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COUNCIL REGULATION (EEC) No 2343/90

of 24 July 1990

on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States

(OJ L 217, 11.8.1990, p. 8)

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on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States

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 [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas it is important to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty; whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Decision 87/602/EEC [4] made a first step towards the liberalization in respect of sharing of passenger capacity and access to the market, necessary to achieve the internal market in air transport; whereas the Council agreed to take further measures of liberalization at the end of a three-year initial period;

Whereas it is necessary to implement principles governing relations between States of registration and air carriers licensed in their territory by 1 July 1992 on the basis of common specifications and criteria;

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

Whereas the development of the air traffic system in the Greek Islands and in the Atlantic Islands comprising the autonomous region of the Azores is at present inadequate and for this reason airports situated on these islands should be temporarily exempted from the application of this Regulation;

Whereas the infrastructure at Porto airport is still being expanded to enable it to cope with the growth in scheduled services; whereas, consequently, that airport should be exempted temporarily from the application of this Regulation until the expansion of this infrastructure is completed;

Whereas it is necessary to make special provision, under limited circumstances, for air services on new routes between regional airports and for public service obligations necessary for the maintenance of services to certain regional airports;

Whereas increased market access will stimulate the development of the Community air transport sector and give rise to improved services for users; whereas as a consequence it is necessary to introduce more liberal provisions concerning multiple designation, third-, fourth- and fifth-freedom traffic rights;

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(1) OJ No C 258, 11. 10. 1989, p. 6; and OJ No C 164, 5. 7. 1990, p. 11.
(2) OJ No C 96, 17. 4. 1990, p. 65.
(3) OJ No C 112, 7. 5. 1990, p. 17.
(4) OJ No L 374, 31. 12. 1987, p. 19.

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Whereas, taking into account problems relating to airport infrastructure, navigational aids and availability of slots, it is necessary to include certain limitations concerning the use of traffic rights;

Whereas the exercise of traffic rights has to be consistent with rules relating to safety, protection of the environment, allocation of slots and conditions concerning airport access and has to be treated without discrimination on grounds of nationality;

Whereas bilateral rules concerning capacity shares are not compatible with the principles of the internal market which should be completed by 1993 in the air transport sector; whereas therefore the bilateral restrictions must be diminished gradually;

Whereas it is especially important to encourage the development of inter-regional services in order to develop the Community network and to contribute to a solution of the problem of congestion at certain large airports; whereas, therefore, it is appropriate to have more liberal rules with respect to capacity sharing these services;

Whereas in view of the relative importance for some Member States of non-scheduled traffic *vis-à-vis* scheduled traffic, it is necessary to take measures to alleviate its impact on the opportunities of carriers of Member States receiving such traffic; whereas the measures to be taken should not be aimed at limiting non-scheduled traffic or subjecting it to regulation;

Whereas, taking into account the competitive market situation, provision should be made to prevent unjustifiable economic effects on air carriers;

Whereas this Regulation replaces Directive 83/416/EEC [1], as last amended by Directive 89/463/EEC [2], and Decision 87/602/EEC; whereas it is therefore necessary to revoke that Directive and that Decision;

Whereas it is desirable that the Council adopt further measures of liberalization including cobotage in respect of market access and capacity sharing by 30 June 1992,

HAS ADOPTED THIS REGULATION:

Scope and definitions

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Article 2

For the purposes of this Regulation:

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(e) Community air carrier means:

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

1. 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 Regulation;
2. or has been providing scheduled air services between Member States on the basis of third- and fourth-freedom

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(1) OJ No L 237, 26. 8. 1983, p. 19.
(2) OJ No L 226, 3. 8. 1989, p. 14.

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traffic rights during the 12 months prior to adoption of this Regulation.

The air carriers which meet the criteria set out in this point (ii) are listed in Annex I.

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

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ANNEX I

Air carriers referred to in Article 2 (e) (ii)

The following air carriers meet the criteria referred to in Article 2 (e) (ii) as long as they are recognized as national carriers by the Member State which so recognizes them at the time of the adoption of this Regulation:

— Scandinavian Airlines System,

— Britannia Airways,

— Monarch Airlines.

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