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

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

of 24 September 2008

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) A number of substantial changes are to be made to Council Regulations (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers[(4)], (EEC) No 2408/92 of 23 July 1992 on access of Community air carriers to intra-Community air routes[(5)], and (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services[(6)]. In the interests of clarity, these Regulations should be recast and consolidated into one single Regulation.

(2) In order to ensure a more efficient and consistent application of Community legislation for the internal aviation market a series of adjustments to the current legal framework is required.

(3) Recognising the potential link between the financial health of an air carrier and safety, more stringent monitoring of the financial situation of air carriers should be established.

(4) Given the growing importance of air carriers with operational bases in several Member States and the need to ensure the efficient supervision of these air carriers, the same Member State should be responsible for the oversight of the air operator certificate and of the operating licence.

(5) To ensure consistent monitoring of the compliance with the requirements of the operating licences of all Community air carriers, licensing authorities should carry out regular assessments of the air carriers' financial situation. Therefore, the latter should provide sufficient information on their financial situation, especially in the first two years of their existence as these are particularly critical for the survival of an air carrier

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 1008/2008 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

on the market. In order to avoid a distortion of competition arising from the different application of the rules at national level, it is necessary to reinforce the financial oversight of all Community air carriers by Member States.

(6) To reduce risks to passengers, Community air carriers failing to fulfil the requirements for maintaining a valid operating licence should not be allowed to continue operations. In such cases, the competent licensing authority should revoke or suspend the operating licence.

(7) According to Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators[7] an air carrier should be insured to cover liability in case of accidents with respect to passengers, cargo and third parties. Obligations should also be placed upon air carriers for insurance to cover liability in case of accidents with respect to mail.

(8) In order to avoid excessive recourse to lease agreements of aircraft registered in third countries, especially wet lease, these possibilities should only be allowed in exceptional circumstances, such as a lack of adequate aircraft on the Community market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of Community and national legislation.

(9) With respect to employees of a Community air carrier operating air services from an operational base outside the territory of the Member State where that Community air carrier has its principal place of business, Member States should ensure the proper application of Community and national social legislation.

(10) In order to complete the internal aviation market, still existing restrictions applied between Member States, such as restrictions on the code sharing on routes to third countries or on the price setting on routes to third countries with an intermediate stop in another Member State (sixth freedom flights) should be lifted.

(11) To take into account the special characteristics and constraints of the outermost regions, in particular their remoteness, insularity and small size, and the need to properly link them with the central regions of the Community, special arrangements may be justified regarding the rules on the period of validity of the contracts for public service obligations covering routes to such regions.

(12) The conditions under which public service obligations may be imposed should be defined clearly in an unambiguous way, while the associated tender procedures should allow a sufficient number of competitors to take part in the tenders. The Commission should be able to obtain as much information as necessary to be able to assess the economic justifications for public service obligations in individual cases.

(13) The rules in force with regard to traffic distribution between airports serving the same city or conurbation should be clarified and simplified.

(14) It is appropriate to ensure that Member States have the possibility to react to sudden problems resulting from unforeseeable and unavoidable circumstances, which make it technically or practically very difficult to carry out air services.

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(15) Customers should have access to all air fares and air rates irrespective of their place of residence within the Community or their nationality and irrespective of the place of establishment of the travel agents within the Community.

(16) Customers should be able to compare effectively the prices for air services of different airlines. Therefore the final price to be paid by the customer for air services originating in the Community should at all times be indicated, inclusive of all taxes, charges and fees. Community air carriers are also encouraged to indicate the final price for their air services from third countries to the Community.

(17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(8)].

(18) Since the objective of this Regulation, namely more homogeneous application of Community legislation with regard to the internal aviation market cannot be sufficiently achieved by the Member States because of the international character of air transport, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(19) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006, during the first ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on the airport made in London on 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 declaration.

(20) It is therefore necessary to repeal Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

[[F1]1 This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate intra-Community air services and the pricing of intra-Community air services. It also lays down temporary rules on the supply of groundhandling services at Union airports.**]**

2 The application of Chapter III of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

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Textual Amendments

F1 Substituted by Regulation (EU) 2020/696 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community in view of the COVID-19 pandemic (Text with EEA relevance).

Article 2

Definitions

For the purposes of this Regulation:

1. ‘operating licence’ means an authorisation granted by the competent licensing authority to an undertaking, permitting it to provide air services as stated in the operating licence;

2. ‘competent licensing authority’ means an authority of a Member State entitled to grant, refuse, revoke or suspend an operating licence in accordance with Chapter II;

3. ‘undertaking’ means any natural or legal person, whether profit-making or not, or any official body whether having its own legal personality or not;

4. ‘air service’ means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;

5. ‘flight’ means a departure from a specified airport towards a specified destination airport;

6. ‘local flight’ means a flight not involving carriage of passengers, mail and/or cargo between different airports or other authorised landing points;

7. ‘airport’ means any area in a Member State especially adapted for air services;

8. ‘air operator certificate (AOC)’ means a certificate delivered to an undertaking confirming that the operator has the professional ability and organisation to ensure the safety of operations specified in the certificate, as provided in the relevant provisions of Community or national law, as applicable;

9. ‘effective control’ means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:

   (a) the right to use all or part of the assets of an undertaking;

   (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;

10. ‘air carrier’ means an undertaking with a valid operating licence or equivalent;

11. ‘Community air carrier’ means an air carrier with a valid operating licence granted by a competent licensing authority in accordance with Chapter II;

12. ‘business plan’ means a detailed description of the air carrier's intended commercial activities for the period in question, in particular in relation to the expected market

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development and the investments to be carried out, including the financial and economic implications of these activities;

13. ‘intra-Community air service’ means an air service operated within the Community;

14. ‘traffic right’ means the right to operate an air service between two Community airports;

15. ‘seat-only sales’ means the sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorised agent or a charterer;

16. ‘scheduled air service’ means a series of flights possessing all the following characteristics:

    (a) on each flight seats and/or capacity to transport cargo and/or mail are available for individual purchase by the public (either directly from the air carrier or from its authorised agents);

    (b) it is operated so as to serve traffic between the same two or more airports, either:
        — according to a published timetable, or
        — with flights so regular or frequent that they constitute a recognisably systematic series;

17. ‘capacity’ means the number of seats or the payload offered to the general public on a scheduled air service over a given period;

18. ‘air fares’ means the prices expressed in euro or in local currency to be paid to air carriers or their agents or other ticket sellers for the carriage of passengers on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

19. ‘air rates’ means the prices expressed in euro or in local currency to be paid for the carriage of cargo and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

20. ‘Member State(s) concerned’ means the Member State(s) between or within which an air service is operated;

21. ‘Member State(s) involved’ means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;

22. ‘conurbation’ means an urban area comprising a number of cities or towns which, through population growth and expansion, have physically merged to form one continuous built up area;

23. ‘management account’ means a detailed statement of income and costs of an air carrier for the period in question including a breakdown between air-transport-related and other activities as well as between pecuniary and non-pecuniary elements;

24. ‘dry lease agreement’ means an agreement between undertakings pursuant to which the aircraft is operated under the AOC of the lessee;

25. ‘wet lease agreement’ means an agreement between air carriers pursuant to which the aircraft is operated under the AOC of the lessor;