COMMISSION REGULATION (EC) No 1962/2006

of 21 December 2006

in application of Article 37 of the Act of Accession of Bulgaria to the European Union

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of Bulgaria and Romania to the European Union, and in particular Article 4(3) thereof,

Having regard to the Act of Accession of Bulgaria and Romania to the European Union, and in particular Article 37 thereof,

Whereas:

(1) Article 37 of the Act of Accession of Bulgaria and Romania allows the Commission to take appropriate safeguard measures in order to address a serious breach of the functioning of the internal market, or an imminent risk of such a breach, resulting from a failure to implement commitments undertaken by Bulgaria in the context of accession negotiations with regard to any Community sectoral policy which concerns economic activities with cross border effect; there is an imminent risk that Bulgaria's failure to implement its commitments to comply with regulations will cause a serious breach of the internal market for air transport;

(2) The Community has adopted on the basis of Article 80 of the EC Treaty a common air transport policy, which includes rules establishing an internal market for the provision of air transport services[1] as well as common rules in order to establish and maintain a high uniform level of civil aviation safety in Europe[2]. Both sets of rules have a direct impact on the supply of air transport services between the Member States.

(3) In the context of the accession negotiations Bulgaria committed itself to fully apply the Community rules in the area of air transport as from the date of its accession to the European Union;

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[1] OJ L 240, 24.8.1992, p. 1–7, Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers, Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, OJ L 240, 24.8.1992, p. 8–14 and Council Regulation (EEC) N° 2409/92 of 23 July 1992 on fares and rates for air services, OJ L 240, 24.8.1992, p. 15

[2] OJ L 240, 7.9.2002, p. 1-21, Regulation (EC) N° 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, modified by Regulation (EC) N° 1643/2003, OJ L 245, 29.9.2003, p. 7–9 and Regulation (EC) N° 1701/2003, OJ L 243, 27.9.2003, p. 5–5

(4) Following the signature of the Treaty of Accession on 25 April 2005, the competent authority for civil aviation (CAA) of Bulgaria was visited by the European Aviation Safety Agency (EASA) from 16 to 20 May 2005 to verify the capacity of that authority to apply the requirements of Community law as well as standards of the Joint Aviation Authorities (JAA) in the area of aviation safety. The visit revealed significant and persistent shortcomings in the administrative capacity of the Bulgarian CAA to ensure the necessary safety oversight in order to implement the Community requirements on certification of airworthiness and maintenance of aircraft;

(5) In view of the serious deficiencies identified by EASA and the JAA Bulgaria was refused in October 2005 mutual recognition in the relevant safety areas within the JAA system;

(6) The corrective actions submitted by the Bulgarian CAA in October and November 2005, as well as in May 2006, were not deemed satisfactory by EASA, which was well noted by the Commission;

(7) In its Communication adopted on 26 September 2006 on the state of preparedness for EU membership of Bulgaria and Romania[3] the Commission confirmed that Bulgaria had made further progress to complete its preparations for membership, but also identified a number of areas of continuing concern, among which aviation safety, where the Commission would take appropriate measures to ensure the proper functioning of the internal market, unless Bulgaria took the necessary corrective actions;

(8) The Commission's Communication urged Bulgaria, in order to comply with the relevant Community aviation safety rules, to submit a corrective action plan and implement it within a strict timetable, in close cooperation with, and under guidance from EASA to redress all safety shortcomings. The report announced that EASA would verify the implementation of this plan by means of another inspection before Bulgaria's accession. The Commission's Communication concluded that unless Bulgaria took the necessary corrective actions, it risked that the Commission, at its own initiative or at the request of a Member State, restricted access to the internal aviation market; that furthermore, Bulgarian registered aircraft which did not comply with EU civil aviation safety rules could be subject to appropriate safeguard measures;

(9) In the light of the Commission's Communication, EASA was requested to carry out the inspection of the Bulgarian CAA. This inspection took place from 27 November to 1st December 2006; the purpose of the inspection was to evaluate whether the competent authority for civil aviation of Bulgaria was prepared to implement the common rules in the field of aviation safety that shall enter into force in Bulgaria as of 1st January 2007, and to evaluate the progress made in the implementation of the corrective actions submitted by that authority after the first visit of EASA to address safety shortcomings established during that visit.

(10) The report of this inspection established by EASA confirms the shortcomings evidenced previously in the administrative capacity of the Bulgarian CAA to ensure the necessary

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[3] Commission Communication COM(2006) 549, 26 September 2006

safety oversight in order to implement the Community requirements on certification, of airworthiness and maintenance of aircraft and concludes that that the Bulgarian CAA will not be in a position to ensure compliance with Regulation N° 1592/2002 and its implementing rules Commission Regulations 1702/2003[4] and 2042/2003[5] as of the date of entry into force of the Act of Accession;

(11) In view of Bulgaria's failure to implement its commitment to ensure compliance with Regulation (EC) N° 1592/2002 and its implementing rules as of the date of entry into force of the Treaty of Accession, it should be provided that the certificates issued by the Bulgarian CAA shall not benefit from the mutual recognition stipulated in Articles 8 and 57 of Regulation (EC) No 1592/2002.

(12) Bulgaria's failure to implement its commitment to ensure compliance with Regulation (EC) N° 1592/2002 and its implementing regulations by the date of entry into force of the Treaty of Accession may lead to distortions of competition between the carriers licensed by other Member States and the carriers licensed by Bulgaria, should the latter be granted unrestricted access to the Community's internal market. Distortions of competition could result in particular from the fact that air carriers licensed by the Bulgarian CAA would be granted unrestricted access to routes within the Community without fulfilling all the requirements of the rules establishing an internal market for the provision of air transport services, notably those on safety, while their competitors would continue to be subject to such requirements. Moreover, granting such access to air carriers licensed by the Bulgarian CAA could lead to an expansion of the operations currently performed by those carriers into, from to or within other Member States, thereby creating additional safety risks.

(13) For these reasons it is appropriate, in order to prevent an increase of such risks, to provide that the carriers licensed by the Bulgarian authorities will not be considered as "Community carriers" for the purposes of Regulation (EEC) N° 2408/92.

(14) This measure is without prejudice to any further measures that the Commission may be required to impose in accordance with Regulation (EC) N° 2111/2005[6];

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4 OJ L 243, 27.9.2003, p. 6–79, Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, modified by Commission Regulation N° 381/2005, OJ L 61, 8.3.2005, p. 3–3, and Commission Regulation N° 706/2006, OJ L 122, 9.5.2006, p. 16–16.

5 OJ L 315, 28.11.2003, p. 1–165, Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, modified by Commission Regulation N° 707/2006, OJ L 122, 9.5.2006, p. 17–18

6 OJ L 344, 27.12.2005, p.15-22, Regulation (EC) No 2111/2005 of 14 December 2005 of the European Parliament and of the Council on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC.

HAS ADOPTED THIS REGULATION:

Article 1

Articles 8 and 57 of Regulation (EC) N° 1592/2002 shall not apply with respect to certificates issued by the competent authority of Bulgaria.

Article 2

Notwithstanding Article 2(b) of Regulation (EEC) N° 2408/92, air carriers with an operating licence granted by the competent authority of Bulgaria shall not be considered as a 'Community air carrier' for the purposes of that regulation.

Article 3

The Commission shall review whether the continued application of this Regulation is still necessary upon receipt of a duly motivated request from of Bulgaria, or on its own initiative, at least once every twelve months from the date of entry into force of this regulation.

This Regulation shall enter into force only subject to and on the date of entry into force of the Treaty of Accession of Bulgaria.

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

Done at Brussels, 21 December 2006.

For the Commission
Jacques BARROT
Vice-President