
LAW ON CONTRACTUAL AND REAL RIGHT RELATIONS IN RESPECT OF AVIATION TRANSPORT

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FIRST PART

GENERAL PROVISIONS

SCOPE OF APPLICATION

Article 1

(1) This Law shall regulate the obligations in the air traffic, the grounds for ownership and property rights in regard to the aircraft, the procedure for execution and security over the aircraft and load in the aircraft as well as the conflict of Laws in relation to the air traffic.

(2) The obligations in the air traffic beside the provisions of this Law shall be regulated according to issues for:

- the compensation of damages and assistance to passengers in the event of denied boarding on the aircraft, flight cancellation or long delay of flights shall be regulated pursuant to Regulation (EC) 261/2004 from 11 February 2004 on establishing uniform rules for compensation of damages and assistance to passengers in the event of denied boarding on the aircraft due to transport, flight cancellation and long delay of flight (hereinafter: The Regulation 261/2004), which is undertaken pursuant to ANNEX I from the Multilateral Agreement on Establishment of a European Common Aviation Area from 9 June 2006 published in "Official Gazette of the Republic of Macedonia" International Agreements No. 27/2007;
- the compulsory insurance of air carriers and operators against damage caused by third parties, passengers, luggage and goods shall be regulated pursuant to the Regulation (EC) 785/2004 from 21 April 2004 for the insurance terms for air carriers and aircraft operators (hereinafter: Regulation 785/2004), which has been undertaken pursuant to ANNEX I from the Multilateral Agreement from indent 1 under this paragraph;
- the liability of the aircraft air carrier in relation to the air transport of passengers and luggage shall be regulated by the provisions from the Convention for the Unification of Certain Rules for International Carriage by Air, from Montreal 1999, published in "the Official Gazette of the Republic of Macedonia" International Agreements No. 25/2000 (hereinafter: Montreal Convention) and by the Regulation (EC) 2027/97 from 9 October 1997 on air carrier liability in the event of accidents (hereinafter: Regulation 2027/97), amended by the Regulation (EC) 889/2002 (hereinafter: Regulation 889/2002), which has been undertaken pursuant to ANNEX I from the Multilateral Agreement from indent 1 under this paragraph;
- the issuance of passenger tickets by use of computerized reservation systems shall be regulated by the Regulation (EC) 2299/89 on computerized reservation systems from 24 July 1989, amended by the Regulation (EC) 3089/93 and Regulation (EC) 323/99 (hereinafter: Regulation 2299/89), which has been undertaken pursuant to ANNEX I from the Multilateral Agreement from indent 1 under this paragraph;
- the obligation for informing the passengers on the identity of the air carrier shall be regulated pursuant to Regulation (EC) 2111/2005 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 that will carry out the transport, which has been undertaken pursuant to ANNEX I from the Multilateral Agreement from indent 1 under this paragraph and

- the determining of prices and fees in the air transport shall be regulated by the Regulation (EC) 2409/92, which has been undertaken pursuant to ANNEX I from the Multilateral Agreement from indent 1 under this paragraph.

(3) To the obligations in air traffic that are not regulated by the provisions of this Law or by the regulations stipulated in paragraph (2) of this Article, the provisions from the Law on Obligations shall apply.

Dispositive Application of the Legal Norms

Article 2

The relations regulated by the provisions of this Law concerning the contracts can be otherwise regulated by an agreement, i.e. by the general terms for transport, if that is not prohibited by Law or by the regulations stipulated in Article 1 paragraph (2) of this Law.

Compulsorily Application of the Legal Provisions

Article 3

(1) Unless otherwise stipulated by this Law or the regulations stipulated in Article 1 paragraph (2) of this Law, i.e. by the general terms for transport, there could be no provisions by which:

- the aircraft air carrier (hereinafter: air carrier) shall be totally or partially exempt from the liability stipulated by this Law or by the regulations stipulated in Article 1 paragraph (2) of this Law,
- the rights that according to this Law or the regulations stipulated in Article 1 paragraph (2) of this Law belong to the passenger and the transport orderer shall be excluded or restricted and
- the burden of proof of the air carrier shall be transferred, or by which liability restrictions favourable for the air carrier shall be provided from the restrictions prescribed by this Law or by the regulations stipulated in Article 1 paragraph (2) of this Law.

(2) The air carrier shall be obliged to publish the general terms of transport in a usual manner, and upon a request of the interested party, to make the general terms of transport available for inspection to him/her.

Definitions

Article 4

Certain terms used in this Law shall have the following meaning:

1. Air carrier shall be a person, who based on a contract, shall transport passengers and goods by aircraft;
2. Contractual air carrier shall be person that has concluded the transport contract with the passenger, transport orderer or sender;
3. Actual air carrier shall be a person that is not a contractual air carrier, but carries out the entire transport or a part of that transport, and that is not a successive air carrier;
4. Successive (sequential) air carrier shall be a person that based on a contract for transport, concluded by the first air carrier, carries out a part of that transport by accepting the passenger, i.e. the transport orderer;
5. Transport orderer shall be a person concluding a transport contract with the contractual air carrier;
6. Sender shall be the person in whose behalf the goods are handed over for transport on the basis of a contract;
7. Receiver shall be a person authorized in the place of destination to receive the goods handed over for transport;
8. Passenger shall be a natural person entitled to transport by an aircraft, on the basis of a contract;
9. Right-holder shall be a person having claims towards the air carrier on the basis of a contract;

10. Transport-assistant shall be person having worked on carrying out the transport upon order of the air carrier or for the account of the air carrier;
11. International transport shall be transport by an aircraft, whereby, according to the transport contract, the place of departure and the place of destination are located on the territories of two countries, or on the territory of only one country if transit-landing in a another country is envisaged;
12. Special Drawing Right shall be an accounting unit defined by the International Monetary Fund;
13. General terms for transport shall be internal rules stipulated by the air carrier, in general, they are binding if the transport user accepts them;
14. Goods, in the context of this Law, shall be the goods subject to transport, which are not covered by the provisions of this Law concerning the contract for transport of passengers and State aircrafts, in the context of this Law, shall be military, police and customs aircrafts.

SECOND PART

OBLIGATIONS

CHAPTER I

CONTRACT FOR TRANSPORT OF PASSENGERS, LUGGAGE AND GOODS

Section I

Transport of Passengers and Luggage

1. Contract for Transport of Passengers

Concluding of the Contract for Transport of Passengers and Obligations Thereof

Article 5

- (1) The contract for transport of passengers shall be concluded between the air carrier and passenger or between the air carrier and the transport orderer.
- (2) With the contract for transport of passengers the air carrier shall be obliged to transport the passenger from the place of departure to the place of destination in time stipulated by the flight schedule, i.e. the definite period of time, and the passenger shall be obliged to pay the adequate transportation fee.
- (3) With the contract concluded between the air carrier and the transport orderer, the air carrier shall be obliged to transport the passenger determined by the transport orderer, under the terms stipulated by the contract.
- (4) The contract for transport of passengers concluded between the air carrier and the transport orderer can be concluded for one or several trips or for a definite period of time with the entire aircraft or with part of the aircraft capacity.
- (5) The contract concluded between the air carrier and the transport orderer may refer to one or more passengers.
- (6) The contract for transport of passengers concluded with the transport orderer must be in writing. The electronic form shall also be considered as written form of the contract for transport of passengers.

Travel Ticket

Article 6

1. The air carrier is obliged to issue a travel ticket, individual or group.
2. The travel ticket shall be a proof that the contract for transport of passengers is concluded, but the existence of the transport contract may be proven otherwise as well.
3. The travel ticket, in general, shall be made out on behalf of.
4. If the travel ticket is made out on behalf of, it cannot be transferred without the consent of the air carrier. The air carrier shall be entitled to give consent only for justified reasons.
5. ((5) The travel ticket must designate the transport price, the places of departure and destination, as well as the departure time of the aircraft stipulated in the flight schedule, i.e. by the contract.
6. In regard to the travel ticket the provisions from Article 3 of the Montreal Convention shall be used.
7. The issuance of travel ticket by use of computerized reservation systems shall be carried out pursuant to the Regulation (EC) 2299/89 on computerized reservation systems from 24 July 1989, amended by the Regulation (EC) 3089/93 and Regulation (EC) 323/99, which is undertaken pursuant to ANNEX I from the Multilateral Agreement on Establishment of a European Common Aviation Area from 9 June 2006.

Cancellation of the Transport Contract and Refund of the Transportation fee

Article 7

- (1) The passenger shall be entitled to cancel the transport contract prior to the commencement of its execution.
- (2) The air carrier shall be obliged to refund the transportation fee to the passenger should the passenger cancel the domestic transport not later than 24 hours, and in the international transport at the latest 48 hours prior to the commencement of the trip.
- (3) Should the passenger cancel the trip under the terms from paragraph (2) of this Article, the air carrier shall be entitled to retain 10% of the transportation fee.

Cancellation of the Trip due to Force Majeure

Article 8

- (1) If the passenger or a member of his/her family or his/her friend without whom the passenger cannot travel, dies prior to the commencement of the trip or falls ill so that it is impossible for him/her to travel, or if the trip could jeopardize the health of the patient, the transportation fee that has been paid shall be refunded provided that the air carrier is notified for the inability to travel prior to the departure of the aircraft.
- (2) In the event from paragraph (1) of this Article the air carrier shall be entitled to retain 5% of the transportation fee.
- (3) Should the impediment to travel from paragraph (1) of this Article occur during the transport, the transportation fee shall be refunded proportionally to the part of the trip that has not been used.

Flight Cancellation

Article 9

The compensation of damages and assistance to passengers in the event of flight cancellation shall be regulated pursuant to Regulation (EC) 261/2004.

Denial of Boarding on the Aircraft to Passengers and Long Delay of Flights

Article 10

The compensation of damages and assistance to passengers in the event of denied boarding on the aircraft, and in the event of a long delay of the flight shall be regulated pursuant to the Regulation (EC) 261/2004.

Notification of the Passengers

Article 11

The notification of passengers for compensation of damages and providing assistance in the event of flight cancellation denied boarding on the aircraft to the passenger for transport and in the event of a larger flight delay shall be regulated pursuant to the Regulation (EC) 261/2004.

Liability of the Transport Orderer

Article 12

- (1) Unless otherwise stipulated by the contract between the transport orderer and air carrier, the transport orderer shall be liable before the air carrier for the obligations deriving from the transport contract.
- (2) Should the transport orderer, pursuant to paragraph (1) of this Article, be liable to the air carrier for the obligations deriving from the transport contract, the passenger shall be entitled to realize his/her claims occurred in the event of cancellation, interruption, postponement, i.e. delay in the transport only towards the transport orderer.
- (3) Unless otherwise stipulated by the contract between the transport orderer and passenger, the transport orderer shall be obliged to provide the passenger with all the services from the air carrier.

Entrusting the Transport of Passengers to the Actual

Article 13

- (1) Unless otherwise stipulated by the contract for transport of passengers, the contractual air carrier shall be entitled to entrust the transport of passengers to the actual air carrier if he/she provides the same or similar terms of transport.
- (2) Concerning the contract for transport of passengers for a definite period of time with an entire aircraft, the contractual air carrier can entrust the transport to the actual air carrier, only if that is stipulated by the contract or if the transport orderer has additionally explicitly agreed to that.
- (3) The relations between the contractual and actual air carrier shall be regulated with their mutual agreement.
- (4) Unless otherwise stipulated by the contract between the contractual and actual air carrier, the provisions of this Law referring to the transport and the provisions from the Regulation (EC) 261/2004 shall be applied for their mutual relations.

Contract for Transport of Passengers for a Definite Period of Time

Article 14

- (1) If transport of passengers for a definite period of time has been agreed upon with the entire aircraft, the air carrier can be replaced by the stipulated type of aircraft only by a written consent by the transport orderer.
- (2) Should the air carrier replace the stipulated type of aircraft without a written consent by the transport orderer, he/she shall be liable for compensation of the damage caused to the transport

orderer due to the said...

Execution of the Orders by the Transport Orderer

Article 15

(1) In the contract for transport of passengers for a definite period of time with the entire aircraft, the air carrier shall be obliged to execute the orders by the transport orderer within the frames of the contract.

(2) The transport orderer from paragraph (1) of this Article shall not be entitled to determine a trip that could expose the aircrafts, crew or passengers to danger, or a trip for which it could be expected to end with a significant exceeding of the time for which the contract has been concluded.

Contract for Transport of Passengers with an Entire Aircraft

Article 16

(1) If transport of passengers with the entire aircraft has been stipulated, the air carrier shall be entitled to dispose of the unused aircraft capacity only by a written consent from the transport orderer.

(2) If transport of passengers with the entire aircraft has been stipulated, and the air carrier disposed of unused capacity, the agreed transportation fee will be proportionally reduced.

(3) If the air carrier has disposed of the unused aircraft capacity without a written consent by the transport orderer, he/she shall be liable for compensation of the damage that the transport orderer has suffered due to that.

Transport of Passengers by an Aircraft carrying out a Transport of Postal Parcels as well

Article 17

In the transport of passengers by an aircraft carrying out a transport of postal parcels as well, the terms for application of the provisions of this Law for flight cancelation, denial of boarding on the aircraft to passengers for transport for a larger delay of the flight in relation to the postal parcels shall be regulated by a contract, i.e. by the general terms of transport.

2. Liability of the Air Carrier

Liability for Death or Bodily Injury of the Passenger

Article 18

The liability of the air carrier for the damaged occurred due to death or bodily injury of the passenger during the air transport, including the volume of the damage compensation and the restriction of liability, shall be regulated by the provisions from the Montreal Convention and by the Regulation (EC) 2027/97 from 9 October 1997 on air carrier liability in the event of accidents amended by Regulation (EC) 889/2002.

Compulsory Insurance against Accidents

Article 19

The air carrier shall be obliged to conclude a contract for insurance against accidents, pursuant to the

provisions from Regulation (EC) 2027/97 amended by Regulation (EC) 889/2002.

Advance Payment for Compensation of Damages

Article 20

The advance payment for compensation of damages shall be regulated by the provisions from Regulation (EC) 2027/97 amended by Regulation (EC) 889/2002 and the Montreal Convention.

Compulsory Contents of the General Terms for Transport

Article 21

The provisions from the Montreal Convention and from the Regulation (EC) 2027/97 from 9 October 1997 on air carrier liability in the event of accidents, amended by Regulation (EC) 889/2002 to which it refers to Articles 18, 19 and 20 of this Law shall be an integral part of the general terms for transport and the air carrier must make them available for inspection in his/her agencies, the other travel agencies and points of sale, as well as at the desks for registration of passengers.

3. Luggage Transport

Hand-Luggage

Article 22

- (1) On the basis of the contract for transport in the aircraft, the passenger shall be entitled to take hand-luggage for which he/she shall be responsible, and the air carrier shall be obliged to transport the hand-luggage free-of-charge.
- (2) Goods, which, according to their dimensions and nature could represent a danger or impediment for the aircraft, the passengers or the other goods, or goods which do not belong in the space for accommodation of passengers, cannot be boarded on the aircraft as hand-luggage.
- (3) The air carrier shall specify the weight, dimensions and number of items of the hand-luggage that the passenger could take into the aircraft.
- (4) Hand-luggage in the context of paragraph (1) from this Article refers to the goods that the passenger takes with or on himself/herself.
- (5) The general terms of transport must be without prejudice to the provisions of this Law and the provisions of the European Union that are applied pursuant to this Law.

Transport of Registered Luggage

Article 23

- (1) The air carrier shall be obliged to receive the luggage that does not have a capacity of hand-luggage for transport (hereinafter: registered luggage) and to issue a written certificate for that.
- (2) Goods for which a specialized permit is required or goods that must be transported under special conditions, or goods that according to their nature could represent a danger to the aircraft or to the people in the aircraft, or that could cause, i.e. inflict damage to the other luggage, or goods that according to their nature, dimensions or weight do not belong in the premises designated for luggage accommodation shall not be allowed to be hand over as registered luggage.
- (3) The air carrier shall determine the limit of the weight and dimensions up to which the registered luggage handed over by the passenger could be transported free-of-charge as well as the mass limit of that luggage.

(4) The general terms of transport must be without prejudice to the provisions of this Law and the provisions of the European Union that are applied pursuant to this Law.

Right of the Air carrier to Retention

Article 24

For the purpose of providing his/her claims in relation to the transport, the air carrier shall be entitled to retain the registered luggage and other goods of great value to the passenger, for which the provisions for higher degree of liability from the Regulation (EC)2027/97 and the Montreal Convention shall apply.

Transportation fee

Article 25

The criteria and procedures that should be applied to the determining of prices and fees in the air transport, shall be regulated by the Regulation (EC) 2409/92, which is undertaken pursuant to ANNEX I from the Multilateral Agreement on Establishment of a European Common Aviation Area from 9 June 2006.

Section II

Transport of Goods

1. Contract for Transport of Goods

Article 26

The contract for transport of goods shall be concluded between the air carrier and transport orderer. With the contract for transport of goods by an aircraft, the contractual air carrier shall be obliged towards the transport orderer to transport the goods by an aircraft, and the transport orderer shall be obliged to pay the transportation fee.

Types of Contract for Transport of Goods

Article 27

The contract for transport of goods can refer to one or more transports or to a transport for a definite period of time, the entire capacity or to a part of the aircraft capacity, to a definite quantity of goods or to definite goods.

Form of the Contract for Transport of Goods

Article 28

- (1) The contract for transport of goods with use of the entire aircraft for a definite period of time or for several transports must be concluded in writing.
- (2) The contract from paragraph (1) of this Article not concluded in writing shall be legally non-valid.

Determining the Quantity of Goods

Article 29

The quantity of goods hand over to be transported can be determined according to their number, weight, dimensions or by a combination of the aforementioned.
In case of suspicions, the quantity of goods shall be determined by a measure that is usual in the place where the goods are handed over to the air carrier.

Handing Over for Transport of Goods other than Those Specified

Article 30

In the contract for transport of goods by use of the entire aircraft, the sender shall be entitled to transport other goods instead of those specified, if that does not change the terms of transport to the detriment of the air carrier, if that does not lead to delay of the aircraft or unless that could jeopardize its safety and if the sender upon request of the air carrier provides a collateral for the claims that could occur due to the goods replacement.

Third Party as Sender Article 31

The transport orderer shall be entitled to authorize a third party on his/her own behalf to hand over for transport the entire quantity of goods that has been agreed upon or a part of them, only if he/she is authorized for that by the contract for transport.

Responsibility of the Transport Orderer towards the Sender

Article 32

Unless otherwise agreed between the transport orderer and the air carrier, the transport orderer who has authorised a third person as a sender to deliver the transport goods to the air carrier shall be liable to the air carrier in respect of the obligations which shall emerge from the contract on transport of goods.

Obligations of the Transport Orderer towards the Sender

Article 33

Unless otherwise agreed in the contract between the transport orderer and the sender, the transport orderer shall be obliged only to deliver the transport services to the sender.

Liability of the Sender towards the Air carrier

Article 34

Unless otherwise agreed, the sender shall also be liable to the air carrier in respect of the obligations emerging from the contract on transport of goods, provided that these obligations refer to the goods that he has delivered to the air carrier for transport.

Appropriate Application of the Other Provisions of this Law

Article 35

In respect of the transport of goods, the provisions on transport of passengers referred to in Article 13, 14, 15 and 16 of this Law shall be appropriately applied.

2. Air Freight Bill

Compilation and Handing Over of the Air Freight Bill

Air Freight Bill and Other Documents

(1) **Article 36** The air carrier shall have the right to require the sender to compile and hand him/her over an air freight bill, and the sender shall have the right to require the air carrier to receive this air freight bill.

(2) The air freight bill, in consent with the sender, can be replaced by another document in which the data in respect of the transport that should be conducted shall be given. In case such document is used, the air carrier shall be obliged upon request of the sender to issue him/her acknowledgement of receipt of the transport goods. In the acknowledgement of receipt of the transport goods, the data which the freight bill should contain shall be given.

Air freight bill in case of several parcels

Article 37

(1) The freight bill can contain several parcels.

(2) If several parcels are being transported, the air carrier shall have the right to require the sender to compile an air freight bill for each parcel individually.

(3) If several parcels are being transported, and the air freight bill is being replaced by another document in accordance with Article 36, paragraph (2) of this Law, the sender shall have the right to require the air carrier to issue him/her an acknowledgement of receipt of the goods separately for each parcel individually.

Three Original Samples of the Air Freight Bill

Article 38

(1) The sender shall compile the air freight bill in three original samples and shall submit them along with the goods to the air carrier. The first original sample which bears the mark "for the air carrier" shall be signed by the sender. The second original sample bearing the mark "for the receiver" shall be signed by the sender and the air carrier and it shall be handed over to the receiver at delivery of the goods. The third original sample bearing the mark "for the sender" shall be signed by the air carrier and it shall be handed over to the sender after receiving the goods of transport. The air carrier must sign before the goods are being loaded in the aircraft.

(2) The signature of the air carrier can be replaced with a stamp, and the signature of the sender can be typed in advance or be replaced with a stamp.

Contents of the Air Freight Bill

Article 39

(1) The air freight bill must include the following:

- 1) place and date of issue of the freight bill;
- 2) place of departure and place of establishment;
- 3) name and address of the sender;
- 4) name and address of the receiver;
- 5) type and quantity of the goods;
- 6) list of the documents attached to the freight bill; and

- 7) the potential places of arrival in other states if the place of departure and the place of establishment is in the Republic of Macedonia.
- (2) The air freight bill can include delivery date, parcel value, as well as other data.

Effect of the Air Freight Bill on the Transport Contract

Article 40

The non-existence or incorrectness of the air freight bill shall not influence the existence or the validity of the contract on transport of goods with an aircraft.

Liability for Correctness of Data Contained in the Air Freight Bill

Article 41

(1) The sender shall be responsible for the correctness of data and the statements which he/she shall enter in the freight bill or the data and statements which on his/her behalf have been entered by a third person. The sender shall also be responsible for the correctness of data provided to the air carrier by himself/herself or data provided to the air carrier by another person on behalf of the sender, in order for these data to be entered in the acknowledgement of receipt of load, while they have been entered in another way in accordance with Article 36, paragraph (2) of this Law.

(2) The sender shall be held liable for any damage suffered by the air carrier or for any damage for which the air carrier is held liable towards third persons, provided that the damage occurs as a result of incorrect, imprecise and incomplete data or statements by the sender, or towards another person, for the data provided on behalf of the sender.

(3) The air carrier shall be held liable towards the sender for any damage which shall suffered by him or a third person for which he/she is responsible, provided that the damage occurred as a result of incorrect, imprecise and incomplete entry of data or statements in the acknowledgement of receipt of goods by the air carrier or other person which has done this on his/her behalf, as well as in the course of entering data in another manner referred to in Article 36, paragraph (2) of this Law.

Handover of the Transport Goods

Article 42

(1) By handing over the third original sample of the air freight bill to the sender, it shall be assumed that the transport contract is concluded and that the goods are handed over for transport under the conditions given in the freight bill.

(2) It shall be assumed that the data given in the freight bill or in the acknowledgement of receipt of goods specifying the weight, dimensions and packaging, as well as the number of parcels, are correct.

(3) If in the presence of the sender the air carrier has checked the data given in the air freight bill in respect of the dimensions, weight and condition of the goods and enters these information in the air freight bill, or if the external condition of the goods and the packaging is concerned, it shall be assumed that those data and that condition is correct.

Right of the Air carrier to Enter Notes on the Condition of Goods in the Air Freight Bill

Article 43

- (1) The air carrier shall have the right to enter notes on the external condition of goods and the packaging in the air freight bill.
- (2) If the air freight bill contains no notes as referred to in paragraph 1 of this Article, it shall be assumed that the goods and packaging had no external defects.

Necessary Data and Documents

Article 44

- (1) The sender shall be obliged to provide the air carrier with all the data and to attach them to the freight bill and to make all the documents which are necessary for performing customs and other activities to be available to the air carrier.
- (2) The sender shall be held liable for any damage which can occur at the expense of the air carrier, including the damage for which the air carrier is held liable to third persons, provided that the damages occurs as a result of incorrectness, impreciseness and incompleteness of the data and documents referred to in paragraph (1) of this Article.

Liability of the Sender

Article 45

The sender shall be held liable for the damage caused to persons, the aircraft and other goods because of the features of the goods being handed over for transport, provided that the air carrier was not informed of the features, nor he/she was obliged to be informed of them.

3. Transport Execution

Transport Route

Article 46

- (1) The air carrier shall be obliged to transport the goods by air as agreed (transport route). If the transport route has not been agreed upon, the air carrier shall be obliged to execute the transport by the air route which is usual.
- (2) As an exception, the air carrier shall have the right to do the transport by another air route, if necessitated by air traffic safety reasons or other justified reasons.

Transport Deadline

Article 47

- (1) The air carrier shall be obliged to transport the goods within the agreed deadline (transport deadline).
- (2) If the transport term is not agreed, the air carrier shall be obliged to do the transport within a time period which is usual, having in regard the distance, the type of the aircraft and other conditions which influence the time of duration of the transport.
- (3) Unless otherwise agreed, the transport term begins as of midnight after the reception of the goods for transport.
- (4) The period of the transportation term for which withholding of the goods has occurred due to

reasons hindering the start or continuation of the transport, provided that the air carrier is guilty of it, shall not be calculated.

(5) The transport shall be deemed as done at the moment of sending the notification by the air carrier by which the air carrier informs the receiver that the goods have been delivered to the place of establishment and that it is ready for handing over, or at the moment when the air carrier tried to hand over the goods to the receiver.

Obligation for Requiring Directions from the Holder of the Right to Disposition

Article 48

(1) If the air carrier, due to any reasons, shall not be able to fulfil the transport contract in accordance with the agreed terms, and if the barrier shall last for a longer period or its duration shall be uncertain, then the air carrier shall be obliged to ask for directions from the person authorised for disposing of the goods.

(2) If the air carrier is not able to act in accordance with paragraph (1) of this Article, or is not able to act in accordance with the given directions, or no directions have been given to him/her, he/she shall be obliged in accordance with the circumstances of the case, to reload the goods, to return them to the place of departure or to act in another way and at the same time to take into consideration the interests of the holder of the right to disposition.

4. Right to Disposition of Goods during the Transportation

Right to Disposition of the goods by the Sender

Article 49

(1) The sender who has all his/her obligations from the transport contract fulfilled shall have the right to have to dispose of the goods in the following manners:

- 1) To withdraw the goods from the airport of departure or establishment;
- 2) To withhold the goods in the course of transportation at any place of landing;
- 3) In the course of transport to require the goods to be delivered to the place of establishment to a person which is not designated as a receiver in the air freight bill or in the other document referred to in Article 36 of this Law; and
- 4) To require the goods to be returned to the place of departure.

(2) The request for disposition referred to in paragraph (1) of this Article shall be submitted by the sender to the contracting air carrier, while it shall be submitted to its proxy only if agreed so.

(3) The sender shall not be allowed by using the right to disposition to inflict damage upon the air carrier or to other senders and shall be obliged to compensate to the air carrier for the damages caused by executing the request referred to in paragraph 1 of this Article.

(4) The sender who has at its disposition the load, in accordance with paragraph (1) of this Article shall be obliged to submit the third original sample of the air freight bill or the acknowledgement of receipt of the goods to the contracting air carrier or to its proxy.

(5) The air carrier or its proxy shall have the right to demand that the request for disposition of the goods be entered in the first sample of the air freight bill and this request to be issued in writing.

Elimination or Restriction of the Right to Disposition of Goods

Article 50

(1) In the contract, the parties can restrict or eliminate the disposition of goods provided for in Article 49 of this Law.

(2) The contract referred to in paragraph (1) of this Article which is not entered in the air freight bill or in the acknowledgement of receipt of goods, shall have no legal action.

Liability of the Air carrier in Respect of the Request for Disposition of the Goods

Article 51

(1) If the air carrier executes the request of the sender for disposition of the goods and the third original sample of the air freight bill or a sample of the acknowledgement of receipt of goods has not been submitted to him/her in accordance with Article 49 paragraph (4) of this Law, than he/she is obliged to compensate for the damage caused by executing that request to the person who is authorised holder of the third original sample of the air freight bill or holder of the acknowledgement of receipt of goods.

(2) The provision referred to in paragraph (1) of this Article shall not interfere with the right to recourse of the air carrier towards the sender.

(3)

Inability to Execute the Request for Disposition

Article 52

If the execution of the request for disposition of goods is not possible or if its execution would cause damage to the air carrier or to the holders of the right to disposition of goods, the air carrier is obliged to inform the sender thereof.

Right of the Air carrier to Reject the Request for Disposition of Goods

Article 53

(1) The air carrier shall have the right to reject the request for disposition of goods, provided that:

- 1) The execution of the request is no longer possible;
- 2) A damage could occur affecting the holder of the request for disposition of the goods;
- 3) A damage could occur affecting the air carrier, or if the costs for execution of the request would be higher than the value of the goods;
- 4) The execution of the request would be in contrast with the customs and other regulations; and
- 5) the sender has not submitted the third original sample of the air freight bill to the air carrier in the sense of Article 49 paragraph (4) of this Law.

(2) In the cases referred to in paragraph (1) item 3 of this Article, the air carrier shall not be allowed to reject the execution of the request if suitable provision is offered to him/her.

(3) The air carrier is obliged in any case of rejection of the execution of the right to disposition, without any delay, to inform the submitter of the request and to act in accordance with the provisions referred to in Article 48 of this Law.

Liability of the Air carrier for Compensation of Damage in Case of Failure to Execute the Request

Article 54

(1) If the air carrier fails to execute the request referred to in Article 49 paragraph (1) of this Law, or fails to execute in accordance with Article 53 paragraph (3) of this Law, he/she shall be held liable for the damage emerging thereof.

(2) The amount of the compensation of damage referred to in paragraph (1) of this Article and in Article 51 of this Law cannot be larger than the amount that the air carrier would be obliged to compensate, provided that the goods submitted for transport are lost.

Termination of the Right to Disposition of the Goods of the Sender

Article 55

- (1) The right of the sender to disposition of the goods ceases when the goods will reach the place of arrival and the receiver shall submit request for delivering the goods or the air freight bill.
- (2) The receiver is entitled to request from the air carrier to deliver the goods or the air freight bill if the order of the sender does not state something else and under condition to fulfil its obligations given in the provisions from Article 72 paragraph (2) and Article 73 of this Law.
- (3) If the receiver, upon submitting the request from paragraph (1) of this Article rejects the undertaking of the goods or the air freight bill, the sender may take disposition of the goods again.
- (4) If the receiver rejects the undertaking of the goods or the freight bill, the sender may take disposition of the goods without submitting the third original sample of the air freight bill.

5. Delivering the Goods

Place and Manner of Delivering Goods

Article 56

- (1) The air carrier is obliged to deliver the goods at the place of arrival given in the contract or the air freight bill or at the place that shall be determined by the person authorized for having at its disposition the goods.
 - (2) If the contract does not state otherwise, the air carrier shall deliver the goods to the receiver at the airport at the place of arrival.
 - (3) The air carrier is obliged to deliver the goods to the receiver that is stated in the air freight bill.
 - (4) If no air freight bill was issued, the air carrier must deliver the goods to the person for accepting the goods, determined with the contract for transportation or similar.
 - (5) If the sender, according to Article 49 of this Law determines as receiver some other person, and not the one given in the air freight bill or in the acknowledgement of receipt of goods, the air carrier is obliged to deliver the goods to that person.
- Unless otherwise agreed, the air carrier is obliged without delay to inform the receiver of the arrival of the goods at the place of arrival.

Objections of the Receiver

Article 57

- (1) If the receiver of the goods does not give written objection for the damage of the goods immediately during the undertaking, it is assumed that the goods were delivered in a condition as accepted for transportation, or in condition as stated in the air freight bill or in the acknowledgement receipt of the goods.
- (2) If the damage cannot be noticed at the moment of undertaking, the receiver must give objection to the air carrier immediately after noticing the damage and within 14 days from the day of undertaking the goods.
- (3) If the damage was caused by delay of delivering the goods, the receiver must give written objection within 21 day from the day of receiving the goods.
- (4) If the written objection of the goods receiver is not made within the deadline determined with the provisions of this Article, the air carrier is not responsible for the damage, except if the damage was caused by action or neglect of the air carrier or the person that worked on performing the transport by his order or on his account, and the actions or the neglects are done intentionally or with

negligence.

Inability to Delivering to the Receiver

Article 58

- (1) If the receiver cannot be found or if he rejects to undertake the goods, the air carrier is obliged without delay to requests for instructions from the sender.
- (2) If within the deadline, the air carrier does not receive instructions from the sender or if the received instruction cannot be executed, he is entitled, on cost and on risk of the person authorized for disposing the goods, to deliver the goods for keeping to a public warehouse or to other adequate person, or to keep it by himself.
- (3) Regarding the undertaken action from paragraph (2) of this Article, the air carrier is obliged without delay to inform the sender or the person that is authorized to dispose with the goods.
- (4) If the goods are given for keeping by other person, the air carrier is responsible for its choice.
- (5) In case when the air carrier acts in accordance with the provision from paragraph (2) of this Article, it is assumed that the transportation is done.

The Sale of Goods

Article 59

- (1) If the sender, or the person authorized to dispose the goods, does not undertake the goods within 30 days from the day of placing the goods in storage, the air carrier is entitled to sell the goods.
- (2) The air carrier is entitled to sell the goods also before the expiring of the deadline from paragraph (1) of this Article, if:
 - 1) the goods is perishable and is threaten with direct danger of waste or its wasting has already started;
 - 2) the costs for keeping have not be in proportion with the value of the goods and,
 - 3) because of delaying the sale, the amount sufficient for covering the claims of the air carrier and the costs for keeping the goods could not be reached.
- (3) The sale of the goods is done in public, except in case of perishable goods or goods whose price is determined or formed on stock exchange.
- (4) The amount that the air carrier shall made by selling the goods, upon rejecting its claim in relation to the transportation of that goods and upon rejecting the costs for storage and sale, the air carrier is obliged to submit to the court competent according to the place of sale, in favour of the person authorized to dispose the goods and to inform that person for that circumstances.

6. Responsibility of the Air Carrier **Responsibility of the Air Carrier**

Article 60

- (1) The air carrier shall be responsible for the damage occurred due to loss and damage of the goods he/she accepted for transportation and for the damage occurred due to delay of the transport and the handover of the goods to the receiver.
- (2) The air carrier shall be liable for the damages under paragraph (1) of this Article, which will be caused by the person who, on his/her order or on his account acted on carrying out the transportation.
- (3) As time for transport of goods with an aircrafts shall be considered the time from taking over the goods from the airport at departure due to its equipment, until the handover of the goods to the person authorized to dispose of it at the airport on determining or on any other place where the aircraft shall land.

(4) If the contract for performing transport in the air traffic shall include transport before the beginning or after the termination of the transport with an aircraft, one shall assume that the damage occurred during the transport with an aircraft.

Exemption of Responsibility of the Air Carrier

Article 61

(1) The air carrier shall not be responsible for the damage under Article 60, paragraph (1) of this Law, provided he/she shall prove that the damage occurred due to one or several of the following reasons:

- 1) irregularities, shortage or characteristics of the goods;
- 2) irregular packaging of the goods, which was not performed by the air carrier or the person which under his/her order or on his/her account had worked on performing the transportation;
- 3) war or armed conflicts and
- 4) acts or actions of a state authority relating to import, export or transit of goods.

Also, the air carrier shall not be liable for the damage occurred due to the delay in the transport of the goods, if it is proved that he/she or the person acting upon his/her order or on his account had acted on performing the transport had undertaken all necessary measures in order to avoid the damage or if it is proved that it was impossible to undertake these measures.

(2) Should the air carrier prove that the damage from Article 60, paragraph (1) under this Law occurred from reasons of the part of the person who had the right to a compensation of damages, the responsibility of the air carrier for compensation of damages shall be decreased proportionally with the contribution of the person who would have the right to compensation of damages.

Assumption that the

Goods are Lost

Article 62

(1) It is assumed that the goods is lost in the transportation provided the air carrier has not handed over the goods to the receiver in a deadline of seven days from the day when, pursuant to the contract, he/she shall be obliged to hand it over, or if the air carrier, before the expiry of the said deadline shall state that the goods is lost.

(2) Provided the contract shall not envisage a deadline for handing over the goods, the deadline under paragraph (1) of this Contract shall be calculated from the day when the handover should have been done according to the provision under Article 47, paragraph (2) of this Law.

Range of the Responsibility of the Air Carrier

Article 63

(1) The air carrier shall be liable for the value of the lost goods or part of it or for the decrease of the value of the damaged goods.

(2) Provided the goods under paragraph (1) under this Article have been handed over to the receiver with delay, the air carrier shall also be responsible for the damage caused by the delay.

(3) Towards the amount of paragraphs (1) and (2) under this Article, the air carrier shall be obliged to fully compensate the paid transportation fee to the receiver and other expenses occurred during the transportation of the goods provided the goods are lost, or in proportional amount if the goods are damaged, and mostly to the amount under Article 64, paragraph (1) of this Law.

(4) In case of loss or damaging of the goods, the value of the goods shall be determined according to the determined, i.e. market value of the goods of same kind, quantity and characteristics in the place and time of handover of the goods to the receiver.

Amount of the Compensation of Damages

Article 64

(1) The amount of the compensation of damages for which the air carrier shall be held responsible can not be bigger than 17 special rights for withdrawing funds in denars counter—value per kilogram weight of the goods.

(2) The compensation of damages for which the air carrier shall be held responsible can be higher than the amount under paragraph (1) of this Article, provided the sender in the contract on transportation marked a value that is bigger than the amount under paragraph (1) of this Article. In such cases, the air carrier shall be responsible to the determined amount for each damage occurred due to the loss, damaging or delay in the handover of the goods.

(3) If the value of the goods is determined on the manner under paragraph (2) of this Article, the air carrier shall have the right to increase the transportation fee.

(4) One shall assume that the value of the goods shall be in compliance with the amount determined pursuant to paragraph (2) of this Article, except when the air carrier proves otherwise.

Responsibility of the air carrier in Case of Postal Parcels

Article 65

With the transportation of postal parcels via aircraft, the responsibility of the air carrier for the loss or damaging of the parcel, as well as for the delay with the handover of the parcel shall be determined on the basis of the special regulations for transportation of postal parcels in the domestic and international transport.

Unlimited Responsibility of the Air Carrier

Article 66

(1) The air carrier shall have no right to call upon limiting the responsibility envisaged under Article 64, paragraph (1) of this Law, provided it is proved that the damage occurred due to actions or faults of the air carrier or the person who on his/her order or on his/her account acted on carrying out the transport and that that action of fault was committed purposefully or with extreme negligence.

(2) The air carrier shall have no right to call upon limiting the responsibility under Article 64, paragraph (1) of this Law, provided the damage occurred due to actions or faults of the air carrier or the person who on his/her order or on his/her account acted on carrying out the transport, provided it is proven that the person acted out of the frames of his/her responsibilities.

(3) The air carrier without right to call upon limiting the responsibility under Article 64, paragraph (1) of this Law, shall be responsible, except for the damage under Article 63 of this Law, also for any damage occurred due to loss, damaging or delay with the handover of the goods.

Full or Partial Exemption of the air carrier from Responsibility in Certain Cases

Article 67

By exception of the provision from Article 3 of this Law, the contract for transportation of goods with aircraft may envisage provisions with which the air carrier fully or partially shall be exempted from responsibility or which envisage limitation of the responsibility that is favourable for the air carrier from the limitation envisaged with this Law, only in case of loss or damage that will result due to the nature or the lack of the goods that are transported, or as result of the irregular packaging

of the goods that are transported.

Application of Other Provisions from this Law

Article 68

The provisions for transportation of passengers shall be applied to the transportation of goods appropriately.

7. Transportation Fee

Amount of Transportation Fee

Article 69

- (1) The amount of the transportation fee shall be determined with a contract.
- (2) The transportation fee determined in a contract for one or more transportation shall remain unchanged regardless of the duration of the contracted transportation.
- (3) Provided on request of the sender or in the interest of the bearer of the right to transportation one shall continue further from the contracted place of determination, the transportation fee shall be increased proportionally.

Payment of the Transportation Fee

Article 70

- (1) The transportation fee shall be paid only for the goods that are transported and in the place of determining it shall be put at disposal to the receiver.
- (2) The transportation fee should also be paid for the goods that are not transported and put at disposal to the receiver, only if it is caused by the orderer of the transportation, the sender, the person authorized to dispose of the goods or the person for which they shall be held responsible, or provided the reason for which the goods did not arrive at the determined place, and the air carrier shall not be responsible for that reason.
- (3) Provided the goods shall be transported only for one part of the transportation, the air carrier shall have the right to pay the transportation fee proportionally with the usefully performed transportation, except in cases under paragraph (2) of this Article.

Paying the Transportation Fee in Special Cases

Article 71

- (1) If instead of the contracted goods one shall add other goods whose transportation fee is bigger than the contracted one, the transportation fee shall be paid for the factually loaded goods.
- (2) If one shall handover less goods for transportation than the contracted quantity, or one does not load any goods, the transportation fee shall be paid for the complete contracted quantity of goods.
- (3) If one shall load less goods than contracted, and the transportation fee for the other goods that are loaded is bigger than the contracted fee, one will pay the complete contracted transportation fee and the difference between the contracted fee and the bigger transportation fee for the loaded goods.

Responsibilities of the Receiver

Article 72

- (1) The receiver authorized to request handover of the air freight bill and of the goods shall be obliged to settle the claim and to meet all other terms stated in the air freight bill or in the other documents under Article 36, paragraph (2) of this Law, and for which it is not explicitly stated that he/she should pay them, i.e. to meet all requirements by the sender or the orderer of the transportation.

(2) If the transport shall be performed without air freight bill, the receiver who demands handover of the goods shall be obliged to pay the transportation fee and other claims of the air carrier in relation to the transportation of the goods.

Paying the Transportation Fee of the Contract for Transport at Determined Time

Article 73

(1) With the contract for transportation of certain time, the orderer of the transport shall pay the transportation fee in advance in equal monthly instalments, but the air carrier shall pay the transportation fee only for the duration of the performing of the contract.

(2) If during the contract for transportation on certain time obstacles occur during the usage of the aircraft, the orderer of the transportation shall pay the transportation fee and in the duration of those obstacles if the obstacle was caused by him/her or if the obstacle occurred during the carrying out of his/her order.

(3) The air carrier shall have the right to cancel the contract for transportation on certain time if the transportation fee shall not be paid upon the maturity.

Failure to meet the Responsibilities of the Receiver

Article 74

(1) If the receiver shall not meet his/her responsibilities, the air carrier shall have the right to keep the goods and to hand it over for keeping or to keep it by himself/herself, for which he/she shall be obliged to forthwith inform the receiver and the sender.

(2) If the claims shall not be paid to the air carrier under the contract for transport in a deadline of 15 days from the day of handover of the notice under paragraph (1) of this Article, he/she shall be obliged to sell the goods.

(3) In relation to the keeping and selling of the goods, one shall apply the provisions under Articles 58 and 59 of this Law.

Right of the air carrier to realize the claims

Article 75

(1) The air carrier, who, without using the right under Article 74 of this Law shall handover the goods of the receiver beside the fact that the receiver did not meet his/her responsibilities under the contract for transportation, shall not have the right to demand from the sender, i.e. from the orderer of the transportation payment of the claims under the contract for transportation, which the receiver was obliged to pay, except if due to these reasons, the sender and the orderer have become rich on unfounded basis.

(2) If the air carrier who used the right under Article 74 of this Law collects his/her claim only partially, he/she can demand payment of the unsettled debt of the claim from the person stated in paragraph 1 of this Article.

(3) For the purposes of securing all the claims under the contract for transportation of goods, the air carrier shall have the right to retain the goods undertaken for transportation.

Section III

Transportation in which Several Air Carriers are Participating

1. Successive Transportation

Contract Content

Article 76

The contract on successive transportation with aircraft shall be contract for transportation of

passengers, luggage or goods with which the air carrier (first air carrier) shall be obliged to perform the transport with the participation of several air carriers (successive air carriers) and the passenger, i.e. the orderer of the transport shall be in compliance with this.

Relations between Successive air carriers

Article 77

- (1) The relations between the successive air carriers shall be regulated with an agreement.
- (2) Unless otherwise determined with an agreement, the provisions under this Law shall be applied to the relations between the successive air carriers.

Responsibility of the Successive air carriers for the Damage Occurred due to Death, Worsening of the Health Condition and Injuries of the Passengers and Delay in the Transport of Passengers

Article 78

- (1) For the damages that are to occur due to death, worsening of the health condition or injury of the passenger, as well as for the damages caused by the delay, the first air carrier and the particular successive air carrier on those part of the transportation the damages occurred shall be held responsible on solidarity manner.
- (2) The first air carrier shall have the right to exclude his/her responsibility for the damage under paragraph (1) of this Article with a contract, which will occur due to delay in the part of the transportation where the transport is performed by successive air carriers.
- (3) If the first air carrier compensated the damage of the victim, i.e. of his/her successors, and the damage occurred by death, worsening of the health or injury of the passenger, he/she shall have the right to a regress from the successive air carrier on whose part of the transportation the damage occurred.

Responsibility of the Air Carrier for the Loss or Damaging of the Luggage and the Goods and for the Delay in the Transport and in the Handover to the Sender

Article 79

- (1) For the loss or caused damage of the luggage and the goods, as well as for the damage caused due to the delay in the transportation and the handover to the sender, along with the air carrier on whose part of the transportation the damage occurred, on a solidarity basis the first air carrier shall be held responsible to the sender, and the last air carrier to the receiver.
- (2) If one can not determine whose part of the transportation resulted with a loss, i.e. damaging the goods, all the air carriers shall be responsible for the occurred damage on the basis of solidarity.

2. Combined (integral) Transportation

Article 80

- (1) It is also agreed, in the air traffic, the air carrier shall have the right to carry out the contracted transportation with the participation of other air carriers from other branches of the transportation (combined transportation).
- (2) The air carrier who had signed a contract for combined transportation shall be responsible only for the damage pursuant to the regulations for compensation of damages that apply for the air carrier on whose part of the transportation the damage occurred.
- (3) In relation to limiting the responsibility of the air carrier from the combined

transportation, the provisions under Article 64 of this Law shall apply.

Section IV

Accepting and Shipping of Passengers, Luggage and Goods Works on Accepting and Shipping of Passengers, Luggage and Goods

Article 81

1) The contract for transportation shall include the works of accepting and shipping passengers, luggage and goods that are performed during the transport in the air traffic.

As works under paragraph (1) of this Article one shall include:

2) shipping passengers from the airport building and monitoring and transport to the aircraft and vice versa, as well as transport or monitoring the passengers from one aircraft to another;

3) transport of the registered luggage and goods from the premises predetermined for accepting luggage, i.e. of goods from storage houses or from other means of transport at the airport to the aircraft and their loading into the aircraft.

4) unloading the registered luggage and the goods from the aircraft and their transport to the premises predetermined for issuing luggage to the passengers, i.e. of the goods to the storage house or to other means of transport at the airport;

5) reloading the registered luggage and the goods from one aircraft into another on a platform at the airport and

6) taking care that the registered luggage and the goods are loaded in the aircraft, i.e. to be unloaded from the aircraft according to the adequate documents.

Contract for the Works of Accepting and Shipping

Article 82

(1) If the works of accepting or shipping shall not be performed by the air carrier, but some other person, the relation between the air carrier and the said person shall be regulated with mutual contract.

(2) According to the contract from paragraph (1) of this Article, the person regulating the works of accepting or shipping shall be obliged to, for the purposes of executing the contract for transport in the air traffic, neatly and timely perform all works of accepting and shipping passengers, luggage and goods, and the passenger shall be obliged to pay certain contribution to that person.

(3) By signing the contract under paragraph (1) of this Article, the person carrying out the works of accepting or shipping shall be obliged that he/she shall undertake actions necessary for keeping the rights of the air carrier towards the bearers of the claims for right to disposition of the luggage or the goods entrusted to manage.

Responsibility of the Air Carrier towards the Person Performing the Works of Acceptance or Shipping

Article 83

The air carrier shall be responsible to the person performing the works of acceptance or shipping for the damages occurred due to managing dangerous materials or with materials transported under special terms, if about the nature of those goods he/she did not inform the legal entity performing the works of accepting and shipping or if he/she did not provide the necessary instructions, except if the person performing the works of accepting and shipping knew or had to know about the nature of the goods.

Responsibility of the Person Performing the Works of Accepting or Shipping

Article 84

- (1) Concerning the damages caused during the performing of the works of accepting or shipping, the person performing the works of accepting or shipping shall be responsible to the air carrier in the same manner as the air carrier was responsible during the execution of the contract for transportation.
- (2) By exception, the person performing the works of accepting or shipping shall be responsible to the passenger, i.e. the holder of the right for disposing of the luggage or the goods, if the damage was caused intentionally or with extreme negligence or if he/she worked outside the frames of his/her responsibilities.

Contract for Decreasing the Responsibility of the Person Performing the Works of Accepting or Shipping

Article 85

The provisions from the contract for performing the works of accepting or shipping, decreasing the responsibility of the person performing the works of accepting or shipping envisaged by this Law, or decreasing the responsibility of the air carrier under Article 83 of this Law, or on damages to third persons the provisions for their responsibility envisaged by this Law shall be amended.

SECTION V

Complaints

Submitting Written Form of Complaints

Article 86

- (1) The right holder shall realize the claim of the contract for transportation via submitting a written complaint to the air carrier in the envisaged deadline, according to the provisions under this Law, the Montreal convention and the regulations of the European Union referenced for application by this Law.
- (2) Provided the air carrier, in a deadline of 30 days from the day of submitting the complaint shall not meet the requirement from the complaint, the right holder can realize his/her claim by submitting Lawsuit to competent court.
- (3) Default interest rate shall apply to the claims of the right holder from the day of submitting the complaint.
- (4) The default interest rate of the air carrier shall begin to apply from the day of submitting the claim to the passenger, i.e. the orderer of the transport.

CHAPTER II

CONTRACT FOR SPECIALIZED SERVICE WITH AIRCRAFT

Subject of the Contract for Specialized Service with Aircraft

Article 87

- (1) Under the contract for specialized service with aircraft, the provider of that service shall be obliged to perform the service with aircraft that is not transportation of passengers, luggage or goods, and the orderer of the said service shall be obliged to pay certain compensation.

(2) As specialized services with aircraft under paragraph (1) of this Article shall be the aircraft activities where the aircraft is used for giving specialized services such as, in the field of agriculture, forestry, health, construction, for the purpose of photography, recording, monitoring and patrolling, observatory flying, commercial panels, giving leaflets, putting commercial boards, i.e. services not included in the field of transport of persons, subjects and mail.

(3) The contract for specialized services with aircraft shall be valid if signed in written form.

Adequate Usage of Other Provisions from this Law

Article 88

Concerning the contract for specialized service with aircraft, one adequately applies the provisions for the contract for transport of passengers on certain time period and for the contract for transport of passengers with aircraft under this Law.

Filling the Orders of the Orderer of Service

Article 89

(1) Concerning the contract for specialized service with aircraft, the service provider shall be obliged to fill the orders of the orderer of the specialized service in the limits of the contract and according to the purpose of the aircraft.

(2) The performer of the specialized service with aircraft shall not be obliged to fill the order of the orderer of the service which the aircraft or the persons in the aircraft would expose them to danger, and neither the order for which one can assume on solid grounds that, provided it is fill, it will cause damage to third persons.

Liability for damages

Article 90

(1) The performer of the specialized service with aircraft shall be liable for the damages which his assistants in the process of performing the service shall inflict on the orderer of the specialized service.

(2) Under the contract for specialized service with aircraft, one may not exclude the responsibility for the damage which purposefully or with extreme negligence will be inflicted by the assistants of the performer of the specialised service.

Adequate Application of the Provisions for the Liability under the Contract for Transport of Passengers and Goods

Article 91

Concerning the damage that occurred due to death, worsening the health or inflicted injury of the orderer of the service or of the persons for which the orderer of the service shall be liable, and which are located in the aircraft, as well as the damage due to loss or damaging the goods of the orderer located in the aircraft for the purposes of executing the service, one adequately shall apply the provisions for liability under the contract for transport of passengers and goods under this Law, the regulations of the European Union on whose application shall refer this Law and the Montreal convention.

Application of the Provisions that Apply for the Work Contract

Article 92

If not otherwise determined by this Law, the provisions of the obligation right shall apply, which also apply to the work contract, as well as the regulations of the European Union on whose application refers this Law and the Montreal convention.

Application of the provisions of this Law on extra-Contractual Liability for Damages

Article 93

On the damages caused by the aircraft during flight in filling the contract for specialized service with aircraft to the ground, one shall apply the provisions under this Law for extra-contractual liability for damages.

Chapter III

AIRCRAFT LEASE CONTRACT

Subject of the contract

Article 94

1) With the aircraft lease contract, the leaser shall be obliged to the lessee to give certain aircraft for using, and the lease shall be obliged to pay the lease for the said.

The aircraft lease contract shall be valid if signed in written form and if approved by the authority of the state management competent for performing the works in the field of aviation, the Civil Aviation Agency.

Responsibilities of the leaser

Article 95

(1) The leaser shall be obliged to handover to the lessee the aircraft in such condition that it can be used again according to the contractual or usual purpose.

(2) If under the aircraft lease contract one envisaged that the leaser shall put at disposal the crew for the aircraft. The crew shall be obliged to carry out the orders from the leaser.

Submitting the Expenses for Using the Aircraft

Article 96

(1) The expenses for using the aircraft shall be submitted by the leaser.

The lessee shall not submit the expenses for repairs of the aircraft, needed for removing hidden default of the aircraft that existed in the time when the aircraft was handed over, neither ne/she shall submit the expenses for damages due to loss of the aircraft for the purposes of actions of Force Majeure.

Maintenance of the Aircraft in the Duration of the Contract

Article 97

(1) The lessee shall be obliged to maintain the aircraft in the duration of the contract.

Upon the expiry of the contract, the lessee shall be obliged to return the aircraft in condition in which he/she received it and in the place where the aircraft had been handed over.

(2) Lessee shall not be liable for the regular wear and tear of the aircraft.

Responsibility for Damages due to Aircraft Default

Article 98

The leaser shall be responsible for the damages occurred due to a default that renders the aircraft useless or decreases its usage for the contracted or usual using purposes, if the default existed during the handover of the aircraft to the lessee.

Aircraft Lease and Contract for Aircraft Transport

Article 99

In case of having doubts whether aircraft lease contract has been signed or a contract for transport on definite time period, one shall consider that a contract for transport on definite period of time has been signed.

Payment of Lease

Article 100

(1) If not otherwise determined, the lease shall be paid in advance in monthly instalments, calculated from the day of handing over or the aircraft under lease.

The leaser shall not have the right to a lease during the time in which the lessee had been prevented to use the aircraft due to fault of the leaser or due to hidden default of the aircraft, if that said default existed during the handing over of the aircraft.

(2) The leaser shall have the right with a personal statement to terminate the contract provided the lease is not paid in a deadline of 15 days upon the arrival, hence, not interfering with his/her right to realize damage compensation.

(3) In case of paragraph (3) of this Article, the contract shall remain into force if the lessee shall pay the remaining lease payments before receiving the statement for termination.

Duration and Termination of the Aircraft Lease Contract

Article 101

(1) The aircraft lease contract can be concluded on definite or indefinite period of time.

(2) The aircraft lease contract signed on definite period of time can be extended or terminated only in written form.

(3) The aircraft lease contract signed on indefinite period of time can be cancelled up front only in written form and in a deadline that may not be shorter than 3 months.

Contract Termination

Article 102

The aircraft lease contract shall cease to be valid in case the aircraft is destroyed or becomes permanently unusable, as well as in cases that may not be envisaged, prevented not removed, and that disables the usage of the aircraft during the lease period.

Cancellation of the Lessee

Article 103

If the repairing of the aircraft submitted by the leaser shall be pending, or it is envisaged that they shall last longer in relation to the time and duration of the contract or the purpose of signing the contract, the lessee may waive the lease contract by written form.

Delay of the Lessee in Returning the Aircraft

Article 104

(1) If the lessee shall not return the aircraft to the leaser upon the expiry of the time for returning determined by the lease contract, he/she shall be obliged to pay proportional compensation in the amount that is double the amount of the contracted lease for extended time.

(2) If the lessee shall be deemed responsible for the delay by returning the aircraft, along with the amount stated in paragraph (1) of this Article, he/she shall be responsible for each damage caused by the leaser with this action.

Reward for Search and Rescue of the Leased Aircraft

Article 105

The reward for search and rescue of the leased aircraft during the duration of the lease contract shall be paid by the lessee.

Sublease

Article 106

The lessee can give the aircraft under lease to another person (sublease) only on the basis of the accordance of the leaser given in written form.

CHAPTER IV

RESPONSIBILITY OF THE DAMAGES CAUSED BY THE AIRCRAFT ON THE GROUND

Responsibility of the Owner of the Aircraft

Article 107

(1) The owner of the aircraft shall be responsible for the damage occurred on the ground due to death, worsening of the health condition or caused injuries to third persons, as well as for damages inflicted on goods that will be directly caused by aircraft in flight, or persons or goods that fell out or have been jettisoned from the aircraft during flight.

(2) The owner of the aircraft shall be responsible only for the damages under paragraph (1) of this Article, caused by the person who on his/her order, i.e. on his/her account worked on carrying out the transportation.

(3) The provision under paragraph (1) of this Article shall refer to the damages caused by the sole passing of the aircraft through the airspace if the damage occurred due to the fact of not following the adequate regulations for the safety of the air traffic (for example, damage caused by sound or etc.).

(4) It shall be considered that the aircraft is driven by engines during flight, according to the paragraph (1) of this Article, from the moment of initiating the motors with purpose to takeoff, until the moment of stopping the aircraft and the termination of the work of the engines due to landing.

Responsibility for Damages of the Lessee Caused to the Aircraft, by the Contracting and the Real air carrier

Article 108

(1) The lessee of the aircraft shall be responsible for the damages under Article 107 of this Law, caused by the aircraft subject to the aircraft lease contract.

(2) For the damages under paragraph (1) of this Article, the contracting and the real air carrier shall be held responsible in manner of solidarity.

**Responsibility of the Orderer of the Transport with Entire Aircraft on Definite Period of Time
and of the Orderer of the Specialized Service with Aircraft**

Article 109

In relation to the damage from Article 107 of this Law, besides the owner of the aircraft, the orderer of the transportation for aircraft at definite period is responsible in a manner of solidarity, as well as the orderer of the specialized service with aircraft.

Insurance From Responsibility

Article 110

The person responsible for damage according to the provisions from the Articles 107, 108 and 109 of this Law (responsible person) shall not be responsible if the following is proved:

- 1) the damage occurred by action of the damaged person or the person that work by order and on the account of the damaged person, and
- 2) the aircraft that caused the damage was illegally used by other person, and the responsible person undertook the needed measures in order to prevent the illegal usage of the aircraft.

Divided Responsibility

Article 111

In case the responsible person proves that the damaged person or the person that worked by order or on the account of the damaged person partially contributed for occurrence of the damage, the responsibility of the responsible person for compensation of damage is decreased in proportion with the involvement of the given persons in the occurrence of the damage.

Illegal Usage of Aircraft

Article 112

If the responsible person does not prove that has undertaken the needed measures for preventing the illegal usage of the aircraft that caused the damage, the same is responsible in a manner of solidarity for the damage with the person that illegally used the aircraft.

Causing Damage by Person who works by Order or on the Account of the Damaged Person

Article 113

The responsible person cannot be released of responsibility according to the provisions from the Article 110 paragraph (1) indent 1 and the Article 120 of this Law, if the damage was caused by persons that worked by order or on the account of the damaged person, and the damaged person proves that those persons worked out of the domain of their duties.

**Responsibility in a Manner of Solidarity for Damage as a Result of Impact or Mutual
Interference of Aircrafts**

Article 114

For the damage given in Article 107 of this Law, that shall occur as a result of an impact or mutual interference of two or more aircrafts, as well as for the damage that mutually shall be caused by two or more aircrafts, all responsible persons shall be responsible in a manner of solidarity.

Limitation of Responsibility

Article 115

For the damage given in Article 107 of this Law, the responsible person is responsible for the amounts given in Article 7 of the Regulation (EC) 785/2004.

Unlimited Responsibility

Article 116

- (1) The responsible person is not entitled to refer to the limitations of the responsibility in Article

115 of this Law, if it is proved that the damage was caused intentionally or with neglect.

(2) The responsible person is entitled to refer to the limitations of responsibility from Article 115 of this Law, if it is proven that the person that worked upon his order or on his account for performing the transportation has caused the damage intentionally or with neglect, working out of the domain of his duties.

(3) The person that illegally used the aircraft, which caused the damage, is not entitled to refer to the limitations of responsibility from Article 115 of this Law.

Limitation of Responsibility Upon an Event

Article 117

The total amount of the compensation that can be requested from several responsible persons for damage that shall be caused by aircraft from one event, cannot surpass the amount determined in Article 115 of this Law, except if the damage was caused intentionally or with neglect.

Allocation of the Compensation

Article 118

(1) If the damage caused by third parties and items on the ground surpasses the amounts foreseen in Article 115 of this Law, half of the amount firstly shall be used for compensation of the damage caused by death, health damage or injury of persons, and the second half for compensation of other damages, in proportion with their level.

(2) If the amount from paragraph (1) of this Article determined for compensation of damage caused by death, health damage or injury of persons is not sufficient for that, the unsettled part shall be settled with the second half of the amount in proportion with the remaining damages.

Mandatory Insurance from Responsibility for Damage Caused to third Persons

Article 119

Mandatory insurance from responsibility for damage caused to third persons, is determined by Law that regulates the mandatory insurance in the traffic and by the Regulation (EC) 785/2004.

Application of the Provisions for Limited Responsibility and for Foreign Aircrafts

Article 120

The provisions for limitation of responsibility of this part of the Law shall be applied for foreign aircrafts, under the condition of mutuality.

Aircrafts in Ownership of the Republic of Macedonia and Aircrafts in Ownership of Foreign State

Article 121

(1) The provisions in this Chapter of the Law refer also to the aircrafts that are in ownership of the Republic of Macedonia.

(2) For aircraft in ownership of foreign state, the provisions of this Law shall be applied under the condition of mutuality.

CHAPTER V

CONTRACT FOR INSURANCE IN THE AIR TRAFFIC

Subject of Insurance

Article 122

(1) The contract of insurance in the air traffic, according to this Law, may insure the following:

1) Aircraft and its equipment, as well as items transported with the aircraft or located in the aircraft;

2) transportation fee, costs for insurance, expected premium, lease and other rights and material benefits that exist or can be expected in relation to the air traffic, and which can be valued with

money and

3) the responsibility for damage caused to third parties in relation to the usage of the aircraft and other items given in point 1 of this paragraph.

(2) The term “third parties” according to this Article, shall mean persons that are not subject to the contract of insurance.

(3) If otherwise not agreed, the insurance of the aircraft shall include its equipment.

Insured Person

Article 123

(1) Insured person, according to this Law, shall be the person that at the moment of damage had material interest not to have the insured case.

(2) The provision from paragraph (1) of this Article shall not be withdrawn with sentenced provision from the contract of insurance.

Application of the Provisions from this Law for Reinsurance

Article 124

The provisions from this Law referring to the insurance shall apply to reinsurance of the items of insurance from Article 122 of this Law, if the reinsurance is done according to the policies or terms, usual for insurance in the air traffic.

Marking the Subject of Insurance

Article 125

(1) The subject of insurance must be marked in the contract of insurance or in the policy for insurance in such manner so its validity can be determined.

(2) If the insured subject was marked incompletely or wrongly, so it cannot determine directly whether it was exposed to the insured risk and damaged, the insured person is not obliged to pay compensation for the caused damage.

Contracted Value

Article 126

(1) The value of the insured subject, which was contractually determined in the contract for insurance or in the policy for insurance (contracted value), is mandatory for the insurer and the insured person.

(2) The insurer may oppose the contracted value, and if the same is in obvious lack of proportion with the market value of the insured subject at the beginning of the insurance or is determined with fraud.

Real value

Article 127

(1) If otherwise not agreed, value of the insured subject is its value at the beginning of the insurance (real value).

(2) Real value of the insured subject shall be its market value at the beginning of the insurance.

Indulgence of the Insured Subject to the Damaged Party

Article 128

The insured person is not entitled to request for indulgence of the damaged insured subject of the insurer, and from the insurer to receive the compensation of damage which would belong to the insurer in case of total loss of that damaged insured subject.

When the Insurance of the Aircraft Begins for Certain Trip

Article 129

The insurance of the aircraft for certain trip begins from the moment when the aircraft is in movement in order to perform the insured trip at the place of departure given in the contract of

insurance and is with duration until the aircraft does not end the movement after the landing at the place of arrival given in the contract of insurance.

Excluding Certain Damages from the Insurance of the Aircraft

Article 130

(1) The insurance of the aircraft excludes the damages that appeared directly or indirectly as a result of defaults or incompetence of the aircraft for safe air navigation, if the insured person knew or must knew about them.

(2) The provision from paragraph (1) of this Article does not refer to the damages caused by defaults or incompetence of the aircraft for safe air navigation for which the insurer was informed or for which the insurer found out in another way during the signing of the contract for insurance.

(3) Incompetence of the aircraft for safe air navigation, in relation to this Article, is the incompetence because of technical defaults or insufficient equipping of the aircraft, therefore the incompetence of inadequate crew or irregular burden of the aircraft.

Surpassing the Borders of the air Navigation

Article 131

During the insurance of aircraft at certain period, besides the damages from Article 130 of this Law, the insurance excludes the damages causes directly or indirectly because of the risks out of the area of air navigation foreseen in the contract of insurance, except if the surpassing of the borders of air navigation was done because of force majeure, error in handling the aircraft or saving the property and lives or giving medical aid, as well as in case when there are smaller surpassing, which did not influence of the cause or size of the damage.

Continuing the Insurance of the Aircraft at Define Period because of Urgent Repairs

Article 132

(1) During the insurance of aircraft at define period, the insurance is continued for the period of duration of urgent repairs of damages covered with the insurance, which started during the insurance period or after the insurance period and are done with justified delay, if during that period the aircraft cannot be used for safe air navigation.

(2) The insured person is obliged to inform the insurer on time for the case in paragraph 1 of this Article.

(3) If the insurance is continued for the reasons from paragraph (1) of this Article, the insurer is entitled to additional payment of the premium, proportionally with the period for which the insurance was continued.

Compensation of Damage in Amount of Real Expenditures

Article 133

(1) When the damaged aircraft is repaired or the lost or destroyed parts of the equipment of the aircraft are replaced, the insurance compensates only the damage in amount of the real expenditures which are necessary for repairing the aircraft and for replacing the parts, however not the damage caused by losing the value of the aircraft, which was caused besides the done repair and the part replacement.

(2) The damage from paragraph (1) of this Article shall be compensated, without taking into consideration whether the repairing of the aircraft and the replacement of the parts caused increasing of the value of the aircraft.

Disappearing of the Aircraft

Article 134

With the contract of insurance, the aircraft disappeared on the day when every connection between the aircraft and the competent flight control was terminated, or the day when the last safe news for the aircraft refer to.

Insurance from Responsibility

Article 135

(1) The insurance from responsibility of the insured party regarding the damage caused to third persons, covers only the amounts which the insured person is obliged to compensate to those persons because of personal responsibility, if those are covered with the insurance, as well as the expenses needed for determining this obligation of the insured person.

(2) In case of mandatory insurance from responsibility, the damaged person may request directly from the insurer a compensation for the damage, for which the insured person is responsible, however up to the amount for which the insurer is obliged to.

(3) The insurance shall compensate the costs for measures, undertaken on request of the insurer or its representatives or in agreement with them, in order to defend the groundless or unreasonable requests from the third parties, as well as costs for the reasonable measures done by the insurer or its representatives, if the consent was not obtained on time.

The insurer shall compensate the damage because of responsibility of the insured person and the costs for determining his obligation, up to the amount of the insured value determined in the contract of insurance.

CHAPTER VI

OBSOLESCENCE OF CLAIMS

Obsolescence and Start of Obsolescence

Article 136

(1) The claim from the contract for transportation, as well as the regress claims in relation to that contract, obsoletes in two years.

(2) Claims from the contract for specialized service with aircraft, claims from the lease contract for aircraft and claims for compensation of damage with the responsibility from Article 107 of this Law, as well as the regress claims in relation to the given claims obsolete in one year.

(3) Claims from the contract of insurance obsolete in five years.

(4) The deadline for obsolescence begins as follows:

1) Contract for transportation of passengers:

- In case of death, health damage, injury of passengers or delay in transportation – from the day when the aircraft arrived or should arrive at the place of arrival and
- In case of death that occurred after unloading the passengers from the aircraft as consequence of injury caused during the transportation - from the day of death, where the Lawsuit must be submitted within three years from the day when the aircraft arrived or should arrive at the place of arrival;

2) Transportation of hand luggage – from the day when the aircraft arrived or should arrive at the place of arrival;

3) transportation of registered baggage and items:

- In case of losing or damaging - from the day when the registered baggage or item where given, or should be given at the place of arrival,
- In case of delay in transportation – from the day when the registered baggage or item were given at the place of arrival and
- In case of other claims – from the day when the claim should be fulfilled;

4) contract for accepting and equipping the passengers, baggage and items – from the day determined in points 1, 2 and 3 of this paragraph;

5) Contract for specialized service with aircraft and contract for lease of aircraft – from the day or receiving the claim;

6) the responsibility from Article 107 of this Law – from the day when the damaged person found out about the damage and for the person that caused the damage, within three years from the day when the damage occurred;

7) Regressive claims – from the day when the obligation for reimbursement of the claim occur based on court decision or based on any other act, referring to the right to regress and

8) Contract for insurance for:

- Claims for compensation of damage caused to third parties – from the day when the insured

- person receives the request from the third party for compensating the damage and
- Other claims – from the first day after the end of the calendar year in which the claim was done.

SECTION THREE REAL RIGHTS OF THE AIRCRAFT

CHAPTER I GENERAL PROVISIONS Capacity of the Aircraft

Article 137

An aircraft and an aircraft under construction are movable goods.

Real Rights

Article 138

- (1) An aircraft may be subject to ownership rights and other real rights.
- (2) The general real rights regulations shall apply in an appropriate manner all real rights relations related to the aircraft not regulated in this Law.

Obtaining State Proprietary to the Republic of Macedonia

Article 139

The aircraft obtains state proprietary to the Republic of Macedonia by its entry in the Aircraft Register of the Republic of Macedonia (hereinafter referred to as the Aircraft Register).

Rule Writing Rules

Article 140

The entry of the rights on the aircraft in the Aircraft Register, the content and the manner of maintaining the Register and the registration procedure shall be implemented on the basis of the provisions of the Law regulating aviation matters.

Order of Priority of Entry

Article 141

- (1) The legal act of entering the aircraft in the Aircraft Register depends on the order of priority for entry.
- (2) The important moment for the order of priority of entry is the moment when the request for entry arrived to the state administration authority responsible for maintaining the Aircraft Register.

Manner of Obtaining Real Rights by the Aircraft

Article 142

- (1) A person may obtain the ownership rights and all other real rights of the aircraft gained on the basis of a legal act by entering such right in the Aircraft Register.
- (2) The rights referred to in paragraph (1) of this Article apply to third parties from the moment of entry in the Aircraft Register.
- (3) The legal act referred to in paragraph (1) may be executed in writing, otherwise it shall not have any legal effect.

(4) For the occurrence of a statutory right of pledge and the action arising for third parties, there is no need of entry in the Aircraft Register.

(5) The provisions of paragraphs (1), (2), (3) and (4) and (5) of this Article shall also apply to aircraft under construction.

When a Legal act in Writing is not Required

Article 143

The provisions of Article 142 paragraph (3) of this Law do not apply to:

- 1) aircraft rights gained by inheritance or by public auction or
- 2) transfer of the aircraft ownership rights to the insurer on the basis of the aviation insurance provisions.

CHAPTER II

AIRCRAFT OWNERSHIP RIGHTS

Scope of Ownership Rights of an Aircraft Under Construction

Article 144

(1) The ownership rights of an aircraft under construction also cover the goods incorporated in the aircraft under construction.

(2) If nothing else has been entered in the Aircraft Register, the ownership rights of the aircraft under construction also cover the goods found in the factories and the workshops, but not incorporated in the aircraft, if by their production they are intended exclusively for integration in a certain aircraft or to its belongings, or if it has been marked and separated in a visible manner for integration in the aircraft.

Belongings of the Aircraft

Article 145

(1) The belongings of the aircraft are all of the goods which are permanently intended for the aircraft, regardless of whether they are incorporated in the aircraft or a temporarily separated from it.

(2) The transfer of aircraft ownership rights also covers its belongings.

(3) The aircraft ownership rights do not cover such belonging which in accordance with the aircraft owner has been entered in the Aircraft Register that it belongs to another person

Entry of Aircraft Lease Contract in the Aircraft Register

Article 146

(1) The right for temporary use right shall be entered in the Aircraft Register on the basis of a lease contract.

(2) By way of derogation of paragraph (1), the right for temporary use right shall be entered in the Aircraft Register on the basis of a lease contract.

(3) If the owner transfers the ownership rights to another person by way of a legal act, the right to lease of the aircraft shall not cease if the lease period has not expired and if the rental right has been entered in the Aircraft Register.

Right of Priority of the Lessee

Article 147

The lessee whose lease right has been entered in the Aircraft Register has the priority rights for

purchase during the lease period.

Co-ownership

Article 148

- (1) An aircraft and an aircraft under construction may be co-owned, wherefore the co-ownership is divided into parts.
- (2) Provided that the co-owners have not agreed otherwise, the co-ownership shall be divided into equal ideal parts.
- (3) The co-owner may, pursuant to the provisions of this Law, renounce or burden his/her part of the aircraft.
- (4) Should one of the co-owners renounce his/her part of the aircraft, the remaining co-owners shall have priority rights, if such rights are entered in the Aircraft Register.

CHAPTER III

CONTRACTUAL RIGHT OF PLEDGE (MORTGAGE) OF AIRCRAFT

Definition of Contractual Right of Pledge (mortgage) of Aircraft

Article 149

- (1) A contractual right of pledge (mortgage) on an aircraft is the right upon which the mortgage creditor is authorised to settle by the sales prices of the aircraft realised by the sale by an authorised authority, if the claim secured by a mortgage is not settled upon arrival.
- (2) The mortgage contract may also contain the right to the mortgage creditor in case of a debt to be paid, to settle his/her arrived unsettled claim by using the aircraft and the authorisation of the mortgage creditor to enter such a right in the Aircraft Register as a burden of the aircraft to the debtor, if such is stipulated in the contract.
- (3) The mortgage contract must be concluded in writing, otherwise it shall not be legally binding.
- (4) The legal right to pledge on the aircraft has priority of settlement before the mortgage of the aircraft.
- (5) The mortgage on the aircraft shall not extinguish in case of change of ownership of the aircraft, unless otherwise determined in this Law.
- (6) The mortgage on the aircraft is obtained on the basis of a contract or a court ruling adopted in a procedure for forced collateralisation of claims. The provisions of the specific Law regulating the court procedure for collateralisation of financial claims shall determine the assumptions under which the court may adopt a ruling for establishing a mortgage on the aircraft.

Effect of the Mortgage on the Aircraft

Article 150

- (1) Aircraft mortgage also applies to the belongings of the aircraft, except in the cases when ownership rights of the belongings have been entered in the Aircraft Register to another person who is not the owner of the aircraft.
- (2) Mortgage of the aircraft to the benefit of the principal of the debt also exists for three year contractual or legal interest received by the date of initiation of the procedure for forced repossession, the interest received during such a procedure, as well as the costs for entry of the mortgage, court case and the forced repossession procedure.
- (3) The mortgage of the aircraft does not apply to the transportation fee, the fee for special services with

the aircraft and the lease fee, as well as the reward for the performed tracing of the aircraft or its recovery, except if not stipulated otherwise by a mortgage contract .

Mortgage for Compensation from the Insurance of the Aircraft

Article 151

(1) If not stipulated otherwise, the mortgage of the aircraft also applies to the compensation from the insurance of the aircraft which belongs to the aircraft owner.

(2) The mortgage of the insurance compensation shall cease if the insurer pays the compensation to the insured party before being notified by the mortgage creditor for the establishment of the mortgage.

(3) If the insurance company is notified about the mortgage contract on the aircraft, it may not pay the insurance compensation to the insured party without approval of the mortgage creditor.

Settlement of the Mortgage Creditor's Claim Before Arrival of the Claim

Article 152

By way of derogation of Article 149 paragraph (1) of this Law, when the aircraft incurs such damages or its state is such that the mortgage does not provide sufficient guarantee for settlement of the claim, each mortgage creditor may request settlement of their claim even before it is due, if the debtor does not offer collateral in any other form for the incurred difference.

Permission for Withdrawal of the Aircraft from air Traffic

Article 153

(1) An aircraft burdened by a mortgage, cannot be permanently withdrawn from air traffic without prior express written consent by all the mortgage creditors whose rights are entered in the Aircraft Register.

(2) If all mortgage creditors have not provided the consent referred to paragraph (1) of this Article, the mortgage debtor shall have the right to request from the court that the aircraft be sold at a public auction.

Super Mortgage

Article 154

(1) A super mortgage may be established with an agreement upon a mortgage on an aircraft in favour of a third party.

(2) In the case referred to in paragraph (1) of this Article the mortgage debtor may pay his/her debt to the mortgage creditor, only if the super mortgage creditor provides written consent and if the amount that the mortgage debtor owes is deposited to the court.

(3) If the mortgage debtor does not proceed in the manner stipulated in paragraph (2) of this Article, the mortgage shall remain in force to the favour of the super mortgage creditor's claim.

Mortgage on the Ideal Part of the Co-Owner of the Aircraft

Article 155

With a view to establish a mortgage on the ideal part of the aircraft co-owner, the co-owners who possess the majority of the parts shall need to provide their consent.

Right of the Creditor on the Part of the Co-Owner

Article 156

(1) If more than half of the co-owned parts of the aircraft are burdened by the mortgage, the

mortgage creditor may request the entire aircraft to be sold, but the settlement of his/her claim may be performed in respect to the part of the sales price that belongs to the parts burdened by the mortgage.

(2) The provision referred to in paragraph (1) of this Article shall also apply to maintenance costs.

Mortgage of an aircraft under construction

Article 157

The provisions of this Law shall also appropriately apply on an aircraft under construction.

Termination of Mortgage

Article 158

The mortgage of the aircraft shall be terminated by:

- 1) deletion of the mortgage from the Aircraft Register and
- 2) sale of the aircraft under a bankruptcy procedure or a procedure for forced repossession.

When a Mortgage does not Terminate

Article 159

The mortgage on the aircraft and its order of priority acquired by the entry into the Aircraft Register shall not terminate with the deletion of the aircraft from the Register, if the deletion is performed because the aircraft has become permanently unusable, has disappeared or pulled out of service in air traffic for any other reasons.

Joint Mortgage

Article 160

- (1) A mortgage may be registered inseparably for the same claim on two or more aircraft or aircraft under construction, or two or more mortgages (joint mortgage).
- (2) In the case referred to in paragraph (1) of this Article, the mortgage creditor shall be authorised to request settlement of the entire claim from each aircraft covered by the mortgage.

Prenote of the Mortgage of the Aircraft

Article 161

(1) The mortgage entered in a foreign Aircraft Register on an aircraft which shall gain state proprietary of the Republic of Macedonia and which is indicated for deletion from the foreign register, shall be entered in the Macedonian Aircraft Register as a prenote of the mortgage, and the order of priority shall be recognised according to the time which was decisive for establishing its order of priority in the foreign register.

(2) The mortgage creditor referred to in paragraph (1) of this Article is obliged to justify its prenote within 60 days of the receipt of the notification for the entry of the prenote in the Aircraft Register.

CHAPTER IV

STATUTORY RIGHT OF PLEDGE OF THE AIRCRAFT

Claims for Which there is a Statutory Right of Pledge on an Aircraft

Article 162

Statutory right of pledge of the aircraft exists for:

- (1) court expenses and expenses for the repossession officers incurred in common interest for all creditors during the repossession or collateralisation procedure with a view to keeping the aircraft or due to implementation of a forced sale;
- (2) the claims concerning the payment of expenses due for the tracing of the aircraft or its recovery;
- (3) the claims concerning extraordinary costs that are necessary for the preservation of the aircraft and
- (4) the expenses that need to be paid to the airport authorities in relation to performed airport services, pursuant to the provisions of the Aviation Act.

Effect of the Statutory Right of Pledge

Article 163

- (1) The statutory right of pledge of the aircraft also applies to the belongings of the aircraft, the transportation fees and the fees for specialised services that are owed by the passenger, the orderer of the transport or the orderer of the specialised service.
- (2) The mortgage of the aircraft also applies to the compensation from the insurance of the aircraft which belongs to the aircraft owner.
- (3) The statutory right of pledge of the aircraft in favour of the principal amount of the debt, also applies for three year contractual interest received before the beginning of the forced repossession procedure and the interests received during such a procedure.

Right of Priority

Article 164

- (1) The claims secure by a statutory right of lien shall have the priority rights for the settlement in comparison to all other rights.

The priority of claim settlement secured by statutory right of lien

Article 165

- (1) The claims secured by statutory right of lien shall be settled according to the order specified in Article 192 paragraph (1) of this Law.
 - (2) In regards to the claims which are referred in the same item of Article 162 paragraph (1) of this Law, the claim incurred later shall have priority over the earlier incurred claims, and in case of doubt it shall be considered that the claims had incurred at the same time, if the contrary is not proven.
 - (3) If the claims referred to in Article 162 paragraph (1) of this Law, which are specified in the same item, were incurred at the same time, and cannot completely be settled, they shall be settled in proportion.
- The claims secured by statutory right of pledge from the last journey have priority over such claims from an earlier journey.

Order of Settlement of Claims for Compensation of Damages

Article 166

- (1) In case of a force sale of the aircraft, the damages claims due to death, damage, damage to health or injury of persons on the ground shall be settled, as a rule, pursuant to the claims referred to in Article 162 paragraph (1) of this Law.
- (2) If in the case referred to in paragraph (1) of this Law, the aircraft is burdened by a mortgage for securing a clam, the claim for compensation of damages shall be settled before the claims of the mortgage creditors, but 20% of the sale price at the most.

The provisions of paragraphs (1) and (2) of this Article shall apply if the liability for such damages is insured to an amount which is lower than the value of such a new aircraft.

Termination of the Legal Right of Pledge

Article 167

- (1) The statutory right of pledge of the aircraft shall cease by:
- 1) termination of the claims secured by the statutory right of pledge;
 - 2) expiration of the three month period from the date when the claim was incurred;
 - 3) forced sale of the aircraft in an executive or bankruptcy procedure and
 - 4) voluntary sale, provided that:
 - 5) the transfer of the aircraft ownership rights to has been entered in the Aircraft Register and such entry has been published in the “Official Gazette of the Republic of Macedonia” in a manner announcing the entry into the Trade Register, and to also have been published on the notice board in the court of first instance under whose jurisdiction the Aircraft Register of the Republic of Macedonia is maintained and in which the aircraft is registered, and
 - the creditor having statutory right of pledge to not initiate court proceedings for settling his/her claims within 60 days from the publication of the transfer entry announcement but before the expiration of three months from the date when the claims were incurred.
- (2) The period referred to in paragraph (2) item 2 of this Article related to the statutory right of pledge for securing claims concerning payment of costs that are due for tracing for the aircraft or its recovery and the claims concerning extraordinary costs that are necessary for preservation of the aircraft shall be calculated from the date when such act were performed.

When the Legal Right of Pledge does not Terminate

Article 168

- 1) The statutory right of pledge for the claims referred to in Article 167 paragraph (1) items 2 and 3 do not cease after the expiration of three month, provided that prior to the expiration of such period:
- 2) the claims are noted in the Aircraft Register in which the aircraft is entered;
- 3) the parties reach an agreement on the amount of the claims and
- 4) court proceedings are initiated on such claims, in which case the court shall determine whether justified reasons exist for the termination or postponement of the deadline.

Termination of the three month period

Article 169

- (1) The three month period referred to in Article 167 paragraph (1) item 2 of this Law shall be terminated by filing a Lawsuit for the realisation of the claims, provided that the aircraft to be ground, pursuant with the provisions in this Chapter of this Law, or a note to be made in the Aircraft Register of the filed Lawsuit.
- (2) When the ruling based on the filed Lawsuit which was subject the note referred to in paragraph 1 of this Article shall become enforceable, the statutory right of pledge shall cease within 60 days of the enforceability of the ruling if the creditor does not demand forced sale or cessation of the aircraft, i.e. to not have the statutory right of pledge to be entered in the Aircraft Register.
- (3) The creditor has the right within the period referred in paragraph (2) of this Article to request from the court to have the claims from this statutory right of pledge entered as a mortgage with a right of priority according to the time when the note of the Lawsuit for realisation of the statutory right of pledge had been entered in the Aircraft Register.

Claims Transfer

Article 170

(1) The termination of the statutory right of pledge shall not imply termination of the claim with which such claims was secured.

(2) The abandonment of the claim secured by the statutory right of pledge shall also transfer the statutory right of pledge.

Unlawful Seizure of an Aircraft

Article 171

The provisions of this Law related to the statutory right of pledge of the aircraft shall apply even when the aircraft shall be used by a person who is not the aircraft owner, except if the aircraft had been seized from the owner by unlawful action, while the pledge creditor had known or should have known that the aircraft had been used by a person who had seized the aircraft by way of an unlawful action.

SECTION FOUR

PROCEDURE FOR REPOSSESSION AND SECURITY OVER THE AIRCRAFT

When may Forced Repossession and Security over the Aircraft be Permissible

Article 172

(1) Forced enforcement of a court ruling or any other decision equivalent to a court ruling which is attributed to the realisation of the obligation and securing the claim on the aircraft may be executed only if the aircraft is located in the territory of the Republic of Macedonia.

(2) Forced repossession and security may also allow on an aircraft which is not located in the territory of the Republic of Macedonia provided that it has been entered in the Aircraft Register of the Republic of Macedonia.

Exemption from Forced Repossession and Security

Article 173

(1) The following cannot be subject to forced repossession and security:

1) military, customs and police aircraft, as well as the aircraft for health purposes and fire fighting aircraft and

2) a foreign aircraft which pursuant to the regulations in force flies over the territory of the Republic of Macedonia or lands on an airport in the territory of the Republic of Macedonia due to force majeure or due to air traffic security reasons (aircraft in emergency procedure) during the span of the force majeure or the reasons for air traffic security, as well as when it lands at the order of a competent authority.

(2) The aircraft referred to in paragraph (1) item 2 of this Article may be subject to forced repossession or security if the procedure is being conducted due to repossession of security of a claim that had incurred during the fly over or the time spent by the aircraft in the territory of the Republic of Macedonia.

An Aircraft Necessary for the Performance of Trade Activity

Article 174

(1) An aircraft under the ownership of a debtor performing trade activities cannot be subject to forced repossession, if it is necessary for the performance of the aviation activity of the debtor.

(2) The aircraft referred to in paragraph (1) of this Article is not exempt from force

repossession, if the debtor owning the aircraft had acquired the aircraft from a creditor or the legal predecessor thereof, who by filing for forced repossession demands settlement of his/her claim in relation to such acquisition.

(3) The aircraft referred to in paragraph (1) of this Article shall not be exempt from forced repossession, when such forced repossession is executed due to the realisation of a claim secured by a mortgage or statutory right of pledge of the aircraft.

(4) The aircraft referred to in paragraph (1) of this Article shall not be exempt from forced repossession even when the forced repossession due to settlement of one of the following claims:

1) due to damages caused on land due to death, damage to health or injury to people, which the aircraft had caused in flight for which forced repossession is implemented or which the persons in the aircraft had suffered during of use of such aircraft;

2) due to tracing and recovery, providing assistance or keeping of the aircraft;

3) due to a transport contract or any other contract for the use of the aircraft subject to forced repossession and

4) due to the supply, repair and equipping the aircraft subject to repossession

Interim Measure for Halting and Storage of an Aircraft

Article 175

(1) Temporary measure for halting and storage of an aircraft cannot be allowed during performance of regular line air traffic, nor during performance of temporary air traffic transport, if the aircraft is in a state immediately before take-off or is continuing an already started transport.

(2) By way of derogation of paragraph (1) of this Article, the halting and storage of an aircraft may be allowed if the procedure is conducted for realisation of a claim incurred in relation with the aircraft.

(3) The provisions of this Article shall also apply to foreign aircraft under the condition of mutuality.

Exemption from Halting and Storage of an Aircraft

Article 176

(1) If the interim measure is determined to secure a financial claim, the aircraft shall be exempt from halting and storage if collateral is provided to the amount of the claim for which halting is demanded, provided that such collateral can be disposable and transferable.

(2) In the case of claims for which the opposing party to the collateral may limit his/her liability, the amount of the collateral referred to in paragraph (1) of this Article does not have to be higher than the amount of the limited liability.

(3) When one of the courts in the Republic of Macedonia shall exempt an aircraft from halting on the basis of the provision of paragraph (1) of this Article, no other domestic court may allow halting of the given aircraft or any other aircraft for the same claim and for the same proposing party of the collateral, under the condition that the provided collateral may be at disposal and to be transferable to the benefit of the proposing party of the collateral.

Competence for the Repossession of an Aircraft and the Goods of an Aircraft

Article 177

(1) The forced repossession of the aircraft shall be carried out by a person who performs public authorisation stipulated by a special Law determining the rules according to which the forced enforcement of the court rulings (repossessor), on whose territory the aircraft subject to repossession is located.

(2) The forced repossession of goods which are on the aircraft due to transport shall be carried out by a person who performs public authorisation stipulated by a special Law

determining the rules according to which the forced enforcement of the court rulings (repossessor), on whose territory the aircraft subject to repossession is located during the time of submitting the request for forced repossession.

(3) The forced repossession of a foreign aircraft not entered in the Aircraft Register be carried out by a person who performs public authorisation stipulated by a special Law determining the rules according to which the forced enforcement of the court rulings (repossessor), on whose territory the aircraft subject to repossession is located during the time of submitting the request for forced repossession.

(4) If this Law contains no special provisions, the provisions of the special Law determining the rules according to the which the forced enforcement of the court rulings attributed to fulfilment of the obligation shall apply on the forced repossession of an aircraft

Authority for the Security of an Aircraft and the Goods of an Aircraft

Article 178

(1) The court, on whose territory the Aircraft Register is maintain containing the entry of the aircraft, shall decide upon the proposal for the collateral of the aircraft and shall enforce the collateral.

(2) The enforcing the collateral of the aircraft shall be exclusively competent concerning the proposal for security of goods which due to transportation are on the aircraft subject to enforcement of the collateral.

(3) If this Law contains no special provisions, the provisions of the Law regulating the rules according to which the court is proceeding in relation the security of the claims shall apply on the collateral of the aircraft or the goods which due to transportation are on the aircraft subject to enforcement of the collateral.

SECTION FIVE

CONFLICT OF LAWS

Application of the Provisions of this Law on Relations Arising in International Air Traffic

Article 179

The provisions of this Law on the contracts for transport of passengers, baggage, goods, postal parcels and for carrying out specialised services with an aircraft shall also apply on the relations arising in international air traffic, if not otherwise specified by an international agreement.

Exclusion of Reciprocity

Article 180

If according to the provisions of this Law, the Law of another country should be used, the rules of such Law for the resolution of the conflict of the Laws.

Exclusion of application of this Law and binding application of this Law

Article 181

(1) The provisions of this Law concerning contracts for aircraft transport, shall not apply if the parties have concluded a written contract for the application of the Law of a foreign country.

(2) Independent of the provision of paragraph (1) of this Law and the provisions of this or any other Law regulating conflict of Laws in the area of contracts, the provisions of this Law shall mandatorily apply on contracts on use of aircraft, if:

- 1) both contractual parties – the transport orderer and the air carrier - are natural persons with residence in the Republic of Macedonia or legal entities with a registered seat in the Republic of Macedonia, whereas the airport of departure or destination is located in the Republic of Macedonia;
 - 2) the application of the Law of the foreign country violates the mandatory provisions of this Law, which in agreement with the parties may be waived or changed, whereas the airport of departure or destination is located in the Republic of Macedonia, and
 - 3) by the application of the Law of a foreign country the passenger would be placed in a less favourable state in comparison to the application of the provisions of this Law.
- (3) A contract concluded in violation of the provisions referred to in paragraph (2) of this Article shall have no legal effect.

Application of the Law which is in Closest Relation

Article 182

(1) If the Law which the contractual parties have agreed to apply cannot be applied in the entire contract, or on some of the relations arising from the contract, or if the parties have not exclusively expressed the Law which shall apply, while their intention for application of a certain Law cannot be clearly determined either by the circumstances of the case, the contract or the contract relationship, the Law which is the most closely related to it shall apply.

(2) The incidental rights and the incidental obligations, such as the manner of receiving and handover of the goods or the manner of payment of the transportation fees, etc., how the Law applies the closest to the place where the actions were performed, i.e. where they were supposed to be performed.

Determining the Applicable Law for the Insurance in Air Traffic

Article 183

(1) The Law of the country where the insurer is based shall apply on the air traffic insurance contract and the relations arising thereof provided that:

- 1) the parties have not expressly the Law that shall be applicable to the contract, and from the circumstances of the case one cannot determine their intention relating to the application of the determined Law and

- 2) the Law whose application the parties agreed to cannot apply to part of the air traffic insurance contract or to a certain relation arising from such contract, or only to such part of the contract, i.e. the legal relationship arising from the contract.

(2) By way of derogation of paragraph (1) of this Law, the relations arising from the air traffic insurance contract shall be subject to the Law of the Republic of Macedonia, if all parties concerned in the contract are citizens of the Republic of Macedonia, with residence in the Republic of Macedonia or a legal entities registered in the Republic of Macedonia with a seat in the Republic of Macedonia and the contract concerns insured items subject to covered risks exclusively to the territory of the Republic of Macedonia.

Establishing of the Applicable Law for the Form of the Contract

Article 184

The contract and any other legal action performed in the fulfilment of the contract shall be fully effective in regards to the form if it has been concluded, i.e. executed in the form which prescribes the Law of the country in which the contract was concluded, i.e. the legal action performed, or pursuant to the Law assessing the main rights and main obligations of the contract.

Establishing the Applicable Law for the Real Rights of the Aircraft

Article 185

The Law of the country in which the aircraft is registered shall apply in regards to the right of ownership and other real rights of the aircraft.

Establishing the Applicable Law on the Liability for the Damage which an Aircraft has Caused on the Ground During Flight

Article 186

The Law of the state in whose territory the damage was caused shall be applicable to the liability for the damage referred to in Article 107 of this Law.

Application of Other Rules for Establishing the Applicable Law

Article 187

If this Law contains no provision on the Law which is applicable for a certain relation, the general regulations governing international private Law and the legal order principles of the Republic of Macedonia.

Exclusion of Application of Foreign Law

Article 188

(1) The provisions of the foreign country's Law shall not apply if the consequences of their application would be in violation of the public order of the Republic of Macedonia.

(2) The foreign Law which would be applicable pursuant to the provisions of this Law shall not apply if the applicability of the Law was made possible by contravention of the provisions of the Law of the Republic of Macedonia.

SECTION SIX

INSPECTION SUPERVISION

Inspection Supervision

Article 189

(1) The Civil Aviation Agency shall perform inspection supervision on the implementation of the obligation of the air carrier or the contractual air carrier on:

1) ensuring damages compensation and assistance to the passengers in the case of flight cancellations, refusing entry of a passenger in the aircraft and in the case of a long of the flight, in a manner envisaged with the provisions of Regulations (EC) 261/2004;

2) conclusion of an insurance contract on liability for damages cause to the passengers, baggage, goods and towards third parties, pursuant to the Law governing the mandatory traffic insurance and Regulation (EC) 785/2004 and

3) Informing the passengers about the identity of the true air carrier pursuant to Regulation (EC) 2111/2005 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.

(2) The inspection supervision referred to in paragraph (1) of this Law shall be implemented pursuant to the provisions of the Aviation Act.

SECTION SEVEN

OFFENCE PROVISIONS

Offence Provisions

Article 190

(1) A fine to the amount of 3,000 to 5,000 Euros in denars equivalent value shall be imposed for an offence committed by a legal entity, which is:

1) a air carrier, but who has not ensured damages compensation and assistance to the passengers in the case of flight cancellations, refusing entry of a passenger in the aircraft and in the case of a long of the flight, in a manner envisaged with the provisions of Regulations (EC) 261/2004;

2) a air carrier which has not concluded an insurance contract on liability for damages cause to the passengers, baggage, goods and towards third parties, pursuant to the Law governing the mandatory traffic insurance and Regulation (EC) 785/2004 and

3) a contracted air carrier, but has not informed the passengers about the identity of the true air carrier pursuant to Regulation (EC) 2111/2005 on the establishment of a Community list of air air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air air carrier.

(2) A fine to the amount of 1,000 to 2,000 Euros in denars equivalent value shall also be imposed to the responsible person in a legal entity for the offence referred to in paragraph (1) of this Article.

Mediation

Article 191

(1) For the offences referred to in Article 190 of this Law, the authorised inspector may propose to the offender mediation and reaching agreement whereby the offender shall pay the fine, the other duties and eliminated the consequences of the offence.

(2) The inspector referred to in paragraph (1) of this Article shall make a report on the offence establishing the contract of the two parties for initiation of a mediation procedure which shall signed by the offender.

(3) The mediation procedure shall be initiated by delivery of the report referred to in paragraph (2) of this Article to the Mediation Commission, which the inspector is obliged to deliver within three days from the day of its composition and writing.

(4) The mediation procedure shall be conducted before the Mediation Commission created by the Director of the Civil Aviation Agency.

(5) The Commission shall consist of three members of which one shall be in the capacity of President.

The Commission members shall be selected from within the employees of the Agency, of whom one shall be a graduated Lawyer.

(6) The Commission President is obliged to begin the procedure within 24 hours of the data of the report's delivery.

(7) The Commission shall work during sessions with mandatory presence of representatives of the offender and the aviation inspector.

(8) A Contract shall be concluded with the offender on the reached consent during the mediation procedure.

(9) The Contract referred to in paragraph 8 of this Article shall regulate the obligation of the offender, especially:

- the amount and manner of payment of the fine,
- the amount and manner of payment of the other duties and expenses and
- the eventual measures that the offender needs to take in order to eliminate the consequences of the

offence.

(10) IN the cases when consent was reached during the mediation procedure, the fine of the offender for the perpetrated offence may be reduced by at least one half of the maximum prescribed fine for the offence.

(11) The Director of the Civil Aviation Agency shall adopt a Rules of Procedure and schedule of costs for the work of the Commission.

(12) For their work, the members of the Mediation Commission shall have the right to a reward which need to be reasonable and appropriate to the significance, scope and complexity of the offences.

(13) The amount and type of the costs stipulated in the schedule of costs referred to in paragraph (11) shall be determined depending on the real costs that the authority has that are needed for ensuring the work of the Mediation Commission.

(14) The Mediation Commission is obligated to keep records of the conducted mediation procedures and of their outcomes.

(15) The contract referred to in paragraph (8) of this Article shall have the legal effect of an executive document.

(16) If the mediation procedure does not succeed, a request shall be filed for initiation of an offence procedure before the competent court.

SECTION EIGHT

TRANSITIONAL AND FINAL PROVISIONS

Application of This Law

Article 192

The relations arising before the entry into force of this Law shall be subject to the applicability of the regulations that were in force before such relation arose.

Termination of Applicability of Other Regulations

Article 193

The validity of the Law on Contractual and Real Right Relations in respect of Aviation Transport ("Official Gazette of the SFRY" no 22/77 and 12/85) shall cease on the day of application of this Law

European Union Regulations

Article 194

The Secretariat for European Affairs of the Government of the Republic of Macedonia shall translate and publish in the Official Gazette of the Republic of Macedonia the European Regulations upon which this Law refers to, within six months from the date that this Law entered into force.

Entry Into Force

Article 195

This Law shall enter into force on the eighth day after its publication in the Official Gazette of the Republic of Macedonia" and its application shall commence upon expiration of six months from the date of its entry into force.

I

(Acts whose publication is obligatory)

REGULATION (EC) No 261/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 February 2004
establishing common rules on compensation and assistance to passengers in the event of denied
boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽³⁾, in the light of the joint text approved by
the Conciliation Committee on 1 December 2003,

Whereas:

(1) Action by the Community in the field of air transport
should aim, among other things, at ensuring a high level
of protection for passengers. Moreover, full account
should be taken of the requirements of consumer protec-
tion in general.

(2) Denied boarding and cancellation or long delay of flights
cause serious trouble and inconvenience to passengers.

(3) While Council Regulation (EEC) No 295/91 of 4
February 1991 establishing common rules for a denied
boarding compensation system in scheduled air trans-
port ⁽⁴⁾ created basic protection for passengers, the
number of passengers denied boarding against their will
remains too high, as does that affected by cancellations
without prior warning and that affected by long delays.

(4) The Community should therefore raise the standards of
protection set by that Regulation both to strengthen the
rights of passengers and to ensure that air carriers
operate under harmonised conditions in a liberalised
market.

(5) Since the distinction between scheduled and non-sched-
uled air services is weakening, such protection should
apply to passengers not only on scheduled but also on
non-scheduled flights, including those forming part of
package tours.

(6) The protection accorded to passengers departing from
an airport located in a Member State should be extended
to those leaving an airport located in a third country for
one situated in a Member State, when a Community
carrier operates the flight.

(7) In order to ensure the effective application of this Regu-
lation, the obligations that it creates should rest with the
operating air carrier who performs or intends to
perform a flight, whether with owned aircraft, under dry
or wet lease, or on any other basis.

(8) This Regulation should not restrict the rights of the
operating air carrier to seek compensation from any
person, including third parties, in accordance with the
law applicable.

(9) The number of passengers denied boarding against their
will should be reduced by requiring air carriers to call
for volunteers to surrender their reservations, in
exchange for benefits, instead of denying passengers
boarding, and by fully compensating those finally denied
boarding.

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 225 and OJ C 71 E, 25.3.2003, p. 188.

⁽²⁾ OJ C 241, 7.10.2002, p. 29.

⁽³⁾ Opinion of the European Parliament of 24 October 2002 (OJ C 300
E, 11.12.2003, p. 443), Council Common Position of 18 March
2003 (OJ C 125 E, 27.5.2003, p. 63) and Position of the European
Parliament of 3 July 2003. Legislative Resolution of the European
Parliament of 18 December 2003 and Council Decision of 26
January 2004.

⁽⁴⁾ OJ L 36, 8.2.1991, p. 5.

-
- (10) Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (11) Volunteers should also be able to cancel their flights, with reimbursement of their tickets, or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding against their will.
- (12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (13) Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.
- (15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.
- (16) In cases where a package tour is cancelled for reasons other than the flight being cancelled, this Regulation should not apply.
- (17) Passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions.
- (18) Care for passengers awaiting an alternative or a delayed flight may be limited or declined if the provision of the care would itself cause further delay.
- (19) Operating air carriers should meet the special needs of persons with reduced mobility and any persons accompanying them.
- (20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.
- (21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.
- (22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.
- (23) The Commission should analyse the application of this Regulation and should assess in particular the opportunity of extending its scope to all passengers having a contract with a tour operator or with a Community carrier, when departing from a third country airport to an airport in a Member State.
- (24) 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. Such arrangements have yet to enter into operation.
- (25) Regulation (EEC) No 295/91 should accordingly be repealed,
- HAVE ADOPTED THIS REGULATION:
- Article 1*
- Subject**
1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:
- (a) they are denied boarding against their will;
 - (b) their flight is cancelled;
 - (c) their flight is delayed.

2. Application of this Regulation to Gibraltar airport 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 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'air carrier' means an air transport undertaking with a valid operating licence;
- (b) 'operating air carrier' means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (c) 'Community carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers ⁽¹⁾;
- (d) 'tour operator' means, with the exception of an air carrier, an organiser within the meaning of Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽²⁾;
- (e) 'package' means those services defined in Article 2, point 1, of Directive 90/314/EEC;
- (f) 'ticket' means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;
- (g) 'reservation' means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;
- (h) 'final destination' means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;
- (i) 'person with reduced mobility' means any person whose mobility is reduced when using transport because of any physical disability (sensory or locomotory, permanent or temporary), intellectual impairment, age or any other cause

of disability, and whose situation needs special attention and adaptation to the person's needs of the services made available to all passengers;

- (j) 'denied boarding' means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;
- (k) 'volunteer' means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits.
- (l) 'cancellation' means the non-operation of a flight which was previously planned and on which at least one place was reserved.

Article 3

Scope

1. This Regulation shall apply:
 - (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
 - (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.
2. Paragraph 1 shall apply on the condition that passengers:
 - (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
 - as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,or, if no time is indicated,
 - not later than 45 minutes before the published departure time; or
 - (b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.
3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

⁽²⁾ OJ L 158, 23.6.1990, p. 59.

4. This Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

6. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC. This Regulation shall not apply in cases where a package tour is cancelled for reasons other than cancellation of the flight.

Article 4

Denied boarding

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

Article 5

Cancellation

1. In case of cancellation of a flight, the passengers concerned shall:

- (a) be offered assistance by the operating air carrier in accordance with Article 8; and
- (b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
 - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

- (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

- (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

Article 6

Delay

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

- (a) for two hours or more in the case of flights of 1 500 kilometres or less; or
- (b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or

- (c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

- (i) the assistance specified in Article 9(1)(a) and 9(2); and
- (ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.

Article 7

Right to compensation

1. Where reference is made to this Article, passengers shall receive compensation amounting to:

- (a) EUR 250 for all flights of 1 500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

- (a) by two hours, in respect of all flights of 1 500 kilometres or less; or
- (b) by three hours, in respect of all intra-Community flights of more than 1 500 kilometres and for all other flights between 1 500 and 3 500 kilometres; or
- (c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50 %.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.

Article 8

Right to reimbursement or re-routing

1. Where reference is made to this Article, passengers shall be offered the choice between:

- (a) — reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
 - a return flight to the first point of departure, at the earliest opportunity;
- (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

- (c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.

3. When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.

Article 9

Right to care

1. Where reference is made to this Article, passengers shall be offered free of charge:

- (a) meals and refreshments in a reasonable relation to the waiting time;
- (b) hotel accommodation in cases
 - where a stay of one or more nights becomes necessary, or
 - where a stay additional to that intended by the passenger becomes necessary;
- (c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

Article 10

Upgrading and downgrading

1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.

2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

- (a) 30 % of the price of the ticket for all flights of 1 500 kilometres or less, or

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- (b) 50 % of the price of the ticket for all intra-Community flights of more than 1 500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1 500 and 3 500 kilometres, or
- (c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

Article 11

Persons with reduced mobility or special needs

1. Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.
2. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

Article 12

Further compensation

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of national law, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

Article 13

Right of redress

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.

Article 14

Obligation to inform passengers of their rights

1. The operating air carrier shall ensure that at check-in a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: 'If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance'.
2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form.
3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

Article 15

Exclusion of waiver

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.
2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

Article 16

Infringements

1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January 2007 on the operation and the results of this Regulation, in particular regarding:

- the incidence of denied boarding and of cancellation of flights,
- the possible extension of the scope of this Regulation to passengers having a contract with a Community carrier or holding a flight reservation which forms part of a 'package

tour' to which Directive 90/314/EEC applies and who depart from a third-country airport to an airport in a Member State, on flights not operated by Community air carriers,

- the possible revision of the amounts of compensation referred to in Article 7(1).

The report shall be accompanied where necessary by legislative proposals.

Article 18

Repeal

Regulation (EEC) No 295/91 shall be repealed.

Article 19

Entry into force

This Regulation shall enter into force on 17 February 2005.

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

Done at Strasbourg, 11 February 2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

I

(Acts whose publication is obligatory)

REGULATION (EC) No 785/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 21 April 2004
on insurance requirements for air carriers and aircraft operators

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽³⁾,

Whereas:

- (1) In the framework of the common transport policy, and in order to foster consumer protection, it is important to ensure a proper minimum level of insurance to cover liability of air carriers in respect of passengers, baggage, cargo and third parties.
- (2) In the Community aviation market, the distinction between national and international air transport has been eliminated and it is, therefore, appropriate to establish minimum insurance requirements for Community air carriers.
- (3) Common action is necessary to ensure that these requirements also apply to air carriers from third countries in order to ensure a level playing field with Community air carriers.
- (4) In its Communication of 10 October 2001 regarding the repercussions of the terrorist attacks in the United States

on the air transport industry, the Commission stated its intention to examine the amounts and conditions of insurance required for the grant of operating licences by Member States in order to ensure a harmonised approach. Moreover, in its Communication of 2 July 2002 regarding insurance in the air transport sector following the terrorist attacks of 11 September 2001 in the United States, the Commission stated that it would continue to monitor the developments on the aviation insurance market with regard to the revision of the amounts and conditions of insurance required for the grant of operating licences by Member States.

- (5) By Council Decision 2001/539/EC ⁽⁴⁾ the Community concluded the Convention for the Unification of Certain Rules Relating to International Carriage by Air, agreed at Montreal on 28 May 1999 (Montreal Convention), which lays down new rules on liability in respect of the international carriage by air of persons, baggage and cargo. These rules are expected to replace those of the Warsaw Convention of 1929 and its subsequent amendments.
- (6) Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured to cover liability under that Convention. Warsaw Convention of 1929 and its subsequent amendments will continue to exist alongside the Montreal Convention for an indefinite period. Both Conventions provide for the possibility of unlimited liability.
- (7) Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers ⁽⁵⁾, requires air carriers to be insured to cover liability in case of accidents, in particular in respect of passengers, baggage, cargo, mail and third parties, albeit without specifying minimum amounts and conditions of insurance.

⁽¹⁾ OJ C 20 E, 28.1.2003, p. 193.

⁽²⁾ OJ C 95, 23.4.2003, p. 16.

⁽³⁾ Opinion of the European Parliament of 13 May 2003 (not yet published in the Official Journal), Council Common Position of 5 December 2003 (OJ C 54 E, 2.3.2004, p. 40), Position of the European Parliament of 11 March 2004 (not yet published in the Official Journal) and Decision of the Council of 30 March 2004.

⁽⁴⁾ OJ L 194, 18.7.2001, p. 38.

⁽⁵⁾ OJ L 240, 24.8.1992, p. 1.

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- (8) It is appropriate to take into account the fact that the European Civil Aviation Conference adopted on 13 December 2000 Resolution ECAC/25-1 on minimum levels of insurance cover for passenger and third party liability, which was modified on 27 November 2002.
- (9) It is necessary to define minimum insurance requirements to cover passengers, baggage, cargo and third parties for air carriers and aircraft operators flying within, into, out of, or over the territory of a Member State, including its territorial waters.
- (10) Insurance obligations should remain with air carriers with a valid operating licence, and, in the case of Community air carriers, with a valid operating licence granted in accordance with Regulation (EEC) No 2407/92. The absence or expiry of such licence does not relieve the undertaking from such obligation.
- (11) While the Montreal Convention specifically regulates liability in respect of passengers, baggage and cargo, the liability for mail is, according to Article 2 of that Convention, to be subject to 'the rules applicable to the relationship between the carriers and the postal administrations'. In the Community, insurance for such liability is sufficiently regulated by Article 7 of Regulation (EEC) No 2407/92.
- (12) Mandatory insurance should not be required for State aircraft and for certain other types of aircraft.
- (13) Minimum insurance cover should be provided in situations where an air carrier or aircraft operator is liable in respect of passengers, baggage, cargo and third parties in accordance with rules of international Conventions, Community or national law, without interfering with such rules.
- (14) The insurance should cover aviation-specific liability in respect of passengers, baggage, cargo and third parties. Regarding passengers, baggage and cargo, insurance should include cover for death and personal injury caused by accidents and for loss or destruction of or damage to baggage and cargo. Regarding third parties, insurance should include cover for death, personal injury and damage to property caused by accidents.
- (15) This Regulation should not be interpreted as requiring double insurance. As far as the contracting carrier and the actual carrier within the meaning of Article 39 of the Montreal Convention can be held liable for the same damage, Member States may establish specific measures to avoid double insurance.
- (16) While the market practice of offering insurance on an aggregate basis may be conducive to insurability, in particular for risks of war and terrorism, by allowing insurers better control over their liabilities, this practice does not release an air carrier or aircraft operator from the obligation to respect minimum insurance requirements when the aggregate fixed by its insurance contract is reached.
- (17) It is necessary to require air carriers to provide evidence that they respect at all times the minimum insurance requirements to cover liability, as provided for in this Regulation. With regard to Community air carriers and with regard to aircraft operators using aircraft registered in the Community, depositing evidence of insurance in one Member State should be sufficient for all Member States, such insurance being effected by an undertaking authorised to do so under the applicable law.
- (18) With respect to overflights of the territory of a Member State by non-Community air carriers or aircraft registered outside the Community which do not involve a landing on or take-off from any Member State, any overflown Member State may, in accordance with international law, request evidence of compliance with the insurance requirements of this Regulation, for example by carrying out random checks.
- (19) The minimum insurance requirements should be reviewed after a period of time.
- (20) Procedures for monitoring the application of the minimum insurance requirements should be transparent and non-discriminatory and should not impede the free movement of goods, persons, services and capital.
- (21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (22) Where further rules are required to establish adequate insurance covering aviation-specific liability on points which are not covered by this Regulation, the Member States should have the possibility to introduce such rules.
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- ⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

(23) 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. Such arrangements have yet to enter into operation.

(24) Since the objective of this Regulation, namely the introduction of minimum insurance requirements which can contribute to the objectives of the internal aviation market by reducing distortions of competition, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

1. The objective of this Regulation is to establish minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties.

2. In respect of the carriage of mail, the insurance requirements are those set out in Regulation (EEC) No 2407/92 and in the national laws of the Member States.

Article 2

Scope

1. This Regulation shall apply to all air carriers and to all aircraft operators flying within, into, out of, or over the territory of a Member State to which the Treaty applies.

2. This Regulation shall not apply to:

(a) State aircraft as referred to in Article 3(b) of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;

(b) model aircraft with an MTOM of less than 20 kg;

(c) foot-launched flying machines (including powered paragliders and hang gliders);

(d) captive balloons;

(e) kites;

(f) parachutes (including parascending parachutes);

(g) aircraft, including gliders, with a MTOM of less than 500 kg, and microlights, which:

— are used for non-commercial purposes, or

— are used for local flight instruction which does not entail the crossing of international borders,

in so far as the insurance obligations under this Regulation relating to the risks of war and terrorism are concerned.

3. 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.

4. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 3

Definitions

For the purposes of this Regulation:

(a) 'air carrier' means an air transport undertaking with a valid operating licence;

(b) 'Community air carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with Regulation (EEC) No 2407/92;

(c) 'aircraft operator' means the person or entity, not being an air carrier, who has continual effective disposal of the use or operation of the aircraft; the natural or legal person in whose name the aircraft is registered shall be presumed to be the operator, unless that person can prove that another person is the operator;

(d) 'flight' means:

— with regard to passengers and unchecked baggage, the period of transport of the passengers by aircraft including their boarding and disembarkation,

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- with regard to cargo and checked baggage, the period of transport of baggage and cargo from the moment the baggage or cargo is handed to the air carrier until the moment of delivery to the entitled recipient,
 - with regard to third parties, the use of an aircraft from the moment when power is applied to its engines for the purpose of taxiing or actual take-off until the moment when it is on the surface and its engines have come to a complete stop; additionally, it shall mean the moving of an aircraft by towing and push-back vehicles or by powers which are typical for the drive and the lift of aircraft, particularly air streams;

(e) 'SDR' means a Special Drawing Right as defined by the International Monetary Fund;

(f) 'MTOM' means the Maximum Take Off Mass, which corresponds to a certified amount specific to all aircraft types, as stated in the certificate of airworthiness of the aircraft;

(g) 'passenger' means any person who is on a flight with the consent of the air carrier or the aircraft operator, excluding on-duty members of both the flight crew and the cabin crew;

(h) 'third party' means any legal or natural person, excluding passengers and on-duty members of both the flight crew and the cabin crew;

(i) 'commercial operation' means an operation for remuneration and/or hire.

Article 4

Principles of insurance

1. Air carriers and aircraft operators referred to in Article 2 shall be insured in accordance with this Regulation as regards their aviation-specific liability in respect of passengers, baggage, cargo and third parties. The insured risks shall include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion.

2. Air carriers and aircraft operators shall ensure that insurance cover exists for each and every flight, regardless of whether the aircraft operated is at their disposal through ownership or any form of lease agreement, or through joint or franchise operations, code-sharing or any other agreement of the same nature.

3. This Regulation is without prejudice to the rules on liability as arising from:

- international Conventions to which the Member States and/or the Community are parties,

- Community law, and

- national law of the Member States.

Article 5

Compliance

1. Air carriers and, when so required, aircraft operators, as referred to in Article 2, shall demonstrate compliance with the insurance requirements set out in this Regulation by providing the competent authorities of the Member State concerned with a deposit of an insurance certificate or other evidence of valid insurance.

2. For the purpose of this Article 'Member State concerned' shall mean the Member State which has granted the operating licence to the Community air carrier or the Member State where the aircraft of the aircraft operator is registered. For non-Community air carriers and aircraft operators using aircraft registered outside the Community, 'Member State concerned' shall mean the Member State to or from which the flights are operated.

3. By way of exception from paragraph 1, Member States overflowed may require that air carriers and aircraft operators referred to in Article 2 produce evidence of valid insurance in accordance with this Regulation.

4. With regard to Community air carriers and aircraft operators using aircraft registered in the Community, the deposit of evidence of insurance in the Member State referred to in paragraph 2 is sufficient for all Member States, without prejudice to the application of Article 8(6).

5. In exceptional cases of insurance-market failure, the Commission may determine, in accordance with the procedure referred to in Article 9(2), the appropriate measures for the application of paragraph 1.

Article 6

Insurance in respect of liability for passengers, baggage and cargo

1. For liability in respect of passengers, the minimum insurance cover shall be 250 000 SDRs per passenger. However, in respect of non-commercial operations by aircraft with a MTOM of 2 700 kg or less, Member States may set a lower level of minimum insurance cover, provided that such cover is at least 100 000 SDRs per passenger.
2. For liability in respect of baggage, the minimum insurance cover shall be 1 000 SDRs per passenger in commercial operations.
3. For liability in respect of cargo, the minimum insurance cover shall be 17 SDRs per kilogram in commercial operations.
4. Paragraphs 1, 2 and 3 shall not apply with respect to flights over the territory of the Member States carried out by non-Community air carriers and by aircraft operators using aircraft registered outside the Community which do not involve a landing on, or take-off from, such territory.
5. The values referred to in this Article may be amended, as appropriate, where amendments in the relevant international treaties indicate the necessity thereof, in accordance with the procedure referred to in Article 9(2).

Article 7

Insurance in respect of liability for third parties

1. In respect of liability for third parties, the minimum insurance cover per accident, for each and every aircraft, shall be:

Category	MTOM (kg)	Minimum insurance (million SDRs)
1	< 500	0,75
2	< 1 000	1,5
3	< 2 700	3
4	< 6 000	7
5	< 12 000	18
6	< 25 000	80
7	< 50 000	150
8	< 200 000	300
9	< 500 000	500
10	≥ 500 000	700

If at any time insurance cover for damage to third parties due to risks of war or terrorism is not available to any air carrier or aircraft operator on a per-accident basis, such air carrier or aircraft operator may satisfy its obligation to insure such risks by insuring on an aggregate basis. The Commission shall closely monitor the application of this provision in order to ensure that such aggregate is at least equivalent to the relevant amount set out in the table.

2. The values referred to in this Article may be amended, as appropriate, where amendments in the relevant international treaties indicate the necessity thereof, in accordance with the procedure referred to in Article 9(2).

Article 8

Enforcement and sanctions

1. Member States shall ensure that air carriers and aircraft operators referred to in Article 2 comply with this Regulation.
2. For the purposes of paragraph 1 and without prejudice to paragraph 7, with respect to overflights by non-Community air carriers or aircraft registered outside the Community which do not involve a landing on or take-off from any Member State, as well as with respect to stops in Member States by such aircraft for non-traffic purposes, the Member State concerned may request evidence of compliance with the insurance requirements laid down in this Regulation.
3. Where necessary, Member States may request additional evidence from the air carrier, the aircraft operator or the insurer concerned.
4. Sanctions for infringement of this Regulation shall be effective, proportional and dissuasive.
5. With regard to Community air carriers, these sanctions may include the withdrawal of the operating licence, subject to and in accordance with the relevant provisions of Community law.
6. With regard to non-Community air carriers and to aircraft operators using aircraft registered outside the Community, the sanctions may include refusal of the right to land on the territory of a Member State.

7. Where Member States are not satisfied that the conditions of this Regulation are met, they shall not allow an aircraft to take off, before the air carrier or aircraft operator concerned has produced evidence of adequate insurance cover in accordance with this Regulation.

Article 9

Committee procedure

1. The Commission shall be assisted by the Committee set up by Article 11 of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ⁽¹⁾.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

4. The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Regulation.

Article 10

Report and cooperation

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Regulation by 30 April 2008.

2. Upon request, Member States shall submit information on the application of this Regulation to the Commission.

Article 11

Entry into force

This Regulation shall enter into force twelve months following the date of its publication in the *Official Journal of the European Union*.

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

Done at Strasbourg, 21 April 2004.

For the European Parliament
The President
P. COX

For the Council
The President
D. ROCHE

⁽¹⁾ OJ L 240, 24.8.1992, p. 8. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

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

Acting in accordance with the procedure laid down in Article 189 (c) of the Treaty ⁽³⁾,

ferent terms and conditions of carriage in the internal aviation market;

(4) Whereas in addition the Warsaw Convention applies only to international transport; whereas, in the internal aviation market, the distinction between national and international transport has been eliminated; whereas it is therefore appropriate to have the same level and nature of liability in both national and international transport;

(5) Whereas a full review and revision of the Warsaw Convention is long overdue and would represent, in the long term, a more uniform and applicable response, at an international level, to the issue of air carrier liability in the event of accidents; whereas efforts to increase the limits of liability imposed in the Warsaw Convention should continue through negotiation at multilateral level;

(6) Whereas, in compliance with the principle of subsidiarity, action at Community level is desirable in order to achieve harmonization in the field of air carrier liability and could serve as a guideline for improved passenger protection on a global scale;

(7) Whereas it is appropriate to remove all monetary limits of liability within the meaning of Article 22 (1) of the Warsaw Convention or any other legal or contractual limits, in accordance with present trends at international level;

(8) Whereas, in order to avoid situations where victims of accidents are not compensated, Community air carriers should not, with respect of any claim arising out of the death, wounding or other bodily injury of a passenger under Article 17 of the Warsaw Convention, avail themselves of any defence under Article 20 (1) of the Warsaw Convention up to a certain limit;

(9) Whereas Community air carriers may be exonerated from their liability in cases of contributory negligence of the passenger concerned;

(1) Whereas, in the framework of the common transport policy, it is necessary to improve the level of protection of passengers involved in air accidents;

(2) Whereas the rules on liability in the event of accidents are governed by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, or that Convention as amended at The Hague on 28 September 1955 and the Convention done at Guadalajara on 18 September 1961, whichever may be applicable each being hereinafter referred to, as applicable, as the 'Warsaw Convention'; whereas the Warsaw Convention is applied worldwide for the benefit of both passengers and air carriers;

(3) Whereas the limit set on liability by the Warsaw Convention is too low by today's economic and social standards and often leads to lengthy legal actions which damage the image of air transport; whereas as a result Member States have variously increased the liability limit, thereby leading to dif-

⁽¹⁾ OJ C 104, 10. 4. 1996, p. 18 and OJ No C 29, 30. 1. 1997, p. 10.

⁽²⁾ OJ C 212, 22. 7. 1996, p. 38.

⁽³⁾ Opinion of the European Parliament of 17 September 1996 (OJ No C 320, 28. 10. 1996, p. 30), Council Common Position of 24 February 1997 (OJ No C 123, 21. 4. 1997, p. 89) and Decision of the European Parliament of 29 May 1997 (OJ C 182, 16. 6. 1997).

- (10) Whereas it is necessary to clarify the obligations of this Regulation in the light of Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁽¹⁾; whereas, in this regard, Community air carriers should be insured up to a certain limit laid down in this Regulation;
- (11) Whereas Community air carriers should always be entitled to claim against third parties;
- (12) Whereas prompt advance payments can considerably assist the injured passengers or natural persons entitled to compensation in meeting the immediate costs following an air accident;
- (13) Whereas the rules on the nature and limitation of liability in the event of death, wounding or any other bodily injury suffered by a passenger form part of the terms and conditions of carriage in the air transport contract between carrier and passenger; whereas, in order to reduce the risk of distorting competition, third-country carriers should adequately inform passengers of their conditions of carriage;
- (14) Whereas it is appropriate and necessary that the monetary limits expressed in this Regulation be reviewed in order to take into account economic developments and developments in international fora;
- (15) Whereas the International Civil Aviation Organization (ICAO) is at present engaged in a review of the Warsaw Convention; whereas, pending the outcome of such review, actions on an interim basis by the Community will enhance the protection of passengers; whereas the Council should review this Regulation as soon as possible after the review by ICAO,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the obligations of Community air carriers in relation to liability in the event of accidents to passengers for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board an aircraft or in the course of any of the operations of embarking or disembarking.

This Regulation also clarifies some insurance requirements for Community air carriers.

In addition, this Regulation sets down some requirements on information to be provided by air carriers established

outside the Community which operate to, from or within the Community.

Article 2

1. For the purpose of this Regulation:

- (a) 'air carrier' shall mean an air transport undertaking with a valid operating licence;
- (b) 'Community air carrier' shall mean an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EEC) No 2407/92;
- (c) 'person entitled to compensation' shall mean a passenger or any person entitled to claim in respect of that passenger, in accordance with applicable law;
- (d) 'ecu' shall mean the unit of account in drawing up the general budget of the European Communities in accordance with Articles 207 and 209 of the Treaty;
- (e) 'SDR' shall mean a Special Drawing Right as defined by the International Monetary Fund;
- (f) 'Warsaw Convention' shall mean the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague on 28 September 1955 and the Convention supplementary to the Warsaw Convention done at Guadalajara on 18 September 1961 — whichever is applicable to the passenger contract of carriage, together with all international instruments which supplement, and are associated with, it and are in force.

2. Concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used in the Warsaw Convention.

Article 3

- 1. (a) The liability of a Community air carrier for damages sustained in the event of death, wounding or any other bodily injury by a passenger in the event of an accident shall not be subject to any financial limit, be it defined by law, convention or contract.
- (b) The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407/92 shall be understood as requiring that a Community air carrier shall be insured up to the limit of the liability required under paragraph 2 and thereafter up to a reasonable level.

2. For any damages up to the sum of the equivalent in ecus of 100 000 SDR, the Community air carrier shall not exclude or limit his liability by proving that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

⁽¹⁾ OJ L 240, 24. 8. 1992, p. 1.

3. Notwithstanding the provisions of paragraph 2, if the Community air carrier proves that the damage was caused by, or contributed to by, the negligence of the injured or deceased passenger, the carrier may be exonerated wholly or partly from its liability in accordance with applicable law.

Article 4

In the event of death, wounding or any other bodily injury suffered by a passenger in the event of an accident, nothing in this Regulation shall

- (a) imply that a Community air carrier is the sole party liable to pay damages; or
- (b) restrict any rights of a Community air carrier to seek contribution or indemnity from any other party in accordance with applicable law.

Article 5

1. The Community air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than the equivalent in ecus of 15 000 SDR per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of Community air carrier liability, but is not returnable, except in the cases prescribed in Article 3 (3) or in circumstances where it is subsequently proved that the person who received the advance payment caused, or contributed to, the damage by negligence or was not the person entitled to compensation.

Article 6

1. The provisions contained in Articles 3 and 5 shall be included in the Community air carrier's conditions of carriage.

2. Adequate information on the provisions contained in Articles 3 and 5 shall, on request, be available to passengers at the Community air carrier's agencies, travel agencies and check-in counters and at points of sale. The ticket document or an equivalent shall contain a summary of the requirements in plain and intelligible language.

3. Air carriers established outside the Community operating to, from or within the Community and not applying the provisions referred to in Articles 3 and 5 shall expressly and clearly inform the passengers thereof, at the time of purchase of the ticket at the carrier's agencies, travel agencies or check-in counters located in the territory of a Member State. Air carriers shall provide the passengers with a form setting out their conditions. The fact that only a liability limit is indicated on the ticket document or an equivalent shall not constitute sufficient information.

Article 7

No later than two years after the entry into force of this Regulation, the Commission shall draw up a report on the application of the Regulation which, *inter alia*, takes into account economic developments and developments in international fora. Such report may be accompanied by proposals for a revision of this Regulation.

Article 8

This Regulation shall enter into force one year after the date of 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 Luxembourg, 9 October 1997.

For the Council

The President

M. DELVAUX-STEHRES

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 2299/89

of 24 July 1989

on a code of conduct for computerized reservation systems

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 the bulk of airline reservations are made through computerized reservation systems;

Whereas such systems can, if properly used, provide an important and useful service to air carriers, travel agents and the travelling public by affording easy access to up-to-date and accurate information on flights, fares and seat availability, making reservations and, in some cases, issuing tickets and boarding passes;

Whereas abuses in the form of denial of access to the systems or discrimination in the provision, loading or display of data or unreasonable conditions imposed on participants or subscribers can seriously disadvantage air carriers, travel agents and ultimately consumers;

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

Whereas Commission Regulation (EEC) No 2672/88 ⁽⁴⁾ exempts for the provisions of Article 85 (1) of the Treaty agreements for the common purchase, development and operation of computerized reservation systems;

Whereas a mandatory code of conduct applicable to all computerized reservation systems and/or distribution

facilities offered for use and/or used in the Community could ensure that such systems are used in a non-discriminatory and transparent way, subject to certain safeguards, so avoiding their misuse while reinforcing undistorted competition between air carriers and between computerized reservation systems and thereby protecting the interests of consumers;

Whereas it would not be appropriate to impose obligations on a computerized reservation system vendor or on a parent or participating carrier in respect of an air carrier of a third country which, alone or jointly with others, owns and/or controls another such system which does not conform with this code or offer equivalent treatment;

Whereas a complaints investigation and enforcement procedure for non-compliance with such a code is desirable,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to computerized reservation systems (CRSs) when offered for use and/or used in the territory of the Community for the distribution and sale of air transport products irrespective of:

- the status or nationality of the system vendor,
- the source of the information used or the location of the relevant central data processing unit,
- the geographical location of the air transport product concerned.

Article 2

For the purpose of this Regulation:

- (a) 'air transport product' shall mean a scheduled passenger air service, including any related ancillary services and additional benefits offered for sale and/or sold as an integral part of the air service;

⁽¹⁾ OJ No C 294, 18. 11. 1988, p. 12.

⁽²⁾ OJ No C 158, 26. 6. 1989.

⁽³⁾ OJ No C 56, 6. 3. 1989, p. 32.

⁽⁴⁾ OJ No L 239, 30. 8. 1988, p. 13.

(b) 'computerized reservation system (CRS) shall mean a computerized system containing information about, *inter alia*, air carriers'

- schedules,
- availability,
- fares, and
- related services

with or without facilities through which

- reservations can be made or
- tickets may be issued

to the extent that some or all of these services are made available to subscribers;

(c) 'distribution facilities' shall mean facilities provided by a system vendor to a subscriber or consumer for the provision of information about air carriers' schedules, availability, fares and related services and for making reservations and/or issuing tickets, and for any other related services;

(d) 'system vendor' shall mean any entity and its affiliates which are responsible for the operation or marketing of a CRS;

(e) 'parent carrier' shall mean an air carrier which is a system vendor or which directly or indirectly, alone or jointly with others, owns or controls a system vendor;

(f) 'participating carrier' shall mean an air carrier which has an agreement with a system vendor for the distribution of its air transport products through a CRS. To the extent that a parent carrier uses the distribution facilities of its own CRS, it shall be considered a participating carrier;

(g) 'subscriber' shall mean a person or an undertaking, other than a participating carrier, using under contract or other arrangement with a system vendor a CRS for the sale of air transport products directly to individual members of the public;

(h) 'consumer' shall mean any person seeking information about and/or intending to purchase an air transport product;

(i) 'principal display' shall mean a comprehensive neutral display of data concerning services between city pairs, within a specified time period, containing *inter alia* all direct flights by participating carriers;

(j) 'elapsed journey time' shall mean the time difference between scheduled departure and arrival time;

(k) 'service enhancement' shall mean any product or service offered by a system vendor on its own behalf to subscribers or consumers in conjunction with a CRS other than distribution facilities;

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

- it is performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the air carrier or from its authorized agents),

- 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 recognizably systematic series.

Article 3

1. A system vendor offering distribution facilities in respect of scheduled passenger air services shall allow any air carrier the opportunity to participate, on an equal and non-discriminatory basis, in these facilities within the available capacity of the system concerned, subject to any technical constraints outside the control of the system vendor.

2. (a) A system vendor shall not

- attach unreasonable conditions to any contract with a participating carrier,
- require the acceptance of supplementary conditions which, by their nature or according to commercial usage, have no connection with participation in its CRS and shall apply the same conditions for the same level of service.

(b) A system vendor shall not make it a condition of participation in its CRS that a participating carrier may not at the same time be a participant in another system.

(c) A participating carrier shall have the right to terminate his contract with a system vendor without penalty on giving notice which need not exceed six months, to expire no earlier than the end of the first year.

3. Loading and processing facilities provided by the system vendor shall be offered to all participating carriers without discrimination.

4. If the system vendor adds any improvement to the distribution facilities provided or the equipment used in the provision of the facilities, it shall offer these improvements to all participating carriers on the same terms and conditions, subject to current technical limitations.

Article 4

1. Participating carriers and others providing material for inclusion in a CRS shall ensure that the data submitted are comprehensive, accurate, non-misleading and transparent.

2. A system vendor shall not manipulate the material referred to in paragraph 1 in a manner that would lead to inaccurate, misleading or discriminatory information being provided.

3. A system vendor shall load and process data provided by participating carriers with equal care and timeliness, subject to the constraints of the loading method selected by individual participating carriers and to the standard formats used by the said vendor.

Article 5

1. A system vendor shall provide a principal display and shall include therein data provided by participating carriers on schedules, fares and seats available for individual purchase in a clear and comprehensive manner and without discrimination or bias, in particular as regards the order in which information is presented.

2. A system vendor shall not intentionally or negligently display inaccurate or misleading information and, subject to Article 9 (5), in particular:

- the criteria to be used for ranking information shall not be based on any factor directly or indirectly relating to carrier identity and shall be applied on a non-discriminatory basis to all participating carriers,
- no discrimination on the basis of different airports serving the same city shall be exercised in constructing and selecting city-pairs.

3. Ranking of flight options in the principal display, for the day or days requested, shall be as set out in the Annex unless requested in a different way by a consumer for an individual transaction.

Article 6

A system vendor shall provide information, statistical or otherwise, generated by its CRS, other than that offered as an integral part of the distribution facilities, only as follows:

- (a) information concerning individual bookings shall be made available on an equal basis to the air carrier or air carriers participating in the service covered by the booking;

(b) information in aggregate or anonymous form when made available on request to any air carrier shall be offered to all participating air carriers on a non-discriminatory basis;

(c) other information generated by the CRS shall be made available with the consent of the air carrier concerned and subject to any agreement between a system vendor and participating carriers;

(d) personal information concerning a consumer and generated by a travel agent shall be made available to others not involved in the transaction only with the consent of the consumer.

Article 7

1. The obligations of a system vendor under Articles 3 to 6 shall not apply in respect of a parent carrier of a third country to the extent that its CRS does not conform with this Regulation or does not offer Community air carriers equivalent treatment to that provided under this Regulation.

2. The obligations of parent and participating carriers under Article 8 shall not apply in respect of a CRS controlled by air carriers of a third country to the extent that a parent or participating carrier is not accorded equivalent treatment in that country to that provided under this Regulation and under Commission Regulation (EEC) No 2672/88.

3. A system vendor or an air carrier proposing to avail itself of the provisions of paragraphs 1 or 2 must notify the Commission of its intentions and the reasons therefor at least 14 days in advance of such action. In exceptional circumstances, the Commission may, at the request of the vendor or the air carrier concerned, grant a waiver from the 14-day rule.

4. Upon receipt of a notification, the Commission shall without delay determine whether discrimination within the meaning of paragraphs 1 and 2 exists. If this is found to be the case, the Commission shall so inform all system vendors or the air carriers concerned in the Community as well as Member States. If discrimination within the meaning of paragraph 1 or 2 does not exist, the Commission shall so inform the system vendor or air carriers concerned.

Article 8

1. A parent or participating carrier shall not link the use of any specific CRS by a subscriber with the receipt of any commission or other incentive for the sale of or issue of tickets for any of its air transport products.

2. A parent or participating carrier shall not require use of any specific CRS by a subscriber for any sale or issue of tickets for any air transport products provided either directly or indirectly by itself.

3. Paragraphs 1 and 2 shall be without prejudice to any condition which an air carrier may require of a travel agent when authorizing it to sell and issue tickets for its air transport products.

Article 9

1. A system vendor shall make any of the distribution facilities of a CRS available to any subscriber on a non-discriminatory basis.

2. A system vendor shall not require a subscriber to sign an exclusive contract, nor directly or indirectly prevent a subscriber from subscribing to, or using, any other system or systems.

3. A service enhancement offered to any other subscriber shall be offered by the system vendor to all subscribers on a non-discriminatory basis.

4. A system vendor shall not attach unreasonable conditions to any contract with a subscriber and, in particular, a subscriber may terminate his contract with a system vendor, without penalty, on giving notice which need not exceed three months to expire no earlier than the end of the first year.

5. A system vendor shall ensure, either through technical means or through the contract with the subscriber, that the principal display is provided for each individual transaction and that the subscriber does not manipulate material supplied by CRSs in a manner that would lead to inaccurate, misleading or discriminatory presentation of information to consumers. However, for any one transaction a subscriber may re-order data or use alternative displays to meet a preference expressed by a consumer.

6. A system vendor shall not impose any obligation on a subscriber to accept an offer of technical equipment, but may require the use of equipment compatible with its own system.

Article 10

1. Any fee charged by a system vendor shall be non-discriminatory and reasonably related to the cost of the service provided and used, and shall, in particular, be the same for the same level of service.

2. A system vendor shall, on request, provide to interested parties details of current procedures, fees, systems facilities, editing and display criteria used. However, this provision does not oblige a system vendor

to disclose proprietary information such as software programmes.

3. Any changes to fee levels, conditions or facilities offered and the basis therefor shall be communicated to all participating carriers and subscribers on a non-discriminatory basis.

Article 11

1. Acting on receipt of a complaint or on its own initiative, the Commission shall initiate procedures to terminate infringement of the provisions of this Regulation.

2. Complaints may be submitted by :—

(a) Member States ;

(b) natural or legal persons who claim a legitimate interest.

3. The Commission shall immediately forward to the Member States copies of the complaints and applications and of all relevant documents sent to it or which it sends out in the course of such procedures.

Article 12

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the Member States and from undertakings and associations of undertakings.

2. The Commission may fix a time limit of not less than one month for the communication of the information requested.

3. When sending a request for information to an undertaking or association of undertakings, the Commission shall forward a copy of the request at the same time to the Member State in whose territory the head office of the undertaking or association of undertakings is situated.

4. In its request, the Commission shall state the legal basis and purpose of the request and also the penalties for supplying incorrect information provided for in Article 16 (1).

5. The owners of the undertakings or their representatives and, in the case of legal persons or of companies, firms or associations not having legal personality, the person authorized to represent them by law or by their rules shall be bound to supply the information requested.

Article 13

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end, officials authorized by the Commission shall be empowered :

- (a) to examine the books and other business records ;
- (b) to take copies of, or extracts from, the books and business records ;
- (c) to ask for oral explanations on the spot ;
- (d) to enter any premises, land and vehicles used by undertakings or associations of undertakings.

2. The authorized officials of the Commission shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 16 (1) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the Member State, in whose territory the same is to be made, of the investigation and the identity of the authorized officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 16 (1) and the right to have the decision reviewed in the Court of Justice.

4. The Commission shall take the decisions mentioned in paragraph 3 after consultation with the Member State in the territory of which the investigation is to be made.

5. Officials of the Member State in the territory of which investigation is to be made may assist the Commission officials in carrying out their duties, at the request of the Member State or of the Commission.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorized by the Commission to enable them to make their investigation.

Article 14

1. Information acquired as a result of the application of Articles 12 and 13 shall be used only for the purposes of the relevant request or investigation.

2. Without prejudice to Articles 11 and 20, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information of a kind covered by the obligation of professional secrecy which has been acquired by them as a result of the application of this Regulation.

3. Paragraphs 1 and 2 shall not prevent publication of general information or of surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 15

1. When an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 16 (1) as well as the right to have the decision reviewed by the Court of Justice.

2. At the same time the Commission shall send a copy of its decision to the competent authority of the Member State in the territory of which the head office of the undertaking or association of undertakings is situated.

Article 16

1. The Commission may, by decision, impose fines on undertakings or associations of undertakings from ECU 1 000 to 50 000 where, intentionally or negligently :

- (a) they supply incorrect information in response to a request made pursuant to Article 12 or do not supply information within the time limit fixed ;
- (b) they produce the required books or other business records in incomplete form during investigations or refuse to submit to an investigation pursuant to Article 13 (1).

2. The Commission may, by decision, impose fines on system vendors, parent carriers, participating carriers and/or subscribers for infringements of this Regulation up to a maximum of 10 % of the annual turnover for the relevant activity of the undertaking concerned.

In fixing the amount of the fine, regard shall be had both to the seriousness and to the duration of the infringement.

3. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a penal nature.

Article 17

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has imposed a fine ; it may cancel, reduce or increase the fine.

Article 18

For the purposes of applying Article 16, the ecu shall be that adopted in drawing up the general budget of the European Communities in accordance with Articles 207 and 209 of the Treaty.

Article 19

1. Before taking decisions as provided for in Article 16, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission takes, or has taken, objection.

2. Should the Commission or the competent authorities of the Member States consider it necessary, they may also hear other natural or legal persons. Applications by such persons to be heard shall be granted when they show a sufficient interest.

Article 20

1. The Commission shall publish the decisions which it adopts pursuant to Article 16.

2. Such publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

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

Done at Brussels, 24 July 1989.

Article 21

1. This Regulation shall apply from 1 August 1989 to all CRSs for scheduled passenger air services.

2. Notwithstanding paragraph 1, Articles 5 (3) and 9 (5) shall not apply until 1 January 1990 to CRSs which have established their central administration and their principal place of business in the Community before 1 August 1989. The Commission may grant a further 12 months' waiver to CRSs which for technical reasons are unable to comply with these provisions by 1 January 1990.

Article 22

This Regulation shall be without prejudice to national legislation on security, public order and data protection.

Article 23

The Council shall decide on the revision of this Regulation by 31 December 1992, on the basis of a Commission proposal to be submitted by 31 March 1992 accompanied by a report on the application of this Regulation.

For the Council

The President

H. NALLET

ANNEX

RANKING CRITERIA

General criteria

1. A principal display shall, wherever practicable, include connecting flights of participating carriers constructed by using a minimum number of nine connecting points. A participating carrier may request the inclusion of an indirect service unless the routing is in excess of 130 % of the great circle distance between the two airports. Connecting points with routings in excess of 130 % need not be used.
2. A system vendor shall not use the screen space in its principal displays in a manner which gives excessive exposure to one particular travel option or which displays unrealistic travel options.
3. Where a system vendor chooses to display information for any city-pair in relation to the schedules or fares of non-participating carriers, such information shall be displayed in an accurate, non-misleading and non-discriminatory manner as between those carriers displayed.
4. If information as to the number of direct air services and the identity of the air carriers concerned is not comprehensive, this shall be clearly stated on the relevant display.

Criteria for scheduled air services

1. Ranking of flight options in principal displays for scheduled air services, for the day or days requested, shall be in the following order unless requested in a different way by a consumer for an individual transaction :
 - (i) all non-stop direct flights between the city-pairs concerned ;
 - (ii) other direct flights, not involving a change of aircraft, between the city-pairs concerned ;
 - (iii) connecting flights.

A consumer shall at least be afforded the possibility of requesting the principal display ranked by departure or arrival time and/or elapsed journey time. Unless a consumer preference is expressed, a principal display shall be ranked by departure time for group (i) and elapsed journey time for groups (ii) and (iii).

2. Scheduled flights involving stops *en route*, change of aircraft, change of airport and/or code-sharing shall be clearly identified. Code-sharing flights shall be treated as connecting flights.
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REGULATION (EC) No 2111/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 December 2005

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Action by the Community in the field of air transport should aim, as a priority, at ensuring a high level of protection for passengers from safety risks. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) A Community list of air carriers that do not meet relevant safety requirements should be brought to the notice of passengers so as to ensure the utmost transparency. This Community list should be based on common criteria drawn up at Community level.
- (3) Air carriers included in the Community list should be subject to an operating ban. The operating bans included in the Community list should apply throughout the territory of the Member States to which the Treaty applies.
- (4) Air carriers that do not enjoy traffic rights in one or more of the Member States may nonetheless fly to and from the Community when their aircraft, with or without crew, are leased by companies that do enjoy such rights. Provision should be made for an operating ban included in the Community list to apply equally to such air carriers, since these air carriers could otherwise operate in the Community while not complying with the relevant safety standards.
- (5) An air carrier which is subject to an operating ban could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

- (6) The procedure for updating the Community list should allow for decisions to be taken swiftly, in order to provide adequate and up-to-date safety information to air passengers and to guarantee that air carriers that have remedied safety deficiencies are taken off the list as soon as possible. At the same time, the procedures should respect the air carrier's rights of defence and should be without prejudice to international agreements and conventions to which the Member States or the Community are parties, in particular the 1944 Chicago Convention on International Civil Aviation. The implementing measures on matters of procedure, to be adopted by the Commission, should notably cater for these requirements.

- (7) When an operating ban has been imposed on an air carrier, appropriate action should be taken with a view to assisting that air carrier in remedying the deficiencies that gave rise to that ban.

- (8) In exceptional cases, Member States should be allowed to take unilateral measures. In cases of urgency and when confronted with an unforeseen safety problem, Member States should have the possibility to impose immediately an operating ban in respect of their own territory. Moreover, where the Commission has decided not to include an air carrier in the Community list, Member States should also be able to impose or maintain an operating ban in view of a safety problem which does not exist in the other Member States. Member States should make restrictive application of these possibilities, taking account of the Community interest and with a view to presenting a common approach in respect of aviation safety. This should be without prejudice to Article 8 of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation ⁽³⁾ and to Article 10 of Regulation (EC) No 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 ⁽⁴⁾.

⁽¹⁾ Opinion of 28 September 2005 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 16 November 2005 (not yet published in the Official Journal) and Council Decision of 5 December 2005.

⁽³⁾ OJ L 373, 31.12.1991, p. 4. Regulation as last amended by Commission Regulation (EC) No 2871/2000 (OJ L 333, 29.12.2000, p. 47).

⁽⁴⁾ OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 1701/2003 (OJ L 243, 27.9.2003, p. 5).

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- (9) Information on the safety of air carriers should be published in an effective manner, such as through use of the Internet.
- (10) In order for the competitive framework in air transport to yield the greatest possible benefits for companies and passengers, it is important that consumers receive the necessary information to be able to make informed choices.
- (11) The identity of the air carrier or carriers actually operating the flight is an essential piece of information. However, consumers concluding a contract of carriage, which could comprise both an outward and a return flight, are not always informed about the identity of the air carrier or carriers actually operating the flight or flights concerned.
- (12) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾ requires certain information to be made available to consumers, but that information does not include the identity of the operating air carrier.
- (13) Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computer reservation systems (CRS) ⁽²⁾ entitles consumers booking a flight via a computer reservation system to be informed of the identity of the operating air carrier. Nevertheless, even in scheduled air transport, industry practices exist, such as wet leasing, or code sharing if booked without a CRS, where the air carrier which has sold the flight under its name does not actually operate it and where there is currently no legal right for the passenger to be informed of the identity of the air carrier actually performing the service.
- (14) These practices increase flexibility and allow a better provision of services to passengers. Moreover, a certain number of last-minute changes, in particular for technical reasons, is unavoidable and contributes to the safety of air transport. This flexibility should, however, be balanced by verification that the companies actually operating the flights meet safety requirements and by transparency for consumers in order to guarantee them the right of making an informed choice. A fair balance between the commercial viability of air carriers and passenger access to information should be sought.
- (15) Air carriers should pursue a policy of transparency vis-à-vis passengers regarding safety-related information. Publishing such information should contribute to passenger awareness of the reliability of air carriers in safety terms.
- (16) Air carriers are responsible for reporting safety deficiencies to the national air safety authorities as well as for addressing such deficiencies without delay. Air and ground crew are expected to take appropriate action when safety deficiencies are apparent to them. It would be contrary to the interests of aviation safety if staff were to be penalised for doing so, as follows from Article 8(4) of Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation ⁽³⁾.
- (17) In addition to the situations covered by Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights ⁽⁴⁾, passengers should be offered the right to reimbursement or to re-routing in certain specific other situations falling within the scope of this Regulation, if there is a sufficiently close connection with the Community.
- (18) In addition to the rules set out in this Regulation, the implications of changes to the identity of the operating carrier for the performance of the contract of carriage should be governed by the laws of the Member States applicable to contracts and by relevant Community law, in particular Council Directives 90/314/EEC and 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ⁽⁵⁾.
- (19) This Regulation is part of a legislative process pursuing an efficient and coherent approach to reinforcing air safety in the Community, in which the European Aviation Safety Agency plays an important role. With an extension of the competencies of this Agency, such as in respect of third-country aircraft, its role under this Regulation could be further expanded. Special attention should be given to further improving the quality and quantity of safety inspections of aircraft and to harmonising these inspections.
- (20) Where there is a risk to safety that has not been adequately resolved by the Member State(s) concerned, the Commission should have the possibility of adopting immediate measures on a provisional basis. In such cases, the committee assisting the Commission in its work under this Regulation should act in accordance with the advisory procedure provided for in Article 3 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁶⁾.

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

⁽²⁾ OJ L 220, 29.7.1989, p. 1. Regulation as last amended by Regulation (EC) No 323/1999 (OJ L 40, 13.2.1999, p. 1).

⁽³⁾ OJ L 167, 4.7.2003, p. 23.

⁽⁴⁾ OJ L 46, 17.2.2004, p. 1.

⁽⁵⁾ OJ L 95, 21.4.1993, p. 29.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

- (21) In all other cases, the committee assisting the Commission in its work under this Regulation should act in accordance with the regulatory procedure provided for in Article 5 of Decision 1999/468/EC.

- (22) Since the relation between this Regulation and Article 9 of Directive 2004/36/CE of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports ⁽¹⁾ would otherwise be unclear, that Article should be repealed with a view to providing legal certainty.

- (23) Member States should lay down rules on penalties applicable to infringements of the provisions of Chapter III of this Regulation and ensure that these penalties are applied. The penalties, which may be of a civil or administrative nature, should be effective, proportionate and dissuasive.

- (24) The Commission should analyse the application of this Regulation and, after a sufficient period, report on the efficiency of its provisions.

- (25) Any competent civil aviation authority in the Community may decide that air carriers, including those not operating in the territory of the Member States to which the Treaty applies, might lodge a request with that authority to subject the air carrier so requesting to systematic checks in order to verify its likelihood of compliance with the relevant safety standards.

- (26) This Regulation should not preclude the Member States from introducing a quality labelling system for air carriers at national level, for which the criteria might include considerations other than minimum safety requirements, in accordance with Community law.

- (27) 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. Such arrangements have yet to enter into operation,

HAVE ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 143, 30.4.2004, p. 76.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes rules:
 - (a) on the establishment and publication of a Community list, based on common criteria, of air carriers which, for safety reasons, are subject to an operating ban in the Community;
 - and
 - (b) on informing air passengers of the identity of the air carrier operating the flights on which they travel.
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 included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'air carrier' means an air transport undertaking with a valid operating licence or equivalent;
- (b) 'contract of carriage' means a contract for or including air transport services, including one where the carriage is composed of two or more flights operated by the same or different air carriers;
- (c) 'air carriage contractor' means the carrier which concludes a contract of carriage with a passenger or, where the contract comprises a package, the tour operator. Any ticket seller shall also be deemed an air carriage contractor;

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- (d) 'ticket seller' means the seller of an air ticket who arranges a contract of carriage with a passenger, whether for a flight on its own or as part of a package, other than an air carrier or a tour operator;
- (e) 'operating air carrier' means an air carrier that performs or intends to perform a flight under a contract of carriage with a passenger, or on behalf of another person, legal or natural, having a contract of carriage with that passenger;
- (f) 'operating authorisation or technical permission' means any legislative or administrative act by a Member State, which provides either that an air carrier may operate air services to and from its airports or that an air carrier may operate in its airspace or that an air carrier may exercise traffic rights;
- (g) 'operating ban' means the refusal, suspension, revocation or restriction of an air carrier's operating authorisation or technical permission for safety reasons, or any equivalent safety measures in respect of an air carrier which has no traffic rights in the Community but whose aircraft might otherwise be operated in the Community under a lease agreement;
- (h) 'package' means those services defined in Article 2(1) of Directive 90/314/EEC;
- (i) 'reservation' means the fact that the passenger has a ticket or other proof, which indicates that the reservation has been accepted and registered by the air carriage contractor;
- (j) 'relevant safety standards' means the international safety standards contained in the Chicago Convention and its Annexes as well as, where applicable, those in relevant Community law.

CHAPTER II

COMMUNITY LIST

Article 3

Establishment of the Community List

1. With a view to reinforcing air safety, a list of air carriers that are subject to an operating ban in the Community (hereinafter referred to as the Community list) shall be established. Each Member State shall enforce, within its territory, the operating bans included in the Community list in respect of the air carriers that are the subject of those bans.

2. The common criteria for imposing an operating ban on an air carrier, which shall be based on the relevant safety standards, are set out in the Annex (and are hereinafter referred to as the common criteria). The Commission may modify the Annex, in particular in order to take account of scientific and technical developments, in accordance with the procedure referred to in Article 15(3).

3. For the purpose of establishing the Community list for the first time, each Member State shall, by 16 February 2006, communicate to the Commission the identity of the air carriers that are subject to an operating ban in its territory, together with the reasons which led to the adoption of such bans and any other relevant information. The Commission shall inform the other Member States of these operating bans.

4. Within one month of receiving the information communicated by the Member States, the Commission shall, on the basis of the common criteria, decide on the imposition of an operating ban on the air carriers concerned and shall establish the Community list of air carriers on which it has imposed an operating ban, in accordance with the procedure referred to in Article 15(3).

Article 4

Updating of the Community list

1. The Community list shall be updated:

- (a) to impose an operating ban on an air carrier and include this air carrier on the Community list, on the basis of the common criteria;
- (b) to remove an air carrier from the Community list, if the safety deficiency or deficiencies that gave rise to the inclusion of the air carrier on the Community list have been remedied and there is no other reason, on the basis of the common criteria, to maintain the air carrier on the Community list;
- (c) to modify the conditions of an operating ban imposed on an air carrier which is included on the Community list.

2. The Commission, acting on its own initiative or at the request of a Member State, shall decide to update the Community list as soon as this is required under paragraph 1, in accordance with the procedure referred to in Article 15(3) and on the basis of the common criteria. At least every three months, the Commission shall verify whether it is appropriate to update the Community list.

3. Each Member State and the European Aviation Safety Agency shall communicate to the Commission all information that may be relevant in the context of updating the Community list. The Commission shall forward all relevant information to the other Member States.

Article 5

Provisional measures for updating of the Community list

1. Where it is evident that the continued operation of an air carrier in the Community is likely to constitute a serious risk to safety, and that such a risk has not been resolved satisfactorily by means of urgent measures taken by the Member State(s) concerned in accordance with Article 6(1), the Commission may provisionally adopt the measures referred to in Article 4(1)(a) or (c), in accordance with the procedure referred to in Article 15(2).

2. As soon as possible, and at most within 10 working days, the Commission shall submit the matter to the Committee referred to in Article 15(1) and shall decide to confirm, amend, revoke or extend the measure which it has adopted under paragraph 1 of this Article, acting in accordance with the procedure referred to in Article 15(3).

Article 6

Exceptional measures

1. In cases of urgency, this Regulation shall not preclude a Member State from reacting to an unforeseen safety problem by imposing an immediate operating ban in respect of its own territory, taking into account the common criteria.

2. A decision by the Commission not to include an air carrier in the Community list in accordance with the procedure referred to in Article 3(4) or 4(2) shall not preclude a Member State from imposing or maintaining an operating ban on the air carrier concerned in view of a safety problem specifically affecting that Member State.

3. In either of the situations referred to in paragraphs 1 and 2, the Member State concerned shall immediately inform the Commission, which shall inform the other Member States. In the situation referred to in paragraph 1, the Member State concerned shall without delay submit a request to the Commission to update the Community list, in accordance with Article 4(2).

Article 7

Rights of defence

The Commission shall ensure that, when it adopts decisions as referred to in Articles 3(4), 4(2) and 5, the air carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure.

Article 8

Implementing measures

1. The Commission, acting in accordance with the procedure referred to in Article 15(3), shall, where appropriate, adopt implementing measures in order to lay down detailed rules in respect of the procedures referred to in this Chapter.

2. In deciding these measures the Commission shall take due account of the need for decisions to be taken swiftly on updating the Community list and shall, where appropriate, provide the possibility of an urgency procedure.

Article 9

Publication

1. The Community list and any modification thereto shall be published immediately in the *Official Journal of the European Union*.

2. The Commission and the Member States shall take the measures necessary to facilitate public access to the Community list, as most recently updated, in particular through the use of the Internet.

3. Air carriage contractors, national civil aviation authorities, the European Aviation Safety Agency and airports in the territory of the Member States shall bring the Community list to the attention of passengers, both via their websites and, where relevant, in their premises.

CHAPTER III

INFORMATION TO PASSENGERS

Article 10

Scope

1. The provisions of this Chapter shall apply in respect of the carriage of passengers by air, where the flight is part of a contract of carriage and that carriage started in the Community, and

(a) the flight departs from an airport on territory of a Member State to which the Treaty applies;

or

(b) the flight departs from an airport in a third country and arrives at an airport on territory of a Member State to which the Treaty applies;

or

(c) the flight departs from an airport in a third country and arrives at another such airport.

2. The provisions of this Chapter shall apply whether the flight is scheduled or non-scheduled and whether the flight is part of a package or not.

3. The provisions of this Chapter shall not affect the rights of passengers under Directive 90/314/EEC and Regulation (EEC) No 2299/89.

Article 11

Information on the identity of the operating air carrier

1. Upon reservation, the air carriage contractor shall inform the passenger of the identity of the operating air carrier or carriers, whatever the means used to make the reservation.

2. Where the identity of the operating air carrier or carriers is not yet known at the time of reservation, the air carriage contractor shall ensure that the passenger is informed of the name or names of the air carrier or carriers that is or are likely to act as operating air carrier or carriers on the flight or flights concerned. In such case, the air carriage contractor shall ensure that the passenger is informed of the identity of the operating air carrier or carriers as soon as such identity is established.

3. Wherever the operating air carrier or carriers is or are changed after reservation, the air carriage contractor shall, irrespective of the reason for the change, take immediately all appropriate steps to ensure that the passenger is informed of the change as soon as possible. In all cases, passengers shall be informed at check-in, or on boarding where no check-in is required for a connecting flight.

4. The air carrier or the tour operator, as the case may be, shall ensure that the relevant air carriage contractor is informed of the identity of the operating air carrier or carriers as soon as this is known, in particular in the event of a change of such identity.

5. If a ticket seller has not been informed of the identity of the operating air carrier, it shall not be responsible for not complying with the obligations provided for in this Article.

6. The obligation of the air carriage contractor to inform passengers of the identity of the operating air carrier or carriers shall be specified in the general terms of sale applicable to the contract of carriage.

Article 12

Right to reimbursement or re-routing

1. This Regulation shall not affect the right to reimbursement or re-routing as provided for in Regulation (EC) No 261/2004.

2. In cases where Regulation (EC) No 261/2004 does not apply, and

(a) the operating air carrier notified to the passenger has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which would have led to such cancellation if the flight concerned had been operated in the Community

or

(b) the operating air carrier notified to the passenger has been replaced by another operating air carrier which has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which would have led to such cancellation if the flight concerned had been operated in the Community,

the air carriage contractor which is party to the contract of carriage shall offer the passenger the right to reimbursement or re-routing provided for in Article 8 of Regulation (EC) No 261/2004, provided that, where the flight has not been cancelled, the passenger has chosen not to take that flight.

3. Paragraph 2 of this Article shall apply without prejudice to Article 13 of Regulation (EC) No 261/2004.

Article 13

Penalties

Member States shall ensure compliance with the rules set out in this Chapter and shall lay down penalties for infringement of these rules. The penalties shall be effective, proportionate and dissuasive.

CHAPTER IV

FINAL PROVISIONS

Article 14

Information and amendment

By 16 January 2009, the Commission shall report to the European Parliament and to the Council on the application of this Regulation. The report shall be accompanied, where necessary, by proposals for the amendment of this Regulation.

Article 15

Committee

1. The Commission shall be assisted by the Committee referred to in Article 12 of Regulation (EEC) No 3922/91 (the Committee).

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Commission may consult the Committee on any other matter concerning the application of this Regulation.

5. The Committee shall adopt its Rules of Procedure.

Article 16

Repeal

Article 9 of Directive 2004/36/EC is hereby repealed.

Article 17

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Articles 10, 11 and 12 shall apply from 16 July 2006 and Article 13 shall apply from 16 January 2007.

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

Done at Strasbourg, 14 December 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
C. CLARKE

ANNEX

Common criteria for consideration of an operating ban for safety reasons at Community level

Decisions on action at Community level shall be taken according to the merits of each individual case. Depending upon the merits of each case, a carrier or all the carriers certified in the same state might be eligible for action at Community level.

In considering whether an air carrier should be totally or partially banned, it shall be assessed whether the air carrier is meeting the relevant safety standards taking into account the following:

1. Verified evidence of serious safety deficiencies on the part of an air carrier:
 - Reports showing serious safety deficiencies, or persistent failure by the carrier to address deficiencies identified by ramp inspections performed under the SAFA programme previously communicated to the carrier.
 - Serious safety deficiencies identified within the framework of the provisions for the gathering of information in Article 3 of Directive 2004/36/EC on the safety of third-country aircraft.
 - Operating ban imposed on a carrier by a third country because of substantiated deficiencies related to international safety standards.
 - Substantiated accident-related information or serious incident-related information indicating latent systemic safety deficiencies.
 2. Lack of ability and/or willingness of an air carrier to address safety deficiencies as demonstrated by:
 - Lack of transparency or adequate and timely communication on the part of a carrier in response to an enquiry by the civil aviation authority of a Member State regarding the safety aspect of its operation.
 - Inappropriate or insufficient corrective action plan presented in response to an identified serious safety deficiency.
 3. Lack of ability and/or willingness of the authorities responsible for the oversight of an air carrier to address safety deficiencies as demonstrated by:
 - Lack of cooperation with the civil aviation authority of a Member State by the competent authorities of another state, when concerns about the safety of the operation of a carrier licensed or certified in that state have been raised.
 - Insufficient ability of the competent authorities with regulatory oversight of the carrier to implement and enforce the relevant safety standards. Particular account should be taken of the following:
 - (a) audits and related corrective action plans established under ICAO's Universal Safety Oversight Audit Programme or under any applicable Community law;
 - (b) whether the operating authorisation or technical permission of any carrier under the oversight of that state has previously been refused or revoked by another state;
 - (c) the air operator's certificate has not been issued by the competent authority of the state where the carrier has its principle place of business.
 - Insufficient ability of the competent authorities of the state in which the aircraft used by the air carrier is registered to oversee the aircraft used by the carrier in accordance with its obligations under the Chicago Convention.
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COUNCIL REGULATION (EEC) No 2409/92

of 23 July 1992

on fares and rates for air services

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

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 establish an air transport policy for 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 Council Decision 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States ⁽⁴⁾ and Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services ⁽⁵⁾ constitute the first steps towards achieving the internal market in respect of air fares;

Whereas air fares should normally be determined freely by market forces;

Whereas it is appropriate to complement price freedom with adequate safeguards for the interests of consumers and industry;

Whereas it is appropriate to deal with all matters of pricing in the same Regulation;

Whereas this Regulation replaces Regulation (EEC) No 2342/90 and partially replaces Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States ⁽⁶⁾,

Article 1

1. This Regulation concerns the criteria and procedures to be applied for the establishment of fares and rates on air services for carriage wholly within the Community.

2. Without prejudice to paragraph 3, this Regulation shall not apply:

- (a) to fares and rates charged by air carriers other than Community air carriers;
- (b) to fares and rates established by public service obligation, in accordance with Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ⁽⁷⁾.

3. Only Community air carriers shall be entitled to introduce new products or lower fares than the ones existing for identical products.

Article 2

For the purposes of this Regulation:

- (a) 'air fares' means the prices expressed in ecus or in local currency to be paid by passengers to air carriers or their agents for the carriage of them and for the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (b) 'seat rates' means the prices expressed in ecus or in local currency to be paid by charterers to air carriers for the carriage on air services of the charterer or its customers and their baggage and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (c) 'charter fares' means the prices expressed in ecus or in local currency to be paid by passengers to charterers for services which constitute or include their carriage and the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency or other auxiliary services;

⁽¹⁾ OJ No C 258, 4. 10. 1991, p. 2.

⁽²⁾ OJ No C 125, 18. 5. 1992, p. 150.

⁽³⁾ OJ No C 169, 6. 7. 1992, p. 15.

⁽⁴⁾ OJ No L 374, 31. 12. 1987, p. 12.

⁽⁵⁾ OJ No L 217, 11. 8. 1990, p. 1.

⁽⁶⁾ OJ No L 36, 8. 2. 1991, p. 1.

⁽⁷⁾ See page 8 of this Official Journal.

- (d) 'cargo rates' means the prices expressed in ecus or in local currency to be paid for the carriage of cargo and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (e) 'standard cargo rates' means the rates which the air carrier would normally quote including the availability of normal discounts;
- (f) 'air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
- (g) 'air carrier' means an air transport undertaking with a valid operating licence.
- (h) 'Community air carrier' means an air carrier with a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers ⁽¹⁾;
- (i) 'Member State(s) concerned' means the Member State(s) between or within which the fare or rate is applied;
- (j) 'Member State(s) involved' means the Member State(s) concerned and the Member State(s) where the air carrier(s) operating the air service is (are) licensed;
- (k) 'basic fare' means the lowest fully flexible fare, available on a one way and return basis, which is offered for sale at least to the same extent as that of any other fully flexible fare offered on the same air service.

Article 3

Charter fares and seat and cargo rates charged by Community air carriers shall be set by free agreement between the parties to the contract of carriage.

Article 4

Air carriers operating within the Community shall inform the general public, on request, of all air fares and standard cargo rates.

Article 5

1. Without prejudice to this Regulation, Community air carriers shall freely set air fares.
2. Member State(s) concerned may, without discrimination on grounds of nationality or identity of air carriers, require air fares to be filed with them in the form prescribed by them. Such filing shall not be required to be submitted more than 24 hours (including a working day)

before the air fares come into effect, except in the case of matching of an existent fare for which no more than prior notification is required.

3. Before 1 April 1997, a Member State may require that air fares on domestic routes where no more than one carrier licensed by it, or two carriers licensed by it under a joint operation, operate have to be filed more than one working day but no more than one month before the air fares come into effect.

4. An air fare may be available for sale and carriage as long as it is not withdrawn in accordance with Article 6 or Article 7.

Article 6

1. Subject to the procedures of this Article, a Member State concerned may decide, at any moment:

- (a) to withdraw a basic fare which, taking into account the whole fare structure for the route in question and other relevant factors including the competitive market situation, is excessively high to the disadvantage of users in relation to the long term fully-allocated relevant costs of the air carrier including a satisfactory return on capital;
- (b) to stop, in a non-discriminatory way, further fare decreases in a market, whether on a route or a group of routes, when market forces have led to sustained downward development of air fares deviating significantly from ordinary seasonal pricing movements and resulting in widespread losses among all air carriers concerned for the air services concerned, taking into account the long term fully-allocated relevant costs of the air carriers.

2. A decision taken pursuant to paragraph 1 shall be notified with reasons to the Commission and to all other Member State(s) involved, as well as to the air carrier(s) concerned.

3. If within fourteen days of the date of receiving notification no other Member State concerned or the Commission has notified disagreement stating its reasons on the basis of paragraph 1, the Member State which has taken the decision pursuant to paragraph 1 may instruct the air carrier(s) concerned to withdraw the basic fare or to abstain from further fare decreases, as appropriate.

4. In the case of disagreement, any Member State involved may require consultations to review the situation. The consultations shall take place within 14 days of being requested, unless otherwise agreed.

⁽¹⁾ See page 1 of this Official Journal.

Article 7

1. At the request of a Member State involved the Commission shall examine whether a decision to act or not to act pursuant to Article 6 complies with the criteria of Article 6 (1). The Member State shall at the same time inform the other Member State(s) concerned and the air carrier(s) concerned. The Commission shall forthwith publish in the *Official Journal of the European Communities* that the air fare(s) have been submitted for examination.

2. Notwithstanding paragraph 1, the Commission may, on the basis of a complaint made by a party with a legitimate interest, investigate whether air fares comply with the criteria of Article 6 (1). The Commission shall forthwith publish in the *Official Journal of the European Communities* that the air fare(s) have been submitted for examination.

3. An air fare in force at the time of its submission for examination in accordance with paragraph 1 shall remain in force during the examination. However, where the Commission, or the Council in accordance with paragraph 8, has decided within the previous six months that a similar or lower level of the basic fare on the city-pair concerned does not comply with the criteria of Article 6 (1) (a), the air fare shall not remain in force during the examination.

Furthermore, where paragraph 6 has been applied, the air carrier concerned may not, during the examination by the Commission, apply a higher basic fare than the one which was applicable immediately before the basic fare under examination.

4. Following consultations with the Member States concerned, the Commission shall take a decision as soon as possible and in any event not later than twenty working days after having received sufficient information from the air carrier(s) concerned. The Commission shall take into account all information received from interested parties.

5. When an air carrier does not supply the information requested within the time limit fixed by the Commission, or supplies it in incomplete form, the Commission shall be decision require the information to be supplied. The decision shall specify what information is required and fix an appropriate time limit within which it is to be supplied.

6. The Commission may, by decision, decide that an air fare in force shall be withdrawn pending its final

determination where an air carrier supplies incorrect information or produces it in incomplete form or does not supply it within the time limit fixed by decision under paragraph 5.

7. The Commission shall without delay communicate its reasoned decision under paragraphs 4 and 6 to the Member State(s) concerned and to the air carrier(s) concerned.

8. A Member State concerned may refer the Commission's decision under paragraph 4 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.

9. The Member States concerned shall ensure that the Commission's decision is enforced, unless the decision is under examination by the Council or the Council has taken a different decision in accordance with paragraph 8.

Article 8

At least once a year the Commission shall consult on air fares and related matters with representatives of air transport user organizations in the Community, for which purpose the Commission shall supply appropriate information to participants.

Article 9

The Commission shall publish a report on the application of this Regulation by 1 April 1994 and periodically thereafter.

Article 10

1. Member States and the Commission shall cooperate in implementing this Regulation, particularly as regards collection of information for the report referred to in Article 9.

2. Confidential information obtained in application of this Regulation shall be covered by professional secrecy.

Article 11

Regulation (EEC) No 2342/90 is hereby repealed.

Article 12

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels, 23 July 1992

For the Council

The President

J. COPE