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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 294/91

of 4 February 1991

on the operation of air cargo 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 during the period expiring on 31 December 1992, as provided for in Article 8a of the Treaty; whereas the internal market must comprise a territory without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

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 for Foreign Affairs of the two countries and such arrangements have yet to come into operation;

Whereas Regulation (EEC) No 2343/90 (4) provides for the liberalization of air cargo services operated in combination with passenger services;

Whereas it is appropriate that all-cargo air services should also be liberalized;

Whereas this Regulation is without prejudice to the application of Articles 85 and 86 of the Treaty;

Whereas the air cargo industry still encounters national barriers which hamper the free movement of goods by air; whereas increased market access possibilities will stimulate the development of the Community air transport sector and give rise to improved services for users;

Whereas certain Member States depend heavily on air cargo services for their connections with the rest of the Community; whereas the movement of air cargo is an essential element for trade;

Whereas, as a result, it is important to remove the barriers which currently hinder access to the market for air cargo services;

Whereas it is desirable as a first stage to increase the market possibilities for air cargo services between Member States;

Whereas common rules on the granting of operating licences should be drawn up and adopted by the Council no later than 1 July 1992;

Whereas, taking into account airport infrastructure and navigational aids, it is necessary to include certain limitations concerning the exercise of traffic rights;

Whereas the communication of all standard cargo rates creates more transparency in the market place;

Whereas, in order to be better able to compete, air cargo carriers need flexibility in setting cargo rates,

HAS ADOPTED THIS REGULATION:

Scope and definition

Article 1

1. This Regulation concerns:

(a) access to the market for the operation of air cargo services between Member States by Community air cargo carriers;

(b) air cargo rates between Member States.

(1) OJ No C 88, 6. 4. 1990, p. 7 and OJ No C 9, 15. 1. 1991, p. 4.
(2) OJ No C 295, 26. 11. 1990, p. 694.
(3) OJ No C 182, 23. 7. 1990, p. 8.
(4) OJ No L 217, 11. 8. 1990, p. 8.

2. The application 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.

3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

Article 2

For the purposes of this Regulation :

(a) 'air cargo carrier' shall mean an air transport enterprise in possession of a valid operating licence issued by a Member State and authorizing it to operate, at least, air cargo services ;

(b) 'Community air cargo carrier' shall mean :

(i) an air cargo carrier which has, and maintains, its central administration and principal place of business in the Community, and the majority of whose shares are, and continue to be, held by Member States and/or by nationals of Member States and which is, and continues to be, effectively controlled by such States or persons ; or

(ii) an air cargo carrier which meets the definition in Article 2 (e) (ii) of Regulation (EEC) No 2343/90 and is listed in the Annex hereto ;

(c) 'cargo rates' shall mean the prices to be paid in the national currency for the carriage of cargo and the conditions under which these rates apply, including remuneration and conditions offered to agency and other auxiliary services ;

(d) 'standard cargo rates' shall mean the prices which the air carrier would normally quote for the carriage of cargo and the conditions under which these rates apply without taking into account any special discounts ;

(e) 'air cargo services' shall mean air services carrying only cargo and mail ;

(f) 'a third-freedom traffic right' shall mean the right of an air carrier licensed in one State to put down, in the territory of another State, passengers, cargo and mail taken up in the State in which the licence was issued ;

'a fourth-freedom traffic right' shall mean the right of an air carrier licensed in one State to take on, in the territory of another State, passengers, cargo and mail, for off-loading in the State in which the licence was issued ;

'a fifth-freedom traffic right' shall mean the right of an air carrier to undertake air transport of passengers, cargo and mail between two States other than the State in which the licence was issued ;

(g) 'airport system' shall mean two or more airports grouped together as serving the same city ;

(h) 'States concerned' shall mean the Member States between which an air cargo service is operated ;

(i) 'State of registration' shall mean the Member State in which the licence mentioned in (a) is issued.

Operating licences

Article 3

1. This Regulation shall not affect the relationship between a Member State and air cargo carriers licensed by that State regarding market access and implementing capacity.

2. The Council shall, on the basis of a proposal concerning common specifications and criteria to be submitted by the Commission not later than 31 May 1991, adopt rules governing the licensing of air cargo carriers and route licensing to be brought into effect no later than 1 July 1992.

Market access

Article 4

Subject to the provisions of this Regulation, Community air cargo carriers shall be permitted to operate third- and fourth-freedom air cargo services between airports or airport systems in one Member State and airports or airport systems in another Member State when these airports or airport systems are open for air cargo traffic between Member States or for international traffic.

Article 5

1. A Member State shall authorize air cargo carriers to exercise third-, fourth and fifth-freedom traffic rights when those carriers are licensed in another Member State,

and have been authorized by that State to exercise those rights; the fifth-freedom traffic rights shall be exercised on a service which constitutes an extension of a service from, or as a preliminary of a service to, their State of registration.

2. In operating air cargo services to or from two or more points in another Member State or between Member States other than its State of registration, a Community air cargo carrier shall be permitted by the States concerned to combine services and use the same flight number.

Flexibility of operations

Article 6

1. Community air cargo carriers may at any point on a route carry out intermediate reloading where this involves one change of aircraft only.

2. Subject to Article 8, there shall be no restrictions on frequency of service, aircraft type and/or the amount of cargo and mail which may be carried.

Conditions for the exercise of traffic rights

Article 7

This Regulation shall not affect a Member State's right to regulate, without discrimination on grounds of nationality, the distribution of traffic between the airports within an airport system.

Article 8

1. The exercise of traffic rights shall be subject to published Community, national, regional or local rules relating to safety, the protection of the environment and the allocation of slots and to the following conditions:

(a) the airport or airport system concerned must have sufficient facilities to accommodate the service;

(b) navigational aids must be sufficient to accommodate the service.

2. When the conditions in paragraph 1 are not met, a Member State may, without discrimination on grounds of nationality, impose conditions on, limit or refuse the exercise of those traffic rights. Before taking such a measure, the Member State concerned shall inform the Commission and provide it with all the necessary information.

3. At the request of a Member State, the Commission shall examine the application of paragraph 2 in any particular case and within one month decide whether the Member State may continue to apply the measure.

4. The Commission shall communicate its decision to the Council and to the Member States. Any Member State may refer the Commission's decision to the Council within a time limit of one month. The Council, acting by a qualified majority, may take a different decision within a period of one month.

Pricing

Article 9

1. Cargo rates charged by Community air carriers shall be set by free agreement between the parties to the contract of carriage.

2. Air carriers operating within the Community shall make available on request all standard cargo rates to the general public.

General provisions

Article 10

1. This Regulation shall not prevent Member States from concluding between themselves arrangements which are more flexible than the provisions of Articles 4, 5 and 6 or from maintaining such arrangements in force.

2. The provisions of this Regulation shall not be used to make existing rights and arrangements in respect of market access, implementing capacity and operating flexibility more restrictive.

Final provisions

Article 11

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

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

Done at Brussels, 4 February 1991.

For the Council

The President

J. F. POOS

ANNEX

Air cargo carriers referred to in Article 2 (b) (ii)

— Scandinavian Airlines System,

— Britannia Airways,

— Monarch Airlines.