

Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance)

CHAPTER II

OPERATING LICENCE

Article 3

Operating licence

1 No undertaking established in the Community shall be permitted to carry by air passengers, mail and/or cargo for remuneration and/or hire unless it has been granted the appropriate operating licence.

An undertaking meeting the requirements of this Chapter shall be entitled to receive an operating licence.

2 The competent licensing authority shall not grant operating licences or maintain them in force where any of the requirements of this Chapter are not complied with.

3 Without prejudice to any other applicable provisions of Community, national, or international law, the following categories of air services shall not be subject to the requirement to hold a valid operating licence:

- a air services performed by non-power-driven aircraft and/or ultralight power-driven aircraft; and
- b local flights.

Article 4

Conditions for granting an operating licence

An undertaking shall be granted an operating licence by the competent licensing authority of a Member State provided that:

- (a) its principal place of business is located in that Member State;
- (b) it holds a valid AOC issued by a national authority of the same Member State whose competent licensing authority is responsible for granting, refusing, revoking or suspending the operating licence of the Community air carrier;
- (c) it has one or more aircraft at its disposal through ownership or a dry lease agreement;
- (d) its main occupation is to operate air services in isolation or combined with any other commercial operation of aircraft or the repair and maintenance of aircraft;
- (e) its company structure allows the competent licensing authority to implement the provisions of this Chapter;
- (f) Member States and/or nationals of Member States own more than 50 % of the undertaking and effectively control it, whether directly or indirectly through one or

- more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party;
- (g) it meets the financial conditions specified in Article 5;
 - (h) it complies with the insurance requirements specified in Article 11 and in Regulation (EC) No 785/2004; and
 - (i) it complies with the provisions on good repute as specified in Article 7.

Article 5

Financial conditions for granting an operating licence

1 The competent licensing authority shall closely assess whether an undertaking applying for the first time for an operating licence can demonstrate that:

- a it can meet at any time its actual and potential obligations established under realistic assumptions, for a period of 24 months from the start of operations; and
- b it can meet its fixed and operational costs incurred by operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations.

2 For the purposes of the assessment referred to in paragraph 1, each applicant shall submit a business plan for, at least, the first three years of operation. The business plan shall also detail the applicant's financial links with any other commercial activities in which the applicant is engaged either directly or through related undertakings. The applicant shall also provide all relevant information, in particular the data referred to in point 1 of Annex I.

3 Paragraphs 1 and 2 shall not apply to an undertaking applying for an operating licence intended to cover operations with aircraft of less than 10 tonnes maximum take-off mass (MTOM) and/or less than 20 seats. Such undertakings shall demonstrate that their net capital is at least EUR 100 000 or provide, when required by the competent licensing authority, all relevant information for the purposes of the assessment referred to in paragraph 1, in particular the data referred to in point 1 of Annex I.

The competent licensing authority may nevertheless apply paragraphs 1 and 2 to an undertaking applying for an operating licence under the provisions of the previous subparagraph that intends to operate scheduled air services or whose turnover exceeds EUR 3 million per year.

Article 6

Air operator certificate

1 The granting and validity of an operating licence shall at any time be dependent upon the possession of a valid AOC specifying the activities covered by the operating licence.

2 Any modification in the AOC of a Community air carrier shall be reflected, where appropriate, in its operating licence.

Article 7

Proof of good repute

1 Where, for the purpose of issuing an operating licence, proof is required that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt, the competent licensing authority shall accept as sufficient evidence in respect of nationals of Member States the production of documents issued by the competent authorities in the Member State of origin or the Member State where the person has his/her permanent residence showing that those requirements are met.

2 Where the Member State of origin or the Member State where the person has his/her permanent residence does not issue the documents referred to in paragraph 1, such documents shall be replaced by a declaration on oath or — in Member States where there is no provision for declaration on oath — by a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary or qualified professional body of the Member State of origin or the Member State where the person has his/her permanent residence. Such authority, notary or qualified professional body shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

3 The competent licensing authority may require that the documents and certificates referred to in paragraphs 1 and 2 be presented no more than three months after their date of issue.

Article 8

Validity of an operating licence

1 An operating licence shall be valid as long as the Community air carrier complies with the requirements of this Chapter.

A Community air carrier shall at all times be able on request to demonstrate to the competent licensing authority that it meets all the requirements of this Chapter.

2 The competent licensing authority shall closely monitor compliance with the requirements of this Chapter. It shall in any case review compliance with these requirements in the following cases:

- a two years after a new operating licence has been granted;
- b when a potential problem has been suspected; or
- c at the request of the Commission.

In case the competent licensing authority suspects that financial problems of a Community air carrier might affect the safety of its operations, it shall immediately inform the authority competent for the AOC.

3 The operating licence shall be resubmitted for approval when a Community air carrier:

- a has not started operations within six months of the granting of an operating licence;
- b has ceased its operations for more than six months; or
- c which has been licensed on the basis of the first subparagraph of Article 5(3) intends to engage in operations with aircraft above the size threshold specified in Article 5(3) or no longer complies with the financial conditions set out therein.

4 A Community air carrier shall provide to the competent licensing authority its audited accounts no later than six months following the last day of the respective financial year, unless

otherwise provided for in national law. During the first two years of operation of a Community air carrier, the data as referred to in point 3 of Annex I shall be made available to the competent licensing authority upon request.

The competent licensing authority may at any time assess the financial performance of a Community air carrier to which it has granted an operating licence by requesting the relevant information. As part of such an assessment, the Community air carrier in question shall update the data referred to in point 3 of Annex I and provide it to the competent licensing authority upon request.

- 5 A Community air carrier shall notify the competent licensing authority:
- a in advance of any plans for the operation of a new air service to a continent or a world region not previously served, or any other substantial change in the scale of its activities, including, but not limited to, changes in the type or number of aircraft used;
 - b in advance of any intended mergers or acquisitions; and
 - c within 14 days of any change in the ownership of any single shareholding which represents 10 % or more of the total shareholding of the Community air carrier or of its parent or ultimate holding company.

6 If the competent licensing authority deems the changes notified under paragraph 5 to have a significant bearing on the finances of the Community air carrier, it shall require the submission of a revised business plan incorporating the changes in question and covering, at least, a period of 12 months from its date of implementation as well as the data referred to in point 2 of Annex I, in addition to the information to be provided under paragraph 4.

The competent licensing authority shall take a decision on the revised business plan as to whether the Community air carrier can meet its existing and potential obligations during that period of 12 months. Such a decision shall be taken not later than three months after all the necessary information has been submitted to it.

7 In relation to Community air carriers licensed by it the competent licensing authority shall decide whether the operating licence shall be resubmitted for approval in case of change in one or more elements affecting the legal situation of a Community air carrier and, in particular, in the case of a merger or takeover.

8 Paragraphs 4, 5 and 6 shall not apply to Community air carriers exclusively engaged in operations with aircraft of less than 10 tonnes MTOM and/or less than 20 seats. Such Community air carriers shall at all times be able to demonstrate that their net capital is at least EUR 100 000 or to provide when required by the competent licensing authority the information relevant for the purposes of the assessment referred to in Article 9(2).

The competent licensing authority may nevertheless apply paragraphs 4, 5 and 6 to Community air carriers licensed by it that operate scheduled air services or whose turnover exceeds EUR 3 million per year.

Article 9

Suspension and revocation of an operating licence

1 The competent licensing authority may at any time assess the financial performance of a Community air carrier which it has licensed. Based upon its assessment, the authority shall suspend or revoke the operating licence if it is no longer satisfied that this Community air carrier can meet its actual and potential obligations for a 12-month period. Nevertheless, the competent licensing authority may grant a temporary licence, not exceeding 12 months pending financial

reorganisation of a Community air carrier provided that safety is not at risk, that this temporary licence reflects, when appropriate, any changes to the AOC, and that there is a realistic prospect of a satisfactory financial reconstruction within that time period.

2 Whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened against a Community air carrier licensed by it the competent licensing authority shall without delay make an in-depth assessment of the financial situation and on the basis of its findings review the status of the operating licence in compliance with this Article within a time period of three months.

The competent licensing authority shall inform the Commission of its decisions, relating to the status of the operating licence.

3 When the audited accounts referred to in Article 8(4) have not been communicated within the deadline indicated in that Article, the competent licensing authority shall, without undue delay, request the Community air carrier to communicate these audited accounts.

If the audited accounts are not communicated within one month, the operating licence may be revoked or suspended.

4 The competent licensing authority shall suspend or revoke the operating licence if the Community air carrier knowingly or recklessly furnishes the competent licensing authority with false information on an important point.

5 In case a Community air carrier's AOC is suspended or withdrawn, the competent licensing authority shall immediately suspend or revoke that air carrier's operating licence.

6 The competent licensing authority may suspend or revoke the operating licence of a Community air carrier if such a carrier no longer satisfies the requirements relating to good repute set out in Article 7.

Article 10

Decisions on operating licences

1 The competent licensing authority shall take a decision on an application as soon as possible, and not later than three months after all the necessary information has been submitted, taking into account all available evidence. The decision shall be communicated to the applicant. A refusal shall indicate the reasons therefor.

2 Procedures for granting, suspending and revoking operating licences shall be made public by the competent licensing authorities, which shall inform the Commission thereof.

3 A list of decisions of the competent licensing authorities to grant, suspend or revoke operating licences shall be published annually in the *Official Journal of the European Union*.

Article 11

Insurance requirements

Notwithstanding Regulation (EC) No 785/2004, an air carrier shall be insured to cover liability in case of accidents with respect to mail.

Article 12

Registration

1 Without prejudice to Article 13(3), aircraft used by a Community air carrier shall be registered, at the option of the Member State whose competent authority issues the operating licence, in its national register or within the Community.

2 In accordance with paragraph 1, the competent authority shall, subject to applicable laws and regulations, accept on its national register, without any discriminatory fee and without delay, aircraft owned by nationals of other Member States and transfers from aircraft registers of other Member States. No fee shall be applied to transfers of aircraft in addition to the normal registration fee.

Article 13

Leasing

1 Without prejudice to Article 4(c), a Community air carrier may have one or more aircraft at its disposal through dry or wet lease agreement. Community air carriers may freely operate wet-leased aircraft registered within the Community except where this would lead to endangering safety. The Commission shall ensure that the implementation of such a provision is reasonable and proportionate and based on safety considerations.

2 A dry lease agreement to which a Community air carrier is a party or a wet lease agreement under which the Community air carrier is the lessee of the wet-leased aircraft shall be subject to prior approval in accordance with applicable Community or national law on aviation safety.

3 A Community air carrier wet leasing aircraft registered in a third country from another undertaking shall obtain prior approval for the operation from the competent licensing authority. The competent authority may grant an approval if:

- a the Community air carrier demonstrates to the satisfaction of the competent authority that all safety standards equivalent to those imposed by Community or national law are met; and
- b one of the following conditions is fulfilled:
 - (i) the Community air carrier justifies such leasing on the basis of exceptional needs, in which case an approval may be granted for a period of up to seven months that may be renewed once for a further period of up to seven months;
 - (ii) the Community air carrier demonstrates that the leasing is necessary to satisfy seasonal capacity needs, which cannot reasonably be satisfied through leasing aircraft registered within the Community, in which case the approval may be renewed; or
 - (iii) the Community air carrier demonstrates that the leasing is necessary to overcome operational difficulties and it is not possible or reasonable to lease aircraft registered within the Community, in which case the approval shall be of limited duration strictly necessary for overcoming the difficulties.

4 The competent authority may attach conditions to the approval. Such conditions shall form part of the wet lease agreement.

The competent authority may refuse to grant an approval if there is no reciprocity as regards wet leasing between the Member State concerned or the Community and the third country where the wet-leased aircraft is registered.

The competent authority shall inform the Member States concerned about an approval it has granted for wet leasing aircraft registered in a third country.

Article 14

Right to be heard

The competent licensing authority shall ensure that, when adopting a decision to suspend or revoke the operating licence of a Community air carrier, the Community air carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure.