II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 14 December 1987

on fares for scheduled air services between Member States

(87/601/87)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 84 (2) and 227 (2) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinions of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas more flexible procedures for approving scheduled passenger air fares for air services between Member States will give air carriers greater scope to develop markets and better meet consumer needs;

Whereas air carriers should be encouraged to control their costs, increase productivity and provide efficient and attractively priced air services;

Whereas common rules should be established laying down criteria for the approval of air fares;

Whereas, by virtue of Article 189 of the Treaty, Member States may choose the most appropriate means of implementing the provisions of the Directive, and in particular may apply the criteria laid down in Article 3 more precisely;

Whereas procedures should be established for the submission by air carriers of proposed air fares and their express of automatic approval by the Member States concerned; whereas air carriers should be free to propose air fares individually or after consultation with other air carriers for the purpose, in particular, of fixing the terms of interlining agreements, given the important benefits which they confer;

Whereas provision should be made for rapid consultation between Member States in the case of any disagreement and for procedures for settling such disagreements regarding approval of fares as are not resolved by consultations;

Whereas provision should be made for the regular consultation of consumer groups on matters relating to air fares;

Whereas the Heads of State and Government, at their meeting in June 1986, agreed that the internal market in air transport should be completed by 1992 in pursuance of Community actions leading to the strengthening of its economic and social cohesion; whereas the provisions of this Directive on fares are a first step in this direction and the Council will therefore, in order to meet the objective set by the Heads of State and Government, adopt further measures of liberalization in respect of air fares at the end of a three year initial period,

(1) OJ No C 78, 30. 3. 1982, p. 6.
(2) OJ No C 322, 28. 11. 1983, p. 10 and OJ No C 345, 21. 12. 1987.
(3) OJ No C 77, 21. 3. 1983, p. 26.

HAS ADOPTED THIS DIRECTIVE:

Scope and definitions

Article 1

This Directive shall apply to criteria and procedures to be applied with respect to the establishment of scheduled air fares charged on any route between an airport in one Member State and an airport in another Member State.

This Directive shall not apply to the overseas departments referred to in Article 227 (2) of the Treaty.

Article 2

For the purposes of this Directive:

(a) scheduled air fares means the prices to be paid in the applicable national currency for the carriage of passengers and baggage on scheduled air services and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

(b) zone of flexibility means a pricing zone as referred to in Article 5, within which air fares meeting the conditions in Annex II qualify for automatic approval by the aeronautical authorities of the Member States. The limits of a zone are expressed as percentages of the reference fare;

(c) reference fare means the normal economy air fare charged by a third- or fourth-freedom air carrier on the routes in question; if more than one such fare exists, the average level shall be taken unless otherwise bilaterally agreed; where there is no normal economy fare, the lowest fully flexible fare shall be taken;

(d) air carrier means an air transport enterprise with a valid operating licence to operate scheduled air services;

(e) a third freedom air carrier means an air carrier having the right to put down, in the territory of another State, passengers, freight and mail taken up in the State in which it is registered;

a fourth-freedom air carrier means an air carrier having the right to take on, in another State, passengers, freight and mail for off-loading in its State of registration;

a fifth-freedom air carrier means an air carrier having the right to undertake the commercial air transport of passengers, freight and mail between two States other than its State of registration;

(f) Community air carrier means:

(i) an air carrier which has its central administration and principal place of business in the Community, the majority of whose shares are owned by nationals of Member States and/or Member States and which is effectively controlled by such persons or States, or

(ii) an air carrier which, although it does not meet the definition set out in (i), at the time of adoption of this Directive:

A. either has its central administration and principal place of business in the Community and has been providing scheduled or non-scheduled air services in the Community during the 12 months prior to adoption of this Directive.

B. or has been providing scheduled services between Member States on the basis of the third- and fourth-freedoms of the air during the 12 months prior to adoption of this Directive.

The enterprises which meet the above criteria are listed in Annex I;

(g) States concerned mean the Member States between which the scheduled air service in question is operated;

(h) scheduled air service means a series of flights each possessing all the following characteristics:

(i) it passes through the air space over the territory of more than one Member State;

(ii) it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for purchase by members of the public (either directly from the air carrier or from its authorized agents);

(iii) it is operated so as to serve traffic between the same two or more points, either:

(1) according to a published timetable, or

(2) with flights so regular of frequent that they constitute a recognisably systematic series;

(i) flight means a departure from a specified airport towards a specified destination.

Criteria

Article 3

Without prejudice to Article 5 (2), Member States shall approve air fares if they are reasonably related to the long-term fully allocated costs of the applicant air carrier, while taking into account other relevant factors. In this connection, they shall consider the needs of consumers, the

need for a satisfactory return on capital, the competitive market situation, including the fares of the other air carriers operating on the route, and the need to prevent dumping. However, the fact that a proposed air fare is lower than that offered by another air carrier operating on the route shall not be sufficient reason for withholding approval.

Procedures

Article 4

1. Air fares shall be subject to approval by the aeronautical authorities of the States concerned. To this end, an air carrier shall submit its fares in the forms prescribed by those authorities.

This shall be done either:

(a) individually,

or

(b) following consultations with other air carriers, provided that such consultations comply with the requirements of regulations issued pursuant to Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector. (1)

Aeronautical authorities shall not require air carriers to submit their fares for approval more than 60 days before they come into effect.

2. Subject to Article 5, and without prejudice to Article 6, fares shall require approval by both the States concerned. If neither of the aeronautical authorities has expressed disapproval within 30 days of the date of submission of a fare, it shall be considered as approved.

3. An air fare, once approved, shall remain in force until it expires or is replaced. It may however be prolonged after its original date of expiry for a period not exceeding 12 months.

4. A Member State shall permit an air carrier of another Member State operating a direct or indirect scheduled air service, on giving due notice, to match an air fare already approved between the same city pairs. This provision shall not apply to indirect services which exceed the length of the shortest direct service by more than 20 %.

5. Only third- and fourth-freedom air carriers shall be permitted to act as price leaders.

Article 5

1. There shall be two zones of flexibility on any scheduled air service as follows:

— a discount zone which shall extend from 90 % to more than 65 % of the reference fare;

— a deep-discount zone which shall extend from 65 % to 45 % of the reference fare.

2. Within zones of flexibility, the States concerned shall permit third- or fourth-freedom air carriers to charge discount and deep-discount air fares of their own choice subject to the respective conditions set out in Annex II and provided those air fares have been filed with the States concerned at least 21 days prior to the proposed date for their entry into force.

3. If a fare which has been, or is, approved under the bilateral approval regime and which, as far as its conditions are concerned, qualifies for automatic approval in the deep-discount zone, is below the floor of that zone, there shall be additional flexibility as to the level of that fare. Such additional flexibility shall extend from 10 % below the bilaterally approved level of that fare to the ceiling of the deep-discount zone.

A fare which is entitled to additional flexibility in accordance with this paragraph shall be renewed in successive fare seasons at the request of the air carrier concerned at a level not lower than the percentage of the reference fare at which it stood at the end of the previous fare season, any change in level of the reference fare being duly taken into account. For the purpose of this paragraph, summer and winter fare seasons shall be treated separately.

Article 6

This Directive shall not prevent Member States from concluding arrangements which are more flexible than the provisions of Articles 4 and 5 or from maintaining such arrangements in force.

Article 7

1. When a State concerned (the first State) decides, in conformity with the above Articles, not to approve a scheduled air fare, it shall inform the other State concerned (the second State) in writing within 21 days of the fare being filed, stating its reasons.

2. If the second State disagrees with the decision of the first State, it shall so notify the first State within seven days

(1) See p. 9 of this Official Journal.