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By E-mail

M. Akis KELEPESHIS, President

The Members

The Members of the Air Matters Committee

The Members of the Legal Committee

GEBTA

Brussels, 15 July 2008

Dear Members,

Re: Regulation proposal on common rules for the operation of air transport services in the Community – Final approval by the European Parliament – Recap note on the Regulation

Summary

The European Parliament approved on 9 July 2008 the common position of the Council with no additional amendments.

The final Regulation should come into force in October 2008. It will provide for:

- Indication of transparent prices for air tickets;
- Prohibition of discriminations in access to fares based on location in the EU;
- Stricter monitoring of airlines' finances
- Rules on wet lease of aircrafts registered in third countries.

As announced to you on 10 July 2008, the European Parliament approved in plenary session the common position of the Council on the Regulation proposal on common rules for the operation of air transport services in the Community, and asked for the final act to be signed and published in the Official Journal of the EU. Please find enclosed the legislative resolution adopted by the European Parliament (language choice at top right of the page):

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0342+0+DOC+XML+V0//EN>

The signature should take place in September 2008 and the publication in October 2008. The Regulation will come into force the day after its publication in the Official Journal. It will be directly and fully applicable in all the Member States. It will replace EC Regulation 2407/92 on licensing of air carriers, 2408/92 on access for Community air carriers to intra-Community air routes and 2409/92 on fares and rates for air services.

The text approved by the European parliament is the Common position of the Council adopted on 18 April 2008¹. The provisions interesting travel agents and tour operators are the following:

¹ Available in all EU languages at : <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:129E:SOM:FR:HTML>

1. Transparency of pricing - Article 23§1:

“Air fares and air rates available to the general public shall include the applicable conditions when offered or published in any form, including on the Internet, for air services from an airport located in the territory of a Member State to which the Treaty applies. The final price to be paid shall at all times be indicated and shall include the applicable air fare or air rate as well as all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. In addition to the indication of the final price, at least the following shall be specified:

(a) air fare or air rate;

(b) taxes;

(c) airport charges; and

(d) other charges, surcharges or fees, such as those related to security or fuel;

where the items listed under (b), (c) and (d) have been added to the air fare or air rate. Optional price supplements shall be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an "opt-in" basis.”

The civil servant from the European Commission in charge of the Regulation proposal had previously indicated that this provision applies exclusively to air tickets and does not apply to package travels.

◆ *Inclusion of applicable conditions*

In the first sentence, “*applicable conditions*” does not refer to applicable taxes, fees charges, but refers to any conditions under which the fare applies. Such conditions are included in the definition of air fares, provided in the current EC Regulation 2409/92, which is maintained under Article 2§18 of the new Regulation.

◆ *Indication at all time of inclusive final prices:*

The second sentence provides for the obligation to indicate at all time inclusive final prices:

→ Applicable to air services departing from the EU, including flights operated by third country air carriers: As a reminder, this scope is wider than in the Commission’s initial proposal (intra-community services only). However it does not cover flights from third countries to the EU, whereas this was requested by ECTAA and GEBTA and had been agreed by the European Parliament in first reading, because the European Commission argued that the scope could not be effectively extended to flights from third countries, for reasons of extra-territoriality. In the limit of what can be done outside the EU, Recital 16 therefore simply encourages Community carriers to show the final price for flights from third countries.

→ Indication at all times: The requirement of indicating inclusive final prices “*at all times*” applies to information provided in GDSs. This is confirmed in the Regulation proposal on a Code of Conduct for CRSs, which contains in the rules on display when prices are shown in the principal display, the obligation to show prices including the fares and all applicable taxes, charges, surcharges and fees to be paid to the carrier which are unavoidable and foreseeable at the time when shown on the display.

Considering that the specification of the elements forming the price is provided “*in addition*” to the indication of the final price, it should follow the same requirement of indication “*at all times*”.

→ Obligation on all operators: the Regulation will provide those obligations on all operators, whether airlines, travel agents or other ticket sellers.

→ Inclusion of applicable, foreseeable and unavoidable elements: the elements to be included in the final price are the air fare and taxes, charges, surcharges and fees that are applicable, foreseeable and unavoidable at the time of publication of the price.

Concerning the fees applied by travel agents, their inclusion in the final price will depend on the fulfilment of the cumulative criteria “*applicable*”, “*unavoidable and foreseeable*” at the time of the publication of the price. Travel agents’ fees will not be included in a fare published in a GDS, because they are not foreseeable at this stage. At further stages, the travel agent service fee may in certain cases depend on elements known during the booking, like the number of persons, which could delay the foreseeability of the service fee until this information is known. It will be up to each travel agent, depending on its method to calculate its service fees, to include them as soon as it is applicable, unavoidable and foreseeable.

Similarly, airlines’ services fees may not be included in a fare published in a GDS, but may have to be included in a price published on an airline’s website from the moment the fee is foreseeable and unavoidable;

◆ **Specification of the elements forming the final price:**

The third sentence provides for the obligation to specify the elements forming the final price. The requirement to specify various costs only applies to elements that are part of the final price. The compulsory categories for the breakdown of the price are the air fare, taxes, airport charges and other charges/surcharges/fees such as those related to security or fuel.

◆ **Clear communication of optional price supplements**

The fourth sentence provides for the clear communication of optional price supplements at the start of the booking, with acceptance by the consumer on an opt-in basis.

2. Non-discrimination in access to air fares - Article 23§2:

“Without prejudice to Article 16(1), access to air fares and air rates for air services from an airport located in the territory of a Member State to which the Treaty applies, available to the general public shall be granted without any discrimination based on the nationality or the place of residence of the customer or on the place of establishment of the air carrier’s agent or other ticket seller within the Community.”

The provision will prohibit restrictions based on the country of sale or issuance within the EU.

→ Applicable to air services departing from the EU, including flights operated by third country air carriers;

→ Applicable to public fares only?

The Secretariat considers that it is not clear whether the words “*available to the public*” relate in the sentence to “*air fares*”, which would exclude negotiated fares, or to “*air services*”. However, it is the interpretation of the European Commission that the prohibition applies only to public fares (*please note that the European Commission is not officially empowered to interpret EU legislation; this is the competence of the Court of the Justice of the European Communities*).

3. Penalties in case of non-compliance – Article 24

Article 24 provides that Member States will ensure compliance with the rules on pricing and non discrimination and shall lay down effective, dissuasive and proportionate penalties for infringements.

4. Stricter monitoring of airlines’ finances – Articles 8 and 9

In the framework of their authority to licence Community carriers, national authorities’ will reinforce the monitoring of carriers’ compliance with the criteria to obtain and retain an air carrier licence, including financial criteria:

→ **Closer monitoring of European air carriers in the first years of operations:**

- 2 years after the operating licence has been granted, the licensing authority shall closely monitor compliance with the requirements (article 8.2 (a));
 - During the first 2 years of operations, the carrier must provide information on its financial fitness upon request, instead of yearly for other carriers (Article 8.4 §1);
- **Tighter control on all European carriers:**
- The licensing authority shall closely monitor compliance with the requirements when a potential problem has been suspected or at the request of the European Commission (article 8.2 (a))
 - The licensing authority can assess at any time the financial performance of a Community air carrier to which it has granted an operating licence (article 8.4 §2);
 - Whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened, the licensing authority shall without delay make an in depth assessment of the carrier's financial situation, review the status of the operating licence and inform the European Commission of its decision (article 9.2 §1);
- **Further obligations on licensing authorities of the Member States:**
- If the licensing authority is no longer satisfied that the carrier can meet its actual and potential obligations for a 12-month period, it shall suspend or revoke the licence (currently, it “*may*” do so)(Article 9.1 §1).

5. Wet lease - Article 13

Wet lease of aircrafts registered in third countries can be authorised if safety standards are met, and if the carrier justifies the leasing on the basis of exceptional needs (authorisation may be granted for up to 7 months that may be renewed for up to 7 months), or to satisfy seasonal capacity needs (possible renewal with no time limit), or to overcome operational difficulties (limited duration needed to overcome the difficulties). The competent authority may attach conditions to the approval.

The competent authority may however 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.

Please do not hesitate to send to the Secretariat your requests for clarifications.

With kind regards,

Isabelle Leroy
Legal advisor