by conducting standardisation inspections of Member States' competent authorities.

The Regulation mandates the Commission to draw the working methods to be used by the Agency when carrying out such inspections. The rules were drawn up in close cooperation with the Agency and enjoyed the unanimous support of Member States.

The Regulation constitutes the necessary tool for proceeding rapidly to standardisation inspections of the civil aviation authorities of Member States to

ensure that all areas covered by EC Regulation N° 1592/2002 and its implementing rules Regulations EC N° 1702/2003 concerning certification of airworthiness and N° 2042/2003 concerning continued airworthiness (maintenance) of aeronautical products and organisations involved in their design, manufacture and maintenance are upheld.

2. Possibilities of implementation

The Regulation is in itself an implementing rule to Regulation (EC) N° 1592/2002

3. Paperwork and tasks created by the instrument

It is necessary to keep track of the black list and ensure that it is applied when flight permissions are considered.

4. Possibilities of and/or need for cooperation and consultation

With other member states of the EU, the European Commission and EASA.

C10 REGULATION 2111/2005 ON THE ESTABLISHMENT OF A COMMUNITY LIST OF AIR CARRIERS SUBJECT TO AN OPERATING BAN WITHIN THE COMMUNITY AND ON INFORMING AIR TRANSPORT PASSENGERS OF THE IDENTITY OF THE OPERATING AIR CARRIER, AND REPEALING ARTICLE 9 OF DIRECTIVE 2004/36

1. Aim of the legal instrument

The safety of air transport has been a top priority for the European Community ever since the introduction of a common air transport policy. Regulation 2111/2005 EC, which entered into force in January 2006, is a further step towards enhancing European air safety and passenger protection by allowing the European Commission to ban or restrict the activities of unsafe airlines (both passengers and cargo operators).

Bans and operational restrictions are only imposed based on evidence of violation of objective and transparent criteria which are published in the above mentioned regulation (Annex). These criteria focus on the results of checks carried out in European airports; the use of poorly maintained, antiquated or obsolete aircraft; substantiated accident-related or serious incident related information indicating latent systemic safety deficiencies; the inability of the airlines to rectify shortcomings identified during inspections; the inability of the authority responsible for overseeing an airline to perform its task properly; the lack of cooperation of a carrier or its regulatory authority in response to an enquiry regarding the safety aspect of the carrier's operations. The implementing rules of the Basic Regulation have been established by the Commission Regulation (EC) 473/2006. The Community has been established by Commission Regulation (EC) N. 474/2006 of 22 March 2006. The air carriers listed in its Annex A are subject to a ban for all their operations. The air carriers listed in Annex B are subject to operational restrictions, which consist in the prohibition on the use of specific individual aircraft or aircraft type.

The European "black list" should have a real impact on aviation safety in the EU. In addition to its punitive effect the black list will encourage all airlines operating in Europe to comply fully with safety standards and should dissuade unscrupulous airlines from starting up services in Europe. It will avoid discrepancies between national flight bans and restrictions. Through its wide publication the list will have an impact worldwide. The Commission advises people to avoid travelling with these airlines in other parts of the world.

The list is updated as soon as this is required, on the initiative of the Commission or at the request of a Member State (the latest update was Commission Regulation 235/2007). The Commission verifies every three months whether it is appropriate to update the list. If an airline feels that it should be taken off the list because it complies with safety standards, it should contact the Commission or a Member State. The Air Safety Committee will assess the evidence provided by the airline or its supervisory authority. The Commission will take its final decision based on the Committee's opinion.

2. The substantial elements of the instrument

Article 1

The aim of Regulation 2111/2005 is to establish a Community list of air carriers which do not meet relevant safety standards.

Furthermore, an information scheme has been created to ensure that passengers are informed about the identity of the air carriers with which they are going to travel.

Article 3

This article sets out the procedures for establishing the first version of the Community list.

Article 4)

This article sets up a procedure for updating the black list at any time. The principle is that any EU member state (and EASA) would have to communicate to the Commission any information which may be relevant for updating the list. Such new information might concern the need to expand the black list with additional air carriers or because some of the air carriers on the list might have improved safety standards to such an extent that their status should be modified.

On the basis of this information the Commission would review the necessity to update the black list at least every three months, and if appropriate the list would be revised.

During this process the Commission will have to keep all the other EU member states informed.

Articles 5 & 6

Article 5 gives the Commission the possibility to update the list rapidly in the case of acute safety risks by provisional measures. However, such an action will have to be verified and confirmed as a matter of urgency in accordance with the normal procedures.

Article 6

Article 6 gives the member states the possibility to take exceptional measures in response to urgent safety problems. This is the case also in situations where the Commission has not included the air carrier in the black list. In this case also a procedure of verification and, if appropriate, inclusion in the black list will have to be carried out.

Article 7

The air carrier concerned by a decision of the Commission is given the opportunity of being heard (right of defence).

Article 8

The Commission shall establish implementing measures. (This has been done in Regulation 473/2006.

Article 9

The black list shall be published in such a way that it is generally accessible on the internet. In addition, relevant authorities, travel agents and tour operators shall provide access to it on their websites and otherwise as relevant.

Article 10 & 11

Passengers on air routes to, from, within and outside the EU shall be given information about the air carrier(s) which will perform their air carriage if the contract of air carriage has been concluded in the EU.

This information shall be given at the time of reservation. It does not matter which means of reservation has been used.

If this information is not available at that time, or if it is changed later, the passenger must be informed to the extent possible at the time of reservation and then as soon as possible when further information becomes available. This obligation shall be incorporated in the general terms of sale applicable to such transport. There shall be no difference between scheduled and non-scheduled air transport or between individual and package trips.

3. Possibilities of implementation

The first Community list has been established by Commission Regulation (EC) 474/2006 of 22 March 2006. So far, 3 updates have occurred (Commission Regulations 910/2006 of 20 June 2006, 1543/2006 of 12 October 2006, and 235/2007 of 5 March 2007).

4. Paperwork and tasks created by the instrument

It is necessary to keep track of the black list and ensure that it is applied when flight permissions are considered.

5.

5. Possibilities of and/or need for cooperation and consultation

With other member states of the EU, the European Commission and EASA.

7. Implementing rules of the Regulation EC No 2111/2005

The procedural requirements for the updating of the Community list of banned carriers and for hearing of air carriers and consultations with the authorities exercising regulatory control of the air carriers concerned were established with Commission Regulation (EC) No 473/2006 of 22 March laying down implementing rules for the community list of air carriers which are subject to an operating ban within the community referred to in Chapter II of Regulation (EC) 2111/2005 of the European Parliament and of the Council published in the OJ L 84, 23.03.2006, p. 8-13.

8. Updates of the Community list of banned carriers

The first Community list of banned carriers in application of Regulation EC No 2111/2005 was adopted with the Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (Text with EEA relevance) published in the OJ L 84, 23.03.2006, p. 14-28.

Since its adoption in 2006 the Community list was updated three times by means of the following Regulations:

Commission Regulation (EC) No 910/2006 of 20 June 2006 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to

an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council published in the OJ L 168, 21.06.2006, p. 16-27.

Commission Regulation (EC) No 1543/2006 of 12 October 2006 amending Regulation (EC) no 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of Council and as amended by Regulation (EC) No 910/2006 published in the OJ L 283, 14.10.2006., p. 27-39.

Commission Regulation (EC) No 235/2007 of 5 March 2007 amending Regulation (EC) No 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community OJ L 66, 06.03.2007, p. 3-13.

C11 DIRECTIVE 2004/36 ON THE SAFETY OF THIRD-COUNTRY AIRCRAFT USING COMMUNITY AIRPORTS

1. Aim of the legal instrument

Within the framework of the Community's overall strategy to establish and maintain a high uniform level of civil aviation safety in Europe, this Directive harmonises the rules and procedures for ramp inspections of third-country aircraft landing at airports located in the Member States.

2. The substantial elements of the instrument

Article 3

Member States are obliged to put in place a mechanism to collect any information deemed useful for the effective enforcement of international safety standards within the Community

Article 4

Sets out harmonised procedures for the conduct by Member States of ramp inspections of third-country aircraft based on suspicion of non-compliance with international safety standards

Article 5

Provides that the competent authorities of the Member States shall exchange information derived from ramp inspections mutually as well as with the European Commission and the European Aviation Safety Agency (EASA).

Article 6

Provides for appropriate confidentiality of information exchanged between Member States and the Protection of any source of such information, the dissemination of relevant information to interested parties for the purpose of improving aviation safety, and the publication of a yearly aggregated public report by the Commission.

Articles 7-9

Provide for several measures which may be taken following the identification of safety deficiencies during ramp inspections such as: focused inspections of identified aircraft, operators or State of operators, grounding of unsafe aircraft, imposition of an operating restriction (ban included).

3. Possibilities of implementation

EU Member States were obliged to implement this Directive by 26 April 2006.

4. Paperwork and tasks created by the instrument

Regular conduct of ramp inspections on third-country aircraft and a timely input of the ensuing reports into a centralised database which is now managed by EASA.

6. Possibilities of and/or need for cooperation and consultation

The Commission may take any appropriate measures to cooperate with and assist third countries to improve their aviation safety oversight capabilities.

D SECURITY ANNEXES

D1 REGULATION 2320/2002 ESTABLISHING COMMON RULES IN THE FIELD OF CIVIL AVIATION SECURITY**1. Aim of the legal instrument**

The present Regulation was adopted after the attacks of September 11, and represents a step towards establishing satisfactory security at all airports.

It is important to note that the Regulation deals with matters of security controls from a safety point of view. The dividing line is at the point where a person is stopped or where police or military action will have to be taken. The Regulation says nothing about what happens subsequently in such cases.

It is important to note that the Regulation permits EU Member States to apply more stringent measures.

The Regulation sets common rules and standards in its annex. In addition it sets up monitoring mechanisms to ensure compliance with the rules. The annex is based on Document 30 from ECAC as it existed in 2001 and annex 17 of the Chicago Convention.

One of the difficulties in the context of this Regulation is the confidential nature of most implementing legislation. Full transparency is not acceptable to prevent this information falling into the wrong hands.

2. The substantial elements of the instrument*Article 4*

Common standards are laid down in the Annex to the Regulation. The Commission shall adopt measures for the implementation and for the technical adaptation of the common basic standards.

A procedure for setting different standards for small airports is incorporated. In such situations national security measures shall be established under the control of the Commission.

(It should be noted that the Annex does not require separation of departing and arriving passengers except where arriving passengers have not been screened to a satisfactory level.)

Article 5

National Civil Aviation Security Programmes (NCASP) must be established quickly. The main task of such a programme is to ensure the designation of responsibility for the application of the standards. This programme must involve all organisations which have a responsibility in this respect and the state must set up an authority to coordinate and monitor this programme.

Within six months of this Regulation taking effect the authority must set up a national civil aviation security quality control programme (NCASQCP) and ensure the implementation.

Individual airports and air carriers must set up their own security programmes to ensure the compliance with the standards.

Finally a national civil aviation security training programme must be developed by the authority.

Article 7

Specifications for NCASQCPs shall be developed by the Commission. These specifications have been laid down in Regulation 1217/2003.

Airports shall be regularly audited by the authority.

Procedures for conducting inspections shall be developed by the Commission and the Commission shall then carry out such inspections. The reports from such inspections shall be disseminated as appropriate. The procedures for Commission inspections have been laid down in Regulation 1486/2003 (see Annex C8).

Article 8

Strict confidentiality provisions apply.

Article 10

The Commission should in co-operation with ICAO and ECAC consider the possibilities of establishing a mechanism assessing the security situation for flights coming from third countries.

3. Paperwork and tasks created by the instrument

The programmes as specified in Article 5 will have to be developed.

4. Creation of new or modification of existing institutions

It must be ensured that an authority in the sense of Article 5 is in existence.

5. Possibilities of and/or need for cooperation and consultation

With ECAC

D2 REGULATION 622/2003 LAYING DOWN MEASURES FOR THE IMPLEMENTATION OF THE COMMON BASIC STANDARDS ON AVIATION SECURITY1. Aim of the legal instrument

As provided for in Article 4 of Regulation 2320/2002 (Annex D1), the Commission is establishing measures for the implementation and technical adaptation of the common basic standards set out in the Annex to that Regulation.

2. The substantial elements of the instrument*Article 4*

Apart from the secret Annex, Article 4 obliges states to inform the Commission of airports for which they have established special security programmes as referred to in Article 4(3) of Regulation 2320/2000 (Annex D1).

Article 5

The States concerned shall also inform the Commission of compensatory measures at airports where fully screened passengers cannot be separated from arriving passengers that are not screened to the same (or equivalent) standards (at the airport of departure).

3. Possibilities of and/or need for cooperation and consultation

With ECAC

D3 REGULATION 1217/2003 LAYING DOWN COMMON SPECIFICATIONS FOR NATIONAL CIVIL AVIATION SECURITY QUALITY CONTROL PROGRAMMES (NCASQCP)

1. Aim of the legal instrument

Article 7 of Regulation 2320/2002 (Annex D1) lays down that specifications for the NCASQCP shall be developed by the Commission.

It is made very clear that the quality control programme is there to ensure that the national civil aviation security programme (NCASP) is functioning properly and is in compliance with Regulation 2320/2002 (as amended) the implementing legislation (Regulation 622/2003 as amended and Regulation 1138/2004). For several states compliance in respect of substance would have to refer to the Annex to Regulation 2320/2002 and ECAC Document 30 since the adaptations of the Annex will only become available at a later stage. As to procedures, the situation is more straightforward since this Regulation is published in full.

2. The substantial elements of the instrument

Article 4

The main requirements of the quality control programme to monitor the security programme are set out in this article. This covers organisation, job descriptions and operations, making certain that deficiencies are corrected, that the authority has the administrative means to guarantee this and finally ensuring that information resulting from the monitoring is disseminated on a need to know basis. Article 7 is important in this connection since it requires that audits must take place. These audits must be both of an announced and an unannounced kind. Furthermore, compliance must be assessed according to the classification system set out in Annex II to the Regulation. The job description for auditors is supplemented by a set of qualification criteria set out in Article 10.

Article 5

The management, setting of priorities and organisation of the NCASQCP must be set up independently from the NCASP. Since the authority as defined in Regulation 2320/2002 is also responsible, as a minimum, for the coordination of NCASP this would mean that there should be functional separation inside the Authority.

Article 6

States will have to submit an annual report to the Commission covering both the operations of the NCASQCP and the compliance of NCASP with existing rules. This must be done for each airport. Guidelines for reporting can be found in Annex I to the Regulation. In addition States must inform the Commission of best practices for an NCASQCP according to Article 11.

3. Possibilities of implementation

This Regulation should be implemented at the same time as Regulation 2320/2002 (Annex D1).

4. Paperwork and tasks created by the instrument

The task is already set out in connection with Regulation 2320/2002 (Annex D1).

5. Possibilities of and/or need for cooperation and consultation

With ECAC

D4 REGULATION 1486/2003 LAYING DOWN PROCEDURES FOR CONDUCTING COMMISSION INSPECTIONS IN THE FIELD OF CIVIL AVIATION SECURITY**1. Aim of the legal instrument**

Article 7 of Regulation 2320/2002 (Annex D1 above) states that the Commission must develop specifications for inspections that it shall carry out. Therefore, much of this Regulation is aimed at the Commission itself as well as at EU Member States; some of the points in the set-up of the inspections are naturally also of interest to the states.

The aim is to ensure that the security level at all EU airports is both organisationally and operationally at the levels prescribed by Regulation 2320/2002.

2. The substantial elements of the instrument*Articles 3 & 4*

First of all, EU member states shall cooperate with the Commission and ensure the necessary access so that the inspections can be carried out properly. Article 8 also asks the authority of the state to designate a coordinator who shall be responsible for the practical arrangements. The Commission shall be accompanied at all times during the inspection (Article 10.1).

Article 5

Each EU member state shall make a list of its national auditors and communicate it to the Commission. The Commission will then be able to choose auditors who can assist in inspecting other states. This is an opportunity for the auditors to see how security is arranged in other states.

Article 7

At least two months before an inspection the Commission will inform the EU member state. At the same time the Commission will send a questionnaire and ask for the documentation listed in Article 4.2. This questionnaire will have to be different for the states which do not have access to the secret information concerning the Annex to Regulation 2320/2002 (Annex D1).

Articles 9, 10 & 15

The Commission shall deliver an informal oral report at the end of the inspection (Article 9.5). Thereafter, and within 6 weeks, the Commission shall send a full report of the inspection to the authority of the EU Member State who shall inform the entities inspected of the results of the inspection (Article 10.1). Finally it is made clear both in Article 10 and Article 15 that the Commission shall report serious problems to the EU member state immediately and also to all other EU Member States if it has a significant impact on the overall level of security in the EU.

3. Paperwork and tasks created by the instrument

EU Member States (the authority) shall assist the Commission before and throughout the inspection. Questionnaires will have to be filled in.

There will also be preparatory work before and during each inspection.

If deficiencies are found, the authority has to develop an action plan, specifying actions and deadlines, to remedy these deficiencies. Implementation of the action plan may require considerable work.

D5 REGULATION 1138/2004 ESTABLISHING A COMMON DEFINITION OF CRITICAL PARTS OF SECURITY RESTRICTED AREAS AT AIRPORTS**1. Aim of the legal instrument**

According to paragraph 2.3 of the Annex to Regulation 2320/2002 (Annex D1 above) the Commission shall adopt implementing measures for a definition of critical parts of security-restricted areas at airports. That is what this Regulation does.

The guiding principle of the Regulation is straightforward: all areas where passengers and/or baggage move after having been screened are considered to be critical parts of security-restricted areas (Article 1).

2. The substantial elements of the instrument*Article 3*

For small airports i.e. where no more than 40 persons hold an identity card that gives them access to security restricted areas, a simplified set-up is possible according to paragraph 2.3.a of the Annex to Regulation 2320/2002.

Article 4

All staff passing through critical parts of security-restricted areas for passengers must be screened, effective at the latest by 1 January 2006.

All staff passing through critical parts of security restricted areas for baggage must be screened, effective at the latest by 1 July 2009.

Article 5

If unscreened staff are handling baggage then the baggage must be checked before being loaded onto the aircraft. (This derogation should not be used except in exceptional circumstances).

Article 6 & 7

Article 6 states that unscreened staff may have access to critical restricted areas if accompanied by screened and authorised staff.

Article 7 goes on to say that whenever an unscreened person has had access to a critical restricted area then a full security search of those areas shall be carried out. This might seem to include even the situations where the person was accompanied by screened authorised staff; this eventuality is probably not intended.

3. Paperwork and tasks created by the instrument

Included in job defined by Regulation 2320/2002.

4. Creation of new or modification of existing institutions

Gives precision to tasks created by the Annex to Regulation 2320/2002 (Annex D1).

5. Possibilities of and/or need for cooperation and consultation

With ECAC

E ENVIRONMENTAL MATTERS ANNEXES

E1 DIRECTIVE 89/629 ON THE LIMITATION OF NOISE EMISSION FROM CIVIL SUBSONIC JET AEROPLANES1. Aim of the legal instrument

The aim is to reduce noise created by air transport. The Directive introduces an operational ban throughout all of the EU airspace on jet aircraft which do not respect ICAO Chapter 3²⁰ standards except for aircraft entered on the register of a state before 1 November 1990 and not those in respect of certain overseas departments. Small jet aircraft are not included in the ban.

This Directive has been superseded for Jet aircraft wanting to use an EU airport by the entry into force of the final phase of Directive 92/14 (Annex E2).

This Directive is therefore only in force for aircraft overflying the country without landing at any of the national airports.

2. The substantial elements of the instrument

The above principle is included in Articles 1 and 2

Article 4

Certain possible derogations are included in this Article.

The exemptions in Article 5 are no longer valid!

3. Paperwork and tasks created by the instrument

Small changes to approval of flight plans.

E2 DIRECTIVE 92/14 ON THE LIMITATION OF THE OPERATION OF AREOPLANES COVERED BY PART 11, CHAPTER 2, VOLUME 1 OF ANNEX 16 OF THE CONVENTION OF INTERNATIONAL CIVIL AVIATION, SECOND EDITION (1988)

This Directive and its subsequent amendments have been replaced by a consolidated version (**Directive 2006/93/ of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (codified version) (Text with EEA relevance).**

The substantial elements of the instrument*Article 2*

Member States shall ensure that all civil subsonic jet aeroplanes operating from airports in their territory comply with the standards specified in Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988).

Exemptions

Article 3 foresees in a limited number of exemptions.

1. Paperwork and tasks created by the instrument

Instructions for the approval of flight plans.

²⁰ Part II, Chapter 3, Volume 1 of Annex 16

E3 DIRECTIVE 2002/30 ON THE ESTABLISHMENT OF RULES AND PROCEDURES WITH REGARD TO THE INTRODUCTION OF NOISE-RELATED OPERATING RESTRICTIONS AT COMMUNITY AIRPORTS

1. Aim of the legal instrument

This represents a further step to try to limit the noise in and around EU airports. It must be seen as an effort to go beyond Directive 92/14 (Annex E2) at specific airports but it does not replace Directive 92/14 as such.

2. The substantial elements of the instrument

Article 4

For the first time a Directive includes mention of economic incentives (or disincentives) to persuade air carriers to use equipment with lower noise or to use the equipment in a less noisy way.

The Article also mentions operating restrictions as a tool. This would probably include the phasing out of the most noisy aircraft and partial operating restrictions such as night flight restrictions. When noise performance criteria are involved they must be based on the noise performance of aircraft as determined by the certification procedure conducted in accordance with volume 1 of Annex 16 to the Chicago Convention. Noise performance criteria must not be discriminatory on grounds of nationality or in other ways.

The spirit of this Article is consistent with the consideration that this may involve going beyond Directive 92/14.

Application of this Article may only be done after having analysed the costs and benefits.

Article 5

When considering introducing measures mentioned in Article 4 the analysis must, as far as possible and as far as is appropriate, include the elements listed in Annex II. However, if the airport has to carry out an environmental impact assessment according to Directive 85/337 then this impact assessment will suffice if it has taken into account the elements listed in Annex II. Directive 85/337²¹ will be implemented as part of the general harmonisation programme with the EU and it is one of the most important environmental legal measures. An environmental impact assessment shall be made for airports with a runway length of 2,100 metres or more.

Article 6

If it becomes necessary to phase out marginally compliant aircraft (see definition in Article 2(d)) then such a decision can only enter into force 6 months after it was adopted in respect of new or increased services. Six months later air carriers may be requested to reduce their existing operations with marginally compliant aircraft to 20% of these operations annually.

City airports as listed in Annex I may apply more stringent noise performance parameters but not beyond chapter 4.

²¹ A consolidated text of 85/337 can be found at:
http://europa.eu.int/eur-lex/en/consleg/pdf/1985/en_1985L0337_do_001.pdf

Article 8

Certain aircraft registered in developing countries are granted an exemption. However, no list is provided for the aircraft which meet the criteria. Contact with the Commission is recommended to obtain such a list.

Article 12

States shall ensure that it is possible to appeal a decision taken according to Article 6. However, the appeal cannot go to the body responsible for the Decision.

3. Possibilities of implementation

Should be implemented at the same time as the other environmental measures in Annex E1 and E2

4. Paperwork and tasks created by the instrument

Could be considerable

5. Possibilities of and/or need for cooperation and consultation

Commission

E4 DIRECTIVE 2002/49 RELATING TO THE ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL NOISE

1. Aim of the legal instrument

This represents a multi-sectoral approach including major airports i.e. airports with more than 50,000 movements per annum. The aim of the Directive is to harmonise noise descriptors and noise maps and to encourage states to consider the noise situation in detail. The tools for doing this is basically to map the noise situation by using an indicator for the noise, averaged over day-evening-night for a year and a noise indicator for the night over a year.

2. The substantial elements of the instrument

Article 5 & 6

The competent authority²² shall use the noise indicators as defined in Annex I for mapping noise around major airports (more than 50,000 movements). Two indicators shall be used as defined in Annex I, i.e. L_{den} and L_{night} . Common assessment methods may not yet exist and in the interim existing national data may be used if they are compatible with Annex II. The Commission shall develop common assessment methods.

States shall communicate information to the Commission about the situation and indicate any limit values i.e. threshold values for noise indicators where action of any kind will be taken or contemplated.

Article 7

States shall inform the Commission of the existence of major airports on their territory as soon as possible and by 30 June strategic noise maps shall be worked out for those airports. The noise maps meet the requirements of Annex IV. This exercise shall be repeated every 5 years.

Article 8

The strategic noise plans shall at the latest by 18 July 2008 be accompanied by action plans which describe the action, if any, that the state will take when limit values are exceeded. The Directive does not prescribe any action, but the action plan must, in a descriptive way, meet the requirements of Annex V. The public must be consulted on the action plans irrespective of whether they contain any intended action or not. In fact, according to Article 9 the strategic noise maps and action plans must be disseminated to the public.

Information as described in Annex VI must be communicated to the Commission no longer than six months after the dates mentioned above for the strategic noise maps and action plans and thereafter every five years.

The Commission shall place the information in a database and shall publish a summary report on the situation in every state every five years, the first time the 18 July 2009.

²² There may be more than one (Article 1).

3. Paperwork and tasks created by the instrument

The competent authority responsible for airport noise will be impacted in respect of the major airports. The air transport authorities in general should not be impacted in any significant way but would need to monitor the situation.

4. Creation of new or modification of existing institutions

Only in cases where the responsibility for environmental noise in and around airports has not been designated to a competent authority.

5. Possibilities of and/or need for cooperation and consultation

Consultation is necessary with the Commission. Consultation between national authorities may also be necessary in order to resolve any capacity problems.

F SOCIAL MATTERS ANNEXES

F1 DIRECTIVE 1989/391 ON THE INTRODUCTION OF MEASURES TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH OF WORKERS AT WORK**1. Aim of the legal instrument**

This Directive sets rules on safety and health for workers and applies to all economic sectors including air transport. The intention of the Directive is to improve the situation for workers in respect of safety and health. The Directive therefore concentrates on the obligations of employers. In fact the main part of the Directive, i.e. section II, is devoted to employers and their obligations. It makes very clear that the employer is responsible for the safety and health of workers in every respect related to work. In fact, even when an employer engages external services and/or workers the employer is still responsible (Article 5).

Since this Directive will be implemented by other government services and not by air transport authorities, this Annex will be fairly brief on implementation and only concentrate on specific content with clear application in the air transport sector. In this context it should be said that the state naturally has a responsibility as an employer, for example in respect of air traffic controllers, airport workers etc.

2. The substantial elements of the instrument*Article 6*

The employer shall consider the risks involved in the workplace and take measures to avoid them. The employer must ensure that the workers have been instructed properly and that those given responsibility are capable of discharging their responsibilities. This is one of the main articles of the Directive.

Article 7

This Article expands further on the theme introduced in Article 6. In addition it also states that a worker with responsibilities for protection and prevention of risks may not be put at a disadvantage due to their activities in this area.

Article 8

Even if proper measures are taken to minimise risks an accident may still occur. In order to minimise the consequences of such accidents the employer must ensure that first aid and fire-fighting equipment is available and that evacuation procedures are in place. The workers must be properly instructed in respect of these services and certain workers may be given direct responsibility in this context.

Article 9

There must be a clear paper trail; if an accident happens a report must be made etc.

Articles 10 & 11

Workers must be properly informed and consulted. Information imparted must be specific as to the job he/she is actually performing.

Article 12

Workers must be properly trained and instructed. The costs in that respect may not be born by the workers and the training and instruction must be given during working hours.

Article 16

More detailed rules may be decided for specific activities as listed in the Annex to the Directive. A large number of such Directives have been adopted and it goes beyond the boundaries of this paper to cover all which may have a meaning for the air transport sector. However, it is important to mention Directive 2003/10, which deals with noise in the workplace, and Directive 2002/44 which deals with vibration. Both of these health risks are symptomatic of air transport.

A consolidated version exists at:

http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0391_do_001.pdf

F2 DIRECTIVE 2003/88 CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME**1. Aim of the legal instrument**

This Directive expands the protection of workers in Directive 1989/391 (Annex F1 above) to working time in its own right. The Directive aims to improve the working environment by setting standards for working time, rest, breaks, leave etc.

In certain respects this Directive is replaced by Directive 2000/79 (Annex F3 below) which sets out rules for mobile workers i.e. aircraft crew. However, that is only a partial Directive and other aspects on protection of workers apply also to mobile workers. In fact the present Directive clearly acknowledges that in respect of daily rest, breaks, weekly rest period and length of night work the provisions of the Directive shall not apply to mobile workers. On the other hand the Directive opens the door for collective agreements to be accepted in legislation and supplement the Directive and this is what Directive 2000/79 does.

2. The substantial elements of the instrument

This is part of the general European labour law and as such it is necessary in an open market situation. However, it is rather peripheral to air transport so no further description is warranted. Directive 2000/79 (Annex F3) deals with the important issues from an air transport point of view.

F3 DIRECTIVE 2000/79 CONCERNING THE EUROPEAN AGREEMENT ON THE ORGANISATION OF WORKING TIME OF MOBILE WORKERS IN CIVIL AVIATION CONCLUDED BY THE ASSOCIATION OF EUROPEAN AIRLINES (AEA), THE EUROPEAN TRANSPORT WORKERS FEDERATION (EFT), THE EUROPEAN COCKPIT ASSOCIATION (ECA), THE EUROPEAN REGIONS AIRLINE ASSOCIATION (ERA) AND THE INTERNATIONAL AIR CARRIERS ASSOCIATION (IACA)

1. Aim of the legal instrument

At present rules on Working time exists in general in Directive 2003/88. However, a similar Directive existed before which contained a provision allowing for specific agreements between the social partners to be given the force of law. This was used by the social partners in aviation to establish a set of rules (Directive 2000/79) specifically for mobile workers in air transport. It represents at present the overall framework within which flight time limitations (FTL) may be introduced. In fact a number of air carrier representatives have openly said that in their opinion FTL are no longer required. Safety experts tend to differ and point to difficulties of managing stress and fatigue in a safe manner. However, at present these rules apply to working time and national rules on FTL may have to accommodate them.

2. The substantial elements of the instrument

Annex clause 8

The gist of the Directive is found in its Annex clause 8. This clause states that mobile workers may not work more than 2000 hours annually, in which the block flying time shall be no more than 900 hours. Working time shall be spread as evenly as practicable over the year.

Article 9

Further it is specified that mobile workers must have a monthly rest period of at least 7 local days²³ and at least 96 local days annually. Rest periods shall be free of any duty or standby time.

3. Paperwork and tasks created by the instrument

Can be checked by the CAA as part of the work to monitor the safety of air carriers certified by them (AOC).

Check to see whether the applicable FTL rules fall within the limits of the Directive.

²³ A local day is not defined but would probably mean a day at home.

F4 DIRECTIVE 91/670 ON MUTUAL ACCEPTANCE OF PERSONNEL LICENCES FOR THE EXERCISE OF FUNCTIONS IN CIVIL AVIATION**1. Aim of the legal instrument**

In an open market it should be possible to take up a position in another state when qualifications are sufficient for the job, irrespective in principle of where the qualifications have been achieved. This Directive sets out the possibilities of doing that by a mutual acceptance of licences. The central principle is that a licence has to be accepted or validated when a person's qualifications correspond to the qualifications required in the country to which he or she is moving. The application of this Directive is subject to whether or not the movement of workers in other respects is possible.

2. The substantial elements of the instrument*Article 4*

The core of the Directive is found in this Article. The principle is set out that a licence must be accepted if the qualifications on which it is based are the same or better than required in the state where the demand for acceptance has been made. Acceptance means a direct acceptance, a validation or the issuance of a national license.

In order to facilitate the comparison of qualifications the Commission was tasked with establishing a matrix of the requirements in force in all EU Member States.

If an EU member state believes that no equivalence is established it may then require the person to undergo some extra training. An example of this is where the requirement in one state is that certain training must be taken as a whole while another state allows for piecemeal training.

If extra training is required applicants must for this purpose be accepted on equal terms at the national training centres.

3. Paperwork and tasks created by the instrument

Comparison of qualifications.

4. Possibilities of and/or need for cooperation and consultation

Consultation with the Commission necessary.

G PASSENGER PROTECTION ANNEXES

G1 DIRECTIVE 90/314 ON PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS

1. Aim of the legal instrument

Consumers are often found to be the victims of a contract gone wrong. This was found to be the case too often in the travel sector in respect of the so-called package tours, where several elements typically travel and accommodation are lumped together and sold in one go as a whole. In addition the situation often involved more than one state i.e. the package being sold in one and consumed in another. A very specific problem in this business is the possibility of a tourist becoming stranded abroad if a travel organiser goes bankrupt.

The aim of the Directive is therefore to create a structure which makes it possible for a tourist to get a fair compensation and a possibility to go home in the worst of cases.

The Directive applies to all modes of transport but clearly it is very much applicable to air transport.

2. The substantial elements of the instrument

Article 3 & 4

The first task is to ensure that the information provided to consumers is correct and adequate. Both Article 3 and Article 4 contain provisions in this respect. Similar rules were introduced in respect of Computerised Reservation Systems in Regulation 2299/1989 (Annex A6) for basically the same reasons. Contract terms are spelled out in the Annex and in Article 4. It is especially important that Article 4 gives the consumer the right to transfer the package to another person if the consumer is prevented from using the package.

Article 4 also defines situations where total or partial refunding of the package price shall take place.

Article 5

This article deals with situation of non-performance of a contract in whole or in part. These are very important provisions when deciding whether a tour organiser is liable or not.

Article 7

Finally it is necessary to establish a system to avoid tourists being stranded abroad on the failure of their travel company. The organiser must have sufficient security to ensure that travellers can be brought home in case of insolvency. Although this leaves the possibility for a tour organiser to establish security by way of insurance, many states have found that it is better to establish a travel fund. An insurance solution has the drawback that it becomes more and more expensive the more uncertain the financial future of the organiser becomes.

3. Possibilities of implementation

Contracts will need to be reviewed and a fund should be created for repatriation of stranded travellers.

4. Paperwork and tasks created by the instrument

The state will have a number of monitoring tasks perhaps because of complaints in particular.

5. Creation of new or modification of existing institutions

Possibly a complaints office.

6. Possibilities of and/or need for cooperation and consultation

Commission

G2 DIRECTIVE 93/13 ON UNFAIR TERMS IN CONSUMER CONTRACTS

1. Aim of the legal instrument

An individual consumer often finds himself dealing with a large and powerful organisation. The aim with this Directive is to create a situation where contractual arrangements are balanced by banning a number of contractual terms (practices) that would otherwise favour the large organisation. The Directive applies to all consumer contracts including air transport tickets and other forms of contracts in the air transport sector.

The Commission carried out a study a few years ago which shows how the contractual situation in air transport complies with the Directive. The study report is very instructive and illustrates that it is not easy to apply the Directive in the aviation sector.

2. The substantial elements of the instrument

Article 3

The main principle is that a contract term is unfair if it tilts the balance of the contract to the disadvantage of the normal situation for a consumer. Contract terms of this nature are set out in the Annex. On the other hand, if the consumer has specifically negotiated a contract term then it cannot be considered to be unfair.

This is the core of the Directive. Its application must naturally be effectively monitored by the EU Member State and if necessary the EU Member State must be vigilant in ensuring that an unfair contract is modified.

3. Paperwork and tasks created by the instrument

Monitoring

G3 DIRECTIVE 95/46 ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA AND ON THE FREE MOVEMENT OF SUCH DATA

1. Aim of the legal instrument

Air transport is characterised by individual information being entered into computer systems and circulated widely. This is exactly the situation which is controlled by this Directive. In reality this legislation took its starting point from the Council of Europe Convention of 1981 on the Protection of Individuals with regard to Automatic Processing of Personal Data. The Convention has been supplemented in a number of ways and the rules are now legally binding.

The aim of this Directive is to ensure that only the parties which are involved in a transaction have access to the information of an individual nature. This Directive goes hand in hand with Regulation 2299/1989 (Annex A6) on Computerised Reservation Systems which in its Article 6 has some very powerful data protection provisions. There is no conflict between the two legislative instruments.

The Directive has been amended by Regulation 1882/2003. A consolidated version exists as shown below.

2. The substantial elements of the instrument

This is a Directive, which normally will not be applied by the aviation authorities. This section will therefore only mention a few elements that are of specific interest to air transport.

The Directive contains a number of provisions to safeguard individual data. It is not always clear how to apply some of these provisions in specific cases. This problem is handled by a committee which can decide on acceptable application in individual cases. Air transport has been discussed several times, especially at the initiative of IATA. It will therefore be useful to advise air carriers to consult with IATA.

A major negotiation took place with the US on information to be provided for anti-terrorist purposes. The Commission reached an understanding with the US. This understanding was challenged before the ECJ by the European Parliament who believed that it was not compliant with the Directive. This case is still running and may have an impact on what the US can demand without giving very tough guarantees on what happens to the data²⁴.

In other ways an understanding has been reached with the US and it was agreed that US companies could enlist a safe harbour programme committing themselves to respect data protection provisions.

3. Paperwork and tasks created by the instrument

Air carriers, ground-handling agents, travel agents must take care with the handling of computerised data.

4. Possibilities of and/or need for cooperation and consultation

IATA and the Commission.

²⁴ The case has now been decided by the ECJ which found that the procedure for reaching the understanding with the US was not appropriate.

G4 REGULATION 2027/97 ON AIR CARRIER LIABILITY IN THE EVENT OF ACCIDENTS

1. Aim of the legal instrument

In 1999, a groundbreaking Convention was signed at ICAO in Montreal. The Convention puts an end to the legally very complex situation represented by the existing Warsaw system of liability. The Warsaw Convention from 1929 has been modified by different protocols over the years, such as the Hague Protocol, but these protocols are not applied by every state. This has created a confusing situation for passengers and often led to claimants seeking out the legal forum which will grant the highest payments, very often this is the US.

The US has unilaterally tried to increase the limits for international flights by basically forcing the airlines to enter into a “voluntary” agreement. Within the US no limits on liability exist. The EU has introduced a system for its airlines where strict liability exists up to a limit of 100,000 special drawing rights (SDRs). Beyond that limit the airlines can defend themselves but there are no limits in principle. An advance payment constitutes an important element in this system.

The Montreal Convention has basically taken these last principles and incorporated them in a revised and modernised procedural structure which is still largely compatible with the Warsaw Convention. This means that at least to some extent the existing jurisprudence will still apply. The new system is much more straightforward and is in the consumer interest.

There is, however, a major difference in the new system. In the Warsaw system the limits were unacceptably low. In order for the courts to go beyond the limits they had to find that the airlines had exhibited gross negligence or wilful misconduct. However, having found that the airlines had exhibited gross negligence, the court had to decide on the level of compensation, which should be paid. This situation is now changing with the Montreal Convention. The large majority of claims can be settled within the strict liability zone. It is therefore not necessary first to find the airlines guilty, but the question now is whether the claims made are realistic.

The 100,000 strict liability zone does not entail that a compensation of this size will automatically be granted: claims must be justified. This is also the case for claims higher than 100,000 SDRs but in this case the air carriers may choose to defend themselves within the framework defined by the Montreal Convention.

The Montreal Convention entered into force in those countries which have ratified it²⁵ on 4 November 2003. It is clear that these countries will work to ensure that the rest of the world will also ratify the Convention.

The EU moved to ratify the Montreal Convention in 2001²⁶ but the approval was only submitted to ICAO at a later date when all the EU Member States had also carried out their national ratifications.

The present Regulation²⁷ ensures that the Montreal Convention is applied at least for passengers and their baggage in the EU. It can be applied without the states having necessarily ratified the Convention.

²⁵ The countries which have ratified can be found at the following site: www.icao.int/icao/en/leb/mtl99.htm

²⁶ Council Decision 539/2001

²⁷ The Regulation was amended in 2002 by Regulation 889/2002

2. The substantial elements of the instrument

Article 3

Community air carriers shall apply the Montreal Convention for passengers and baggage. This is also the case for domestic flights as stated in Article 1. Normally the Convention would not apply to domestic services. The Article refers back to the insurance requirements in Article 7 of Regulation 2407/92 (Annex A1) but this provision has been overtaken by events. Insurance requirements are now governed by Regulation 785/2004 (Annex A2)

Article 5

Advance payments must be paid without delay to meet immediate needs and shall be a minimum of 16,000 SDRs in case of death.

Article 6

Adequate information as set out in the Annex must be provided to the passenger before travel.

Annex

The Annex summarises air carrier liability in different situations.

A consolidated version exists at:

<http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/consleg/1997/R/01997R2027-20020530-en.pdf>

This text includes Regulation 889/2002.

3. Paperwork and tasks created by the instrument

The information note must be implemented by the air carriers. As a consequence they must also change their contract terms. This needs to be checked by the Competent Authority for issuing the Operating Licence.

4. Possibilities of and/or need for cooperation and consultation

Commission

G5 REGULATION (EC) 261/2004 ESTABLISHING COMMON RULES ON COMPENSATION ASSISTANCE TO PASSENGERS IN THE EVENT OF DENIED BOARDING AND OF CANCELLATION OF LONG DELAYS OF FLIGHTS AND REPEALING REGULATION (EEC) 295/91

1. Aim of the legal instrument

Air carriers apply overbooking in order to manage their capacity and achieve as high loads as possible on any given flight. An underlying reason for this approach is that a number of tickets are fully flexible, meaning that even if a person does not use the ticket they can still claim a full refund or use it on another flight. As a consequence a number of booked passengers do not show up at departure and the air carrier has to fly with empty seats. In order to counter this, it is common practice for air carriers to “overbook” i.e. sell more tickets than there are seats on the aircraft. However, despite using fairly sophisticated data on passenger booking and travel patterns, it does happen that too many passengers show up for the seats available. In many instances these passengers have not been treated fairly because an air carrier has a tendency to accept those who have paid higher fares for travel, although they may have created the problem (since flexible tickets are generally more higher priced) and deny boarding for passengers who would have not been able to transfer their ticket if they did not show up for departure.

The Regulation requires compensation to be paid in the case of denied boarding for passengers with a confirmed reservation. The Regulation does include a mandatory call for volunteers to give up their reservation.

The Regulation includes passenger rights in the case of cancellations and delays for all types of services, be it scheduled, charter or domestic. It is applicable to all air carriers departing from the EU and to Community air carriers departing from third country airports to the EU.

Travel carried out on the basis of frequent flyer points is included in the compensation scheme.

Air carriers have reacted negatively to this Regulation. They claim that some of the compensation is unfair, in particular where a situation of force majeure would exist and that some of the procedures are unrealistic in the day-to-day operation of air transport. Low cost air carriers are unhappy that the limitation constituted by the ticket price has disappeared so that compensation can be higher than the price paid by the passenger. The air carriers, represented by their organisations brought cases to the European Court of Justice, but the case was dismissed.

2. The substantial elements of the instrument

Article 3

The Regulation applies to flights that depart from EU airports and to flights which depart in third countries for arrival at an EU airport. The passengers must have a confirmed reservation and must have shown up in time at check-in.

Article 4

In the case of denied boarding i.e. when the flight actually departs but is overbooked the air carrier shall first ask for volunteers. It is only when an insufficient number of volunteers come forward that booking may actually be denied.

Article 5

In the case of cancellations compensation must be paid unless the air carrier can prove that the cause was outside its control. In this instance, the fact that an incident or occurrence report has been filed might help an air carrier to prove that the situation was outside its control.

Article 6

Delays can lead to a rerouting or a refunding of the ticket at the passengers choice.

Article 7

Compensation amounts are fixed except in cases of volunteers where an agreement may be reached for other amounts.

Article 8

In nearly all instances the passenger will have the possibility of asking for a refund or a rerouting.

Article 9

In all instances, if waiting time exceeds certain limits, the passenger has the right to obtain care i.e. meals and/or accommodation, telephone or other means of communication.

Article 14

The passengers must be properly informed before travel and if denied boarding, cancellation and delay takes place.

3. Paperwork and tasks created by the instrument

A complaint procedure and approval of information messages to passengers.

4. Creation of new or modification of existing institutions

Setting up a complaint office is not required, as the Regulation foresees National Enforcement Bodies in order to solve disputes between passengers and airlines and to impose sanctions if airlines infringe this Regulation.

5. Possibilities of and/or need for cooperation and consultation

Commission

G6 REGULATION (EC) NO 1107/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 5 JULY 2006 CONCERNING THE RIGHTS OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY WHEN TRAVELLING BY AIR.

1. Aim of the legal instrument

Approximately 10% of the population of the EU belongs to the category of persons with reduced mobility. The single market for air services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for air travel comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination. This applies to air travel as to other areas of life.

So far airports and airlines used to apply various standards towards disabled persons and persons with reduced mobility. The objective of Regulation 1107/2006 is to ensure that the same standards are applied throughout the EU. The provisions of Regulation 1007/2006 apply to disabled persons and persons with reduced mobility, using or intending to use commercial passenger air services on departure from, on transit through, or on arrival at an airport, when the airport is situated in the territory of an EU Member State to which the Treaty applies. Articles relating to accessibility and assistance aboard aircrafts also apply to passengers departing from an airport situated in a third country to an airport situated in the territory of a Member State to which the Treaty applies, if the operating carrier is a Community air carrier.

In this context, Regulation 1107/2006 covers four main areas: accessibility, assistance, non-discrimination and information.

Firstly, disabled persons and persons with reduced mobility must be accepted for carriage and not refused transport on the grounds of their disability or lack of mobility, except for reasons which are justified on the grounds of safety and prescribed by law. Secondly, assistance to meet their particular needs must be provided at the airport as well as on board aircraft, by employing the necessary staff and equipment. Regulation 1107/2006 gives the overall responsibility of ground-handling assistance to airports. Thirdly, in the interests of social inclusion, the persons concerned must receive this assistance without additional charge. Fourthly, all essential information provided to air passengers must be provided in alternative formats accessible to disabled persons and persons with reduced mobility.

Air carriers' original reaction to Regulation 1107/2006 was negative, since they considered that they should have been given the responsibility of ground-handling assistance also. However, airlines and airports have started to work together and with PRM associations in order to ensure a proper implementation of the text, which provides for a 2-year transition period.

2. The substantial elements of the instrument

Article 1

Regulation 1107/2006 applies to disabled persons and persons with reduced mobility, using or intending to use commercial passenger air services on departure from, on transit through, or on arrival at an airport, when the airport is situated in the territory of an EU Member State to which the Treaty applies. Provisions on

assistance aboard carriers also apply to passengers departing from an airport situated in a third country to an airport situated in the territory of an EU Member State to which the Treaty applies, if the operating carrier is a Community air carrier.

Articles 3 and 4

Disabled persons and persons with reduced mobility should be accepted for carriage and not refused transport on the grounds of their disability or lack of mobility, except for reasons which are justified on the grounds of safety and prescribed by law. Before accepting reservations from disabled persons or persons with reduced mobility, air carriers, their agents and tour operators should make all reasonable efforts to verify whether there is a valid reason to refuse booking and/or boarding.

Article 6

Air carriers, their agents and tour operators shall take all measures necessary for the receipt of notifications of the need for assistance made by disabled persons or persons with reduced mobility and transmit them in due time to managing bodies of the airport of departure and operating carrier as the case may be.

Articles 7 and 8

Managing bodies of airports may provide the compulsory assistance to disabled persons and persons with reduced mobility themselves. Alternatively, managing bodies may contract with third parties for the supply of this assistance. The managing body of an airport may, on a non-discriminatory basis, levy a specific charge on airport users for the purpose of funding this assistance.

Article 14

EU Member States should supervise and ensure compliance with this Regulation and designate an appropriate body to carry out enforcement tasks.

3. Possibilities of implementation

Contacts with the industry show that airports and air carriers operating from the EU are working closely in order to provide accessibility, assistance and information on non-discriminatory standards. Correct and possibly early implementation can therefore be expected.

4. Paperwork and tasks created by the instrument

Monitoring of the activities of the national enforcement bodies.

5. Creation of new or modification of existing institutions

No new institution is required, since Regulation 11107/2006 foresees National Enforcement Bodies in order to solve disputes between passengers and airlines and to impose sanctions if airlines infringe this Regulation.

6. Possibilities of/or need for cooperation and consultation

Commission

H OTHER AIR TRANSPORT MATTERS

H1 REGULATION 3925/91 CONCERNING THE ELIMINATION OF CONTROLS AND FORMALITIES APPLICABLE TO THE CABIN AND HOLD BAGGAGE OF PERSONS TAKING AN INTRA-COMMUNITY FLIGHT AND THE BAGGAGE OF PERSONS MAKING AN INTRA-COMMUNITY SEA CROSSING

1. Aim of the legal instrument

The aim of this Regulation is to remove controls and formalities in respect of cabin and hold baggage for flights within the internal market, where the free movement of goods has been established. This is the case for Norway and Iceland but not the case for the countries which not yet have joined the internal market. In practice it would mean travellers being able to use the blue exits from airports.

The Regulation sets out the rules for the place of controls on cabin and hold baggage in the case of flights arriving in the internal market with or without a continuation flight, and for flights departing from the internal market.

The implementation of this Regulation will basically concern aircraft which carry out fifth freedom or cabotage flights inside the internal market with or without a consecutive leg to/from a country outside the internal market.

2. The substantial elements of the instrument

Article 1

The principle of no controls on cabin and hold baggage within the internal market is established. It is also made clear that this does not include safety and security controls.

Article 3-5

These articles describe where controls take place for cabin and hold baggage when a flight to/from an airport outside the internal market is also involved.

3. Paperwork and tasks created by the instrument

Certain tasks and paperwork will be eliminated.

4. Possibilities of and/or need for cooperation and consultation

Commission

H2 REGULATION 437/2003 ON STATISTICAL RETURNS IN RESPECT OF THE CARRIAGE OF PASSENGERS, FREIGHT AND MAIL BY AIR

1. Aim of the legal instrument

The aim of this legislation is to create statistics that reflect the new market conditions and which create a foundation for future action.

The statistical information to be collected is compatible with the ICAO approach to statistical information gathering.

2. The substantial elements of the instrument

Article 3

States shall collect statistical information at airports as set out in this Article and in annexes I and II²⁸. However, the information does not have to be collected at the small airports.

Article 5

The data shall be complete, i.e. not a sample.

Article 7

The data shall be transmitted to Eurostat as set out in this Article and in Annex I.

Article 10

The Commission shall develop implementing arrangements.

3. Possibilities of implementation

The Regulation should be implemented as quickly as possible. This should be easy for states that already cooperate with Eurostat.

Data communication requires some efforts and resources.

4. Paperwork and tasks created by the instrument

Modification of procedures gathering statistics from airports.

5. Possibilities of and/or need for cooperation and consultation

Eurostat

²⁸ The two annexes have been replaced by Regulation 1358/2003 (Annex 40)

H3 REGULATION 1358/2003 IMPLEMENTING REGULATION 437/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON STATISTICAL RETURNS IN RESPECT OF THE CARRIAGE OF PASSENGERS, FREIGHT AND MAIL BY AIR

1. Aim of the legal instrument

This Regulation sets out implementing arrangements in accordance with Article 10 of Regulation 437/2003 (Annex H2 above).

2. The substantial elements of the instrument

The Regulation provides a set of Annexes as follows:

- Annex I: a list of airports by country and category with an indication of derogations if any.
- Annex II: a detailed description of the data files to be produced an indication of the transmission medium.
- Annex III: replacements for Annex I and II to Regulation 437/2003.

3. Possibilities of implementation

Data communication may require some effort and resources.

4. Paperwork and tasks created by the instrument

Modification of procedures gathering statistics from airports

Listing of airports according to category and with information on derogations if any

5. Possibilities of and/or need for cooperation and consultation

Eurostat

H4 DIRECTIVE 2003/96 RESTRUCTURING THE COMMUNITY FRAMEWORK FOR THE TAXATION OF ENERGY PRODUCTS AND ELECTRICITY

1. Aim of the legal instrument

The aim of this legislation is to reduce consumption of fuel in order to check the environmental effects.

However, at present the Chicago Convention does not permit taxation of kerosene for international air transport. The implementation of the Regulation is therefore in a sense legislation for the future.

2. The substantial elements of the instrument

Article 14

At present the exemptions for taxation of fuel in this article is the main provision from an air transport point of view. It is important to note that private flying is not exempted.

Furthermore, paragraph 2 of this Article specifies that EU member states may limit the scope of the exemptions by applying them only to international transport. EU member states may also decide not to apply the exemptions for their own air carriers flying routes between them through bilateral agreements.

The consequence of limiting the exemptions is naturally that then the rest of the Regulation would apply as relevant to these air services.

3. Possibilities of implementation

This Regulation probably will be implemented as part of the general harmonisation effort together with the EU. However, the state should ensure that it is implemented in time to fit with the ratification of the ECAA Agreement.

4. Paperwork and tasks created by the instrument

Nothing for air transport unless exemptions will be reduced.

H5 APPLICATION OF AN AIR OPERATOR CERTIFICATE (AOC) & APPROVAL OF OPERATING LICENCE

AOC and OL Forms

Civil Aviation Authority of

Application Number:
Date Received:

AOC No. (If applicable):

SECTION 1: Shared Information

Name of Applicant:		
Business Name:		
Address:		
Mailing Address:		
Telephone No.:	Telefax No.:	e-mail Address:
Principal Operating Base:		

Number and type of aircraft to be or currently employed:

Type	Number	MTOW

If any additional aircraft please continue on separate sheet.

Nature of air transport service operated or proposed:		
Address of CAA	Phone: Fax: Opening hours:	Internet: E-mail:

SECTION 2: AOC (In Particular In accordance with Annex 16 to Chicago Convention)

(Use ✓ marks)

A description of the proposed operation enclosed	<input type="checkbox"/>
Description of the management organisation enclosed	<input type="checkbox"/>

Name of Accountable Manager:	<input type="checkbox"/>
Name of Quality Manager:	<input type="checkbox"/>

Names of nominated post holders:

Flight Operations:	<input type="checkbox"/>
Maintenance Systems:	<input type="checkbox"/>
Crew Training:	<input type="checkbox"/>
Ground Operations:	<input type="checkbox"/>

The Operations Manual must be submitted at least 60 days before the date of intended operation!

Operations Manual enclosed:	<input type="checkbox"/>
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The following information must be included in the initial application:

The Operator's Maintenance Management Exposition enclosed	<input type="checkbox"/>
The Operator's aircraft maintenance programmes enclosed.	<input type="checkbox"/>
The aircraft Technical Log enclosed	<input type="checkbox"/>
Where appropriate, the technical specification(s) of the maintenance contract(s) between the operator and any maintenance organization enclosed	<input type="checkbox"/>

The application for a variation of an AOC must be submitted at least 30 days, or as otherwise agreed, before the date of intended operation.

The application for the renewal of an AOC must be submitted at least 30 days, or as otherwise agreed, before the end of the existing period of validity.

Other than in exceptional circumstances, The CAA must be given at least 10 days prior notice of a proposed change of a nominated post holder.

Remarks:

Date:

Signature of Flight Operations Manager

Signature of Accountable Manager

SECTION 3: Approval of Licence

Information on approval of licenses can be found in Regulation on air carrier's approval, in particular in articles 4 and 5.

COMPANY INFORMATION

Date and Place of Incorporation
Company Registration number

Is the application for a license with aircraft: over 10.000 kg. MTOW <input type="checkbox"/> under 10.000 kg. MTOW <input type="checkbox"/>
What date is the license required to be effective?
Is air transport your principal activity, or will it be your principal activity if a license is granted? If no, please give details on a separate sheet.

SHAREHOLDERS:

Please list below details of each person or company holding issued shares in the applicant. In the case of nominee holdings, indicate the name of the beneficial holder of the shares.

Full name of shareholder	Nationality	Number of shares	Class of shares	% of total issued
Name of parent company (if any) and date and place of incorporation:				
Name of ultimate holding company (if any) and date and place of incorporation:				

If the applicant is a subsidiary of another company, please list below details of each person or company which holds more than 5% of the total issued shares in the ultimate holding company. In the case of nominee holdings, indicate the name of the beneficial holder of the shares.

Shares in:
(ultimate holding company)

Full name of shareholder	Nationality	Number of shares	Class of shares	% of total issued

DIRECTORS:

Please list below details of members of the board of directors of the applicant and of any ultimate holding company shown above.

Board of applicant:

Full name (and executive position, if any) of director	Nationality

Board of:
(ultimate holding company)

Full name (and executive position, if any) of director	Nationality

SENIOR MANAGEMENT:

Please list below details of the applicant's senior management other than directors:

Full name of senior manager	Position in company	Nationality

FINANCIAL ARRANGEMENTS:

Please give details on a separate sheet of any financial or other arrangements, which may have a bearing on control of the applicant.

For example:

- any guarantees or support undertakings
- any loans other than provided by a bank or financial institution
- any aircraft leases other than those provided on normal commercial terms - any operational or commercial agreements involving another airline

OTHER MATTERS AFFECTING CONTROL OF THE APPLICANT:

The Authority is required to be satisfied before granting an Operating Licence that the applicant is majority owned and effectively controlled by Member States or nationals of Member States. Are you aware of any information not included above which might affect the Authority's view of the ownership and control of the applicant in this context? If so, please give details on a separate sheet.

APPLICATION AND DECLARATION

I, the undersigned, hereby apply for the grant of an Operating Licence and I declare that, to the best of my knowledge and belief, the statements given in this application are true.

Signed:

Name:

Position in company:

On behalf of:

Date:

ANNEX to Application for AOC

CIVIL AVIATION AUTHORITY

Details of Management Personnel required to be approved for AOC purposes
(Use reverse page of this document to specify items, if needed)

1. Name:

2. Position:

3. Qualifications relevant to the Position:

4. Work experience relevant to the Position:

Date.....

Signature

of

Applicant..... On completion, please send this form under
confidential cover to the Civil Aviation Authority:

For official use only

Name and signature of CAA staff member accepting this person:

Date.....

Name:.....

Signature.....

H6 DECLARATION ON INSURANCE FOR AVIATION PASSENGERS, CARGO AND THIRD PARTY LIABILITY

Civil Aviation Authority of.....

Name of license holder or applicant:

1. Policy Details

Liability	Policy Reference and Period of Validity	Aircraft type and Registration/s covered (Attach list if necessary)	Limit of Insurer's Liability (Please show how limits are applicable, e.g. by accident, in aggregate, by aircraft etc.)
Aviation Passenger, Cargo & Third Party (Incl., if any, Excess Liability (Please give details))			
Third Party War risk			

2. Policy Insurers

Include at least the leading insurer(s) participating in each policy. The CAA retains its right to obtain a list of all insurers.

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3. Policy Restrictions

Does the permitted usage include Public Transport?

Geographical limits?

Maximum number of passenger seats

Address	Phone Fax Opening hours	Website E-mail
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4. Policy Cancellation/Material Change (in respect of each policy)

<p>What period of cancellation is required for cancellation or material change (each policy) in respect of war and Allied Perils (if covered)?</p> <p>for any other reason?</p>	
<p>Are their circumstances in which the policies can automatically lapse</p> <p>In respect of War and Allied Perils?</p> <p>For any other reason?</p>	
<p>DECLARATION BY INSURER OR INSURANCE BROKER</p> <p>We certify that to the best of our belief as Insurers of or Insurance Brokers to the Licence Applicant or Holder the above particulars, insofar as they relate to the insurance policies held, are correct. We further certify that each policy detailed above is in the form known as Lloyd's Aircraft Policy AVN 1C (or based thereon), or in the form agreed by the members of the Aviation Insurance Offices Association, or that the policies are no less favourable to the insured than one or other of the aforesaid forms and do not exclude liabilities which would not be excluded by one or other of the aforesaid forms.</p> <p>We confirm that all underwriters participating in this policy are insurers that have been subject to this company's own vetting procedures</p>	
Signed:	Name:
On behalf of:	Position of Signatory:
Date:	

<p>INFORMATION TO BE PROVIDED BY LICENCE HOLDER OR APPLICANT</p>	
<p>(a) Major airports or aerodromes used by licence holder or applicant:</p> <p>(where the airports used can accommodate wide-bodied aircraft, the response 'wide bodied airports' will be sufficient, otherwise, please give the largest airports or aerodromes normally used.)</p>	
<p>(b) Maximum seating capacity of largest aircraft employed:</p>	
<p>(c) Does this policy cover all the aircraft that you operate? YES/NO*</p>	
<p>*If NO please state aircraft registrations excluded (including those leased in on a regular or occasional basis):.....</p> <p>.....</p> <p>.....</p>	

DECLARATION BY LICENCE HOLDER OR APPLICANT (WHO MUST BE A DIRECTOR OR AUTHORISED SIGNATORY)

I certify that to the best of my knowledge and belief the above information is correct, and confirm that all aircraft employed are covered by the above-mentioned policy unless stated herein to the contrary.

Signed..... Name (please print).....

On behalf of Position of
signatory.....

Date
.....
.....

GLOSSARY

AOC:	Aircraft Operator Certificate that is issued by the competent authority of a state certifying that an airline's operations are technically safe.
ATC:	Air Traffic Control
ATFM:	Air traffic flow management
ATM:	Air Traffic Management
Available Seat-Kilometres (ASK):	The total number of seats available for the transportation of revenue passengers multiplied by the number of kilometres which those seats are flown.
Available Tonne-Kilometres (ATK)	The total number of metric tonnes available for the transportation of passengers, freight and mail multiplied by the number of kilometres which this capacity is flown.
Bilateral Agreements:	International air traffic is based on bilateral agreements concluded between states that set out the rights of airlines of the two states to operate, market and sell their services.
Breakeven Load Factor:	The load factor (see passenger load factor below) at which operating revenues will cover operating costs. Unit cost divided by yield
CAA:	Common Aviation Area. An area composed of several states within which air transport operates according to the same rules.
Cabotage:	The right to carry paying traffic within a foreign country. This traffic right is very seldom granted.
CAEP:	ICAO Committee on Aviation Environment Protection.
CFM:	Central Flow Management carried out in Europe by Eurocontrol.
Chicago Convention:	International Convention of 1944 that sets the basic ground rules for international civil aviation.
CNS:	Communications, Navigation and Surveillance. Together with ATM this constitutes the elements of a total air traffic navigation system.
Code sharing:	Two or more air carriers using their flight designator codes on the same flight.
CRS:	Computerised Reservation System. EU common rules exist setting standards for their operation.
DBC:	Denied Boarding Compensation
Dehosting:	Separation of a CRS from other databases and systems. Can be physical but must at least be functional.

Distances:	Airport-to-Airport great circle distances are used.
Dry leasing:	Leasing of an aircraft without crew.
EASA:	European Aviation Safety Authority.
EASP:	Essential Air Services Program.
Economies of scale:	Classical economic definition that recognises that production costs will diminish when the scale of production goes up. Certain limitations to this definition exist.
Economies of scope:	Follow-on definition to economies of scale stating that the more the operations grow the more the undertaking may be able to influence/control the market. This leads typically to concerns in respect of abuse of dominant positions.
FFP:	Frequent Flyer Programme.
Franchising:	The use by an air carrier of another air carrier's flight designator code.
FTL:	Flight Time Limitation. The flight time allowed for Pilots and cabin crew
Fully flexible fare:	An air fare without restrictions which is also fully refundable.
GATS:	General Agreement on Trade in Services. Only a few aspects of air transport are covered i.e. Computerised Reservation Systems, Doing Business and Foreign Repair Stations.
GDP:	Gross Domestic Product.
GPS:	Geostationary Positioning System. A satellite navigation system.
Grandfather-Right:	A term in relation to airport slot allocation which indicates that an air carrier has the right to be given the same slot as it was operating in the preceding season.
Ground Handling:	Services to ensure the proper flow of passengers, baggage and freight (i.e. check-in, baggage and freight handling) and ancillary services such as catering, cleaning of aircraft, fuelling and ordinary maintenance of aircraft, towing of aircraft, etc.
Hard rights:	Traffic rights and directly related services.
Hub:	Traffic centre for an airline where the traffic is scheduled in waves so that connections are facilitated.
ICAO:	International Civil Aviation Organisation. A specialised Agency of the United Nations responsible for establishing (Standards and Recommended Practices (SARPs) in the technical, (economical) and

	legal fields of international civil aviation. The EU has observer status.
ILS:	Instrument Landing System. An approach aid employing two radio beams to provide pilots with vertical and horizontal guidance during the landing approach. The localiser provides azimuth guidance, while the glide slope defines the correct vertical descent profile. Marker beacons and high intensity runway lights are also part of the ILS.
Indirect Air Carrier:	A company that sells air transport to the public and issues tickets in its own name and with its own designator code but uses another air carrier to operate the air services being sold. Also called virtual air carrier.
Interlining:	The ability to transfer from one air carrier to another with the same ticket
Load factor:	See passenger load factor and overall load factor.
Market investor principle:	A term in connection with assessment of whether state aid exists which is not the case if a normal market investor would have acted in the same way.
Nationality clause:	A clause in typical bilateral agreements which allows the receiving country to refuse the designation of an air carrier which is not owned or controlled by the citizens of the designating country.
NGO:	Non-Governmental Organisation
Non-scheduled services:	Are defined as 'Non-scheduled services': charter flights and special flights performed for remuneration on an irregular basis, including empty flights and blocked-off charters, other than those reported under scheduled services.
One time last time:	After the final liberalisation, which took effect from 1 January 1993, it was accepted by the Commission that an air carrier in economic difficulties could be given state aid once more but after that no more.
Open Skies Agreements:	Air services agreements between typically the US and other states which liberalise market access (routes, capacity and prices) but keep the US home market totally protected.
Operating License:	Together with the AOC the operating license certifies that an airline is both technically and economically fit. Without an operating license the airline is not allowed to operate any aircraft.
Operating Ratio:	The relationship between operating revenues and operating expenses. The latter may be inclusive or exclusive of net interest.
Overall load factor:	The percentage of total capacity available for passengers, freight and mail which is actually sold

	and utilised. Computed by dividing total revenue tonne kilometres actually flown by total available tonne-kilometres
Passenger load factor:	The percentage of seating capacity which is actually sold and utilised. Computed by dividing revenue passenger-kilometres flown by available seat kilometres flown on revenue passenger services, or seats available by no of passengers carried.
Public Service Obligation (PSO):	In cases where air transport is vital for a region the state may specify certain levels of quality of service for any airline operating on a route and if necessary the state may pay compensation if no airline is willing to operate without.
Revenue freight:	All freight counted on a point-to-point basis (in metric tonnes) covered by air waybills for which remuneration is received. Freight carried on trucking services is not included.
Revenue Passengers carried:	A passenger for whose transportation an air carrier receives commercial remuneration.
Revenue Passenger-Kilometre (RPK):	Computed by multiplying the number of revenue passengers by the kilometres they are flown.
Revenue Tonne-Kilometre (RTK):	One tonne of revenue traffic transported one kilometre. Revenue tonne kilometres are computed by multiplying metric tonnes of revenue traffic (passenger, freight and mail) by the kilometres which this traffic is flown. Passenger tonne-kilometres are calculated using standard weights (including baggage) which may differ between airlines and between domestic/short/long-haul.
Scheduled Services:	Flights scheduled and performed for remuneration according to a published timetable, or so regular or frequent as to constitute a recognisably systematic series, which are open to direct booking by members of the public.
Slot Allocation:	Distribution of departure and arrival times for aircraft.
Soft rights:	Rights which relate more to the conditions for operation such as marketing and selling etc.
TABD:	Trans Atlantic Business Dialogue (Between US and EU businesses).
TEP:	Transatlantic Economic Partnership (between US and EU).
Traffic distribution:	The distribution by a state of traffic between two or more airports serving the same city.
Traffic rights:	The right to carry passengers, freight and mail for remuneration. These rights are set out in a systematic way as follows:

- 1st freedom is the right to overfly a country.
- 2nd freedom is the right to overfly a country and make a technical stop for fuelling or repair.
- 3rd freedom is the right to carry passengers etc from the carrier's home state to another state.
- 4th freedom is the right to carry passengers etc from another state back to the home state.
- 5th freedom is the right to carry passengers etc between two foreign states on a service which is an extension of a service from the home state.
- 6th freedom is the right to carry passengers etc between two foreign states via a connection point in the home state i.e. a combination of 4th and 3rd freedoms.
- 7th freedom is the right to carry passengers etc between two foreign points on a free-standing service.
- 8th freedom is the right to carry passengers etc on a service within a foreign country which is an extension of a service from the home state. This is a form of cabotage.
- 9th freedom is the right to carry passengers etc on a free-standing service within a foreign country. This is pure cabotage.

Unfair Contract Terms:

The EU has set out principles for defining contract terms which are unfair in a Directive from 1993.

Unit Cost:

The average operating cost incurred per available tonne-kilometre.

Use it or lose it rule:

A term from slot allocation which indicates that if a slot is not used it will have to be given back to the slot pool for distribution to other air carriers.

Warsaw Convention:

International Convention from 1929 which alone or in combination with later protocols sets out the rules for compensation in case of accidents.

Wet leasing:

Leasing of an aircraft with crew.

Yield:

The average amount of revenue received per revenue tonne-kilometre. Passenger yield: passenger revenue per RPK.