COUNCIL DIRECTIVE

of 25 July 1983

concerning the authorization of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States

(83/416/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas a Community procedure for authorizing scheduled inter-regional air services between Member States, for the transport of passengers only or in combination with mail and/or cargo between certain Community airports, will give air carriers greater scope to develop markets and could thus contribute to the evolution of the intra-Community network;

Whereas common rules should be established to govern access to the provision of these services by air carriers effectively controlled by Member States or their nationals, or which, although not owned and effectively controlled by Member States or their nationals, nevertheless meet certain requirements;

Whereas these rules should not affect the relationship between the Home State and its air carriers;

Whereas it is necessary to develop internal Community air traffic on regional routes in order to contribute to the development of the regions within the European Community;

Whereas in respect of fares and rates it is necessary to adhere to the principles of a fair cost/price ratio and a fair return on capital;

Whereas the laws and regulations of the Member States concerning the protection of the environment, social conditions and matters relating to airports should not be prejudiced by this Directive;

Whereas the Home State and the State affected should have the opportunity to apply less restrictive provisions than those in this Directive, and traffic rights which have already been granted by one Member State to another should not be restricted by this Directive;

Whereas the system set up by this Directive is of an experimental nature and its operation should therefore be reviewed by the Council at the end of a certain period from its taking effect;

Whereas the development of the air traffic system in the Greek Islands is at present inadequate and for this reason airports situated on those islands should be temporarily exempted from the application of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive shall apply to procedures for authorizing those scheduled inter-regional air services, for the development of internal Community air transport for the carriage:

— of passengers, or

— of passengers in combination with mail and/or cargo,

on journeys which both originate and end in the European territories of the Member States and which are operated:

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(1) OJ No C 287, 9. 11. 1981, p. 114.
(2) OJ No C 343, 31. 12. 1981, p. 13.

(a) over stages each being more than 400 kilometres, or over stages of less than 400 kilometres where air transport allows a substantial time saving compared to surface transport, because of natural obstacles such as sea and mountains;

(b) by aircraft which have a capacity of not more than 70 passenger seats or a maximum takeoff weight of not more than 30 tonnes; and

(c) between two airports in the Community which are open to international scheduled traffic of category 2 and 2, 2 and 3 or 3 and 3 respectively. The classification of airports is contained in Annex A.

Article 2

For the purposes of this Directive:

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

(i) it is performed as defined in Article 1 for remuneration, in such a manner that each flight is open to use by members of the public;

(ii) 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 or frequent that they constitute a recognized systematic series;

(b) 'inter-regional air service' means a scheduled air service which may be authorized in accordance with Article 1;

(c) 'air carrier' means:

(i) an air transport enterprise 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 transport enterprise which, although it does not meet the definition set out in (i) above, 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 B.

(d) 'Home State' means the Member State in which the air carrier is established as an air transport operator for commercial purposes;

(e) 'State affected' means a Member State, other than the Home State, in which the airports of an inter-regional air service are situated.

Article 3

1. The Home State of the air carrier concerned, if it gives its approval, shall forward the application for an inter-regional air service to the State affected.

2. The State affected shall authorize the air carrier concerned to operate such an inter-regional air service if it conforms to the provisions of this Directive.

However, this provision shall not take effect, if, at the time of application for authorization:

(a) an indirect scheduled air service already exists between the two airports concerned, or between other airports within 50 kilometres of either of them, which involves:

— a total transit time between flight sectors of less than 90 minutes, and

— an increase in total flight time compared with the proposed inter-regional air service of less than 50 %, or

(b) a scheduled air service already exists:

— between one of the two airports concerned and another airport situated within 50 kilometres of the other airport concerned, or

— between two other airports situated, in each case, within 50 kilometres of one of the two airports concerned.

3. When the Home State forwards an application for an interregional air service to the State affected, that State shall, within three months of receipt, reach a decision either authorizing the service applied for or refusing it on the grounds provided for in this Article or in Article 6, and notify the Home State and the Commission of the decision.

Article 4

An inter-regional air service shall not be approved under the terms of this Directive unless the point of origin of the service is located in the Home State of the air carrier.

Article 5

1. The authorizations referred to in Article 3 shall give the air carrier concerned the right to pick up and set down the classes of traffic mentioned in Article 1.

2. The authorizations mentioned in paragraph 1 shall be valid for a period of at least three years, or such lesser period as may be desired by the air carrier concerned, unless revoked or withdrawn because the service in question no longer complies with the conditions under which it was authorized.

3. An authorization shall lapse if the air carrier concerned fails to commence operations within one year after the inauguration date indicated in that authorization.

4. Should an air carrier not enjoy the right to overfly or land for non-traffic purposes in the territory of a Member State, that State shall accord him those rights for the purposes of operating any inter-regional air service under the provisions of this Directive.

Article 6

1. A State affected shall authorize an inter-regional air service unless one or more of the following grounds preclude such authorization, and provided that these do not discriminate against inter-regional air services:

(a) the airport affected in that State has insufficient facilities to accommodate the service;

(b) navigational aids in that State are inadequate to accommodate the service;

(c) the traffic covered by the air service applied for is already satisfactorily catered for, both as to quality and as to quantity, by existing direct air services between the two airports concerned.

2. Where an air carrier of one Member State has been authorized to operate an inter-regional air service, the Home State of that air carrier shall raise no objection to an application for the introduction of an inter-regional service on the same route by an air carrier of the State affected.

Article 7

The Home State and the State affected shall approve the tariffs charged by an air carrier on a given inter-regional air service without outside subsidy on the basis that they:

(a) are in reasonable proportion to the costs of the air carrier's operations for that service without direct or indirect State aid, while permitting a satisfactory return on capital; and

(b) do not have the character of dumping.

Article 8

The territories of the Member States covered by this Directive means the European territories of the Member States to which the Treaty applies.

Article 9

The provisions of this Directive shall not prejudice the laws and regulations of the Member States, applicable either nationally, regionally or locally, concerning the protection of the environment or social conditions, nor matters related to the location, operation or safety of airports or their facilities. Such laws and regulations shall not, however, discriminate against inter-regional air services.

Article 10

1. The Home State and a State affected may by agreement apply less restrictive provisions whilst respecting the present Directive.

2. This Directive shall not restrict any traffic right which, at the time of adoption of this Directive, has been granted by one Member State to another, and by virtue of which an air carrier has been or can be authorized to operate an air service.

Article 11

A State affected which refuses an authorization, as provided for in Articles 3 and 6, shall on request state in writing the reasons on which the decision is based.