

Reform of the Third Aviation Package Consultation Document

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Department for Transport

October 2006

Introduction

1. The European Commission published its proposals for the reform of the third aviation package on 18 July 2006. The proposal consolidates and updates three existing regulations concerning the liberalisation of air transport in the European Union. These are known collectively as the 'third aviation package' and date from 1992. All relevant documents can be found on the Department webpage listed in paragraph 17.
2. Discussions on this dossier are expected to begin in late autumn/early winter in the Aviation Working Group of the Council of the European Union, which includes the Commission and EU Member States' representatives. Discussions on this dossier will begin in the European Parliament at a later date.

Overview of the proposals

3. The existing Regulations have been essential to the expansion and success of the internal aviation market in the Union. However, they are nearly 15 years old and, in the light of experience, are in need of consolidation and updating to ensure the correct functioning of the single market in aviation.
4. These proposals seek to build upon the success of the single aviation market and modernise its workings. They also seek to address certain loopholes which have emerged and to ensure a consistent application of the common rules across all Member States.

Consultation and Evaluation

5. The Department is seeking the views of UK stakeholders on the Commission's proposals. In order to assist us in evaluating your responses and then compiling a response document we would be grateful if you would group comments as far as possible under the headings set out below. Under each heading we have set out a short summary and then questions on which we would particularly welcome your responses and also your suggestions for improving the text. As initial consideration of the dossier will begin shortly it would be helpful if your comments could reach us as soon as possible.
6. The Department, in conjunction with the Civil Aviation Authority, plans to hold a stakeholder symposium on the proposals on 16th November. This will be an opportunity to discuss them in more detail and to ask any questions you may have. You are invited to let Ashleigh Gray know by 31st October 2006, either by email or by post, if you would be interested in attending the stakeholder symposium. Please note that space may be limited. Please also advise of any requirements you may have. This may be a special diet, equipment or a service relating to a disability. Further details will follow in due course.

The Proposals

Operating licences: Articles 3 - 14 and Annex I¹

7. Before being granted an operating licence, the Commission proposes to increase from 24 to 36 months the length of time for which carriers would be required to demonstrate that they could meet their actual and potential obligations. There are also proposals to more closely define the current concept of 'principal place of business' by requiring a carrier to have both its registered office and a substantial part of its operational activities in the state in which the operating licence is issued.

¹ The Recitals and Articles 1 and 2 apply to all areas of the proposal.

1. *Do you think the proposals to extend the length of time needed to demonstrate financial fitness are appropriate? If not what length of time or other criteria do you consider appropriate?*
2. *Do you agree with the proposals to replace the current principal place of business criterion? If not, how might principal place of business be more appropriately defined?*
3. *Does the new approach adequately ensure safety oversight occurs at operational centres? Does it achieve an appropriate level balance between this objective and the removal of unnecessary restrictions on ownership and control?*

Leasing: Article 13

8. Tighter restrictions on the leasing of aircraft and crews ('wet leasing') from non EU Member States are proposed. There would need to be a valid reciprocity agreement between the Member State concerned or the Community and the third country of registration of the leased aircraft. At present short-term leases would normally cover periods up to a traffic season with the proviso that no air carrier should become excessively dependent on aircraft registered in a third country. It is proposed that such leases would only be allowed for a six month period (renewable once in a second non-consecutive period of up to six months) and when certain safety guarantees had been given. At present Member States have the option of requiring their own airlines to register aircraft on their own national register or within the Community. This flexibility would be withdrawn and apply more broadly to aircraft registered within the Community.

9. At present Member States have the option of requiring aircraft to be registered either in its national register or within the Community, this option would be withdrawn with aircraft able to be registered anywhere within the Community.

4. *What impact would the proposal to reduce the period and frequency of wet leasing have on your business? What alternatives do you suggest that might combine operational flexibility with the need to maintain high levels of safety?*

5. *Do you agree that the current provisions regarding registration should be withdrawn?*

Public service obligations and traffic distribution rules (PSOs and TDRs): Articles 15 - 20 and Annex II

10. The use of PSOs to subsidise socially-necessary but unprofitable air services (e.g. to remote islands), and also to reserve slots for regional services to congested airports, is limited in order to minimise distortions to the single market. However, differences have arisen in the interpretation of these PSO rules which have, in some cases, led to carriers being prevented from operating certain routes on a commercial basis. At the same time, where PSOs are necessary, present rules do not always attract a sufficient number of competitors in the tender procedure.

11. The proposal aims to clarify the conditions attached to PSOs and the airports to which PSOs can apply (see definition of "regional airport" in Annex II of the proposal). It also suggests lengthening the concession period for PSOs from 3 years to 4 and simplifying some elements of the tender procedure. The proposal gives the Commission powers to ensure greater scrutiny of PSOs and of their compliance with European law.

12. TDRs are intended to be used for operational purposes to ensure an appropriate division of traffic between a number of airports serving the same city. Again, there has been a difference of interpretation across the EU, which has led to some carriers being unable to serve their airport of choice. The proposal requires Member States to seek prior approval of TDRs from the Commission, and clarifies and simplifies the rules for when they can be applied.

6. *Are the proposed new rules for PSOs sufficient to ensure the maintenance of lifeline services without restricting the operation of the single market?*

7. Is the definition of 'regional airport' acceptable?

8. Are the proposals on TDRs sufficient to ensure the efficient operation of airports without unduly restricting the ability of carriers to serve their airport of choice?

Consumer issues: Articles 21 - 24

13. The Commission proposes to address two issues about which consumer groups have expressed concerns. The first aims to increase transparency in the advertisement of air fares, including on websites, to ensure consumers are able to make easy comparisons between different airline offers. The second would remove differential pricing based on country of residence, which can currently lead to different prices being quoted for the same flight depending on the country in which the booking is made.

9. Do you believe that common European rules on price transparency are required?

10. If so, do you believe that any changes are required in the Commission's proposal to ensure that passengers are adequately protected?

11. Do you agree that differential pricing for the same flight based on country of residence should be discontinued?

Other provisions

14. The proposal contains a number of further provisions including:

A consolidation measure which requires insurance coverage to comply with the minimum requirements provided for in Regulation (EC) No 785/2004 which came into force in 2005 (Article 11).

The conferring on the Union of the sole right to negotiate intra-EU traffic rights with third countries (Article 15).

Limiting access to airspace in the Community for carriers from countries who are not parties to the International Air Services Transit Agreement (IASTA) (Article 15)

A restriction on the ability of third country operators to introduce new products or lower airfares on intra-EU routes than those offered by EU carriers (Article 23).

12. Do you see merit in the EU assuming negotiating rights with third countries on all intra-EU traffic rights?

13. Would you support measures to limit transit rights for non-IASTA countries unless they had signed an appropriate agreement with the EU?

14. How important is it to continue to restrict the fares that third country carriers can offer on intra-EU routes?

15. Do you agree with the provisions in Article 22.2 that prevents restrictions on the code sharing and pricing on routes to third countries (not withstanding any bilateral agreements) for services that operate to a third country via a Community point?

16. Are there any other proposals not covered above on which you wish to express a view?

General

17. Are there other ways in which the existing regulatory regime might be streamlined?

18. Are there any other issues connected with the internal aviation market which you think should be addressed?

Regulatory Impact Assessment

15. The Initial Regulatory Impact Assessment (IRIA) (which can be found in **Annex C**) examines the purpose and intended effects of the Commission proposal in addition to its potential consequences.

16. We would welcome any comments on the analysis of costs and benefits, giving supporting evidence wherever possible. Please also suggest alternative methods for reaching the objective and highlight any possible unintended consequences of the policy.

Relevant documentation

17. The Department has provided a webpage on the reform of the third aviation package. All relevant documents, including the original proposals, this consultation and the responses, will be posted online. It can be found at:

http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/divisionhomepage/613470.hcsp

Consultees

18. This consultation is expected to be of particular interest to air passengers in addition to businesses, groups and individuals involved in the air transport industry. A list of organisations/stakeholders to which we have sent this consultation to is included at **Annex B**. If you have any suggestions of others who may wish to be involved in the consultation process please forward this to them or let us know.

19. The consultation is being conducted in accordance with the criteria contained in the Cabinet Office 'Code of Practice on Consultation' published in January 2004. A summary of the criteria is at **Annex A**. A full version of the code can be found at:

<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

Freedom of Information

20. According to the requirements of the Freedom of Information Act 2000, all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department. A summary of the consultation will be published on the DfT website after the consultation period ends. Paper copies will be available on request.

Responses and enquiries

21. Responses should be received by 19th January 2007; and sent to Ashleigh Gray at the address below. The Department would prefer to receive responses by e-mail.

22. The Department, in conjunction with the CAA, plans to hold a stakeholder symposium on the third package. This will be an opportunity to be advised of the proposals and to ask any questions you may have. Further details will follow in due course.

23. Enquiry point for both the consultation and the stakeholder symposium:

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