

Cypriot national procedure for the allocation of limited air traffic rights

(2009/C 56/08)

In accordance with Article 6 of Regulation (EC) No 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries, the European Commission publishes the following national procedure for the distribution among eligible Community carriers of air traffic rights where they are limited under air service agreements with third countries.

The Civil Aviation Acts 2002 to 2008

Decision pursuant to Article 260

For the purpose of harmonisation with the act of the European Community entitled:

'Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries (OJ L 157, 30.4.2004, p. 7)'.

The Minister for Communications and Works, exercising the powers bestowed on him by Article 260 of the Civil Aviation Acts 2002 to 2008 (213(I)/2002, 114(I)/2004, 83(I)/2005, 70(I)/2006, 159(I)/2007, 6(I)/2008), hereby issues the following Decision:

1. This Decision shall be referred to as the 2008 Civil Aviation (Implementation measures for Regulation (EC) No 847/2004) Decision.

Definitions

2. (1) In this Decision, unless the text gives a different meaning, the terms given below shall be defined as follows:

'Act' shall mean the Civil Aviation Acts 2002 to 2008.

'Minister' shall mean the Minister for Communications and Works.

'Competent authority' shall mean the Civil Aviation Department of the Ministry of Communications and Works, which is responsible for implementing the procedures provided for by this Decision for granting access licences.

'Evaluation committee' shall mean the committee appointed pursuant to paragraph 8(1).

'Access licence' shall mean the granting of access to an interested Community carrier to scheduled services between Cyprus and a third country under the relevant Bilateral Aviation Agreement. Notification of such licences shall be given as laid down in the Bilateral Aviation Agreement.

'Community carrier', for the purposes of this Decision, shall mean an air carrier with a valid operating licence issued by a Member State under Council Regulation (EEC) No 2407/1992 of 23 July 1992 (OJ L 240, 24.8.1992, p. 1).

- (2) Any terms included in this Decision and not specifically defined shall have the meaning given to them by the Act and by Regulation (EC) No 847/2004, as appropriate.

Objective

3. The objective of this Decision is to establish the procedure and criteria for granting access licences to Community carriers established in Cyprus to perform regular scheduled services, on the basis of Bilateral Aviation Agreements, between Cypriot airports and airports in third countries.

Granting and withdrawing access licences

4. Access licences shall be granted and withdrawn by the Minister pursuant to Articles 5 and 6 of Regulation (EC) No 847/2004.

Procedure

Submission of application

5. (1) Any Community carrier with an Aircraft Operator's Certificate and valid operating licence issued by a Member State under Regulation (EEC) No 2407/92 which is established in Cyprus may apply to the competent authority for an access licence for available commercial rights and any new commercial rights granted under the relevant Bilateral Aviation Agreement. Applications shall be made in Greek or English and must include at least the following documentation and information:
- (a) copy of Aircraft Operator's Certificate;
 - (b) copy of valid operating licence and proof of establishment in Cyprus;
 - (c) description of the desired service (e.g. route, type of aircraft to be used, flight period, frequency and times, nationality and registration State of aircraft, information on any leased aircraft, with or without crew);
 - (d) date services are to commence;
 - (e) type of flight;
 - (f) data demonstrating the Community carrier's operational and financial capacity to operate the route in accordance with Article 5 of Regulation (EC) No 2407/92;
 - (g) the pricing policy the applicant intends to implement;
 - (h) a detailed three-year forecast of the financial results for the route, including data enabling the viability of the route to be assessed.
- (2) The competent authority may, where deemed necessary, ask the applicant for further information and/or clarifications; the Community carrier shall provide this information within the timeframe set by the competent authority.
- (3) The evaluation committee shall accept only those applications which contain all the required documentation and/or information and/or clarifications it asked the competent authority to request.

Designation criteria

6. When examining Community carrier applications for access licences for available and/or new commercial rights granted under the relevant Bilateral Aviation Agreement, the evaluation committee shall consider the following criteria:
- (a) implementation of the provisions of Bilateral Aviation Agreements between Cyprus and third countries;
 - (b) air traffic on the route in question;
 - (c) type of air traffic;
 - (d) current air links, flights via other destinations/frequency of flights;
 - (e) the pricing policy;
 - (f) date flights are to begin on the requested route;
 - (g) flight period;
 - (h) environmental impact;
 - (i) business plan showing the carrier's capacity to discharge its operational and financial obligations;
 - (j) quality of the services provided;
 - (k) continuity of the service provision;
 - (l) satisfaction of air-travel demand;
 - (m) maximisation of benefit to the travelling public at the lowest possible prices;
 - (n) protection of healthy competition among carriers within the Community;
 - (o) further development of Cyprus' tourism industry.

Pooling and publishing available or new commercial rights

7. (1) Available and/or new commercial rights shall be pooled and published on the website of the competent authority (www.mcw.gov.cy/dca).
- (2) Once available and/or new commercial rights have been published, the competent authority shall publish a call for interest for access licences for certain scheduled services in accordance with the provisions of the relevant Bilateral Aviation Agreement. Applications should arrive within thirty days of the publication of the call for interest.

Assessment procedure

8. (1) Applications from Community carriers shall be assessed on the basis of Articles 5 and 6 of this Decision by a three-member evaluation committee to be appointed by the Minister; the members of this committee should be officials from the Ministry of Communications and Works and the competent authority.
- (2) Meetings of the evaluation committee require all members to be present in order to be quorate. Decisions to grant access licences shall be taken by majority vote. Minutes shall be taken of evaluation committee meetings.
- (3) The evaluation committee is responsible for assessing the applications received in accordance with this Decision and making recommendations to the Ministry regarding the granting of access licences.
- (4) The Minister shall accept or reject the decision of the evaluation committee by means of a reasoned decision, and award the access licence or not, as the case may be.
- (5) Within two months of the application deadline passing, the Minister shall select the Community carrier(s) who is/are to receive access licences for available and/or new commercial rights granted under a Bilateral Aviation Agreement.
- (6) The access licence shall specify the terms under which the available and/or new commercial rights are granted, in accordance with the provisions of the Bilateral Aviation Agreement in question.

Obligations of the selected carrier

9. When performing their commercial rights, selected Community carriers shall:
 - (a) provide sufficient and satisfactory air services to the travelling public (frequency, level of service), with due regard to Cyprus' economic dependence on tourism;
 - (b) do everything within their power to ensure that the services covered by the access licence begin at the latest within six months of the selection date and without deviating from the flight programme submitted.

Re-assessing and withdrawing access licences

10. (1) Access licences shall be granted to Community carriers for an unlimited period of time, without prejudice to the possibility of withdrawing licences under Article 11 or re-assessing and withdrawing licences under paragraph 2.
- (2) The Minister, via the evaluation committee, shall re-assess and withdrawn any licences granted to Community carriers where other Community carriers can demonstrate that they can perform the commercial rights granted by a given access licence more effectively and efficiently.
- (3) Should a licence be withdrawn under paragraph 1, the competent authority shall issue another call for applications from interested Community carriers, following the procedure described in this Decision.

Withdrawal of access licence

11. Access licences shall be withdrawn by the Minister in the following cases:
 - (a) substantial changes to the data on the basis of which the Community carrier was selected;
 - (b) suspension (with no re-start within six months) of the services for which the access licence was granted, unless the suspension is due to circumstances outside the Community carrier's control;

- (c) written notification from the Community carrier to the Minister of the intention to suspend flights on the route covered by the access licence;
- (d) partial or complete failure properly and effectively to use the commercial rights granted under the access licence;
- (e) failure on the part of the Community carrier to comply with the provisions of this Decision and/or the terms of the access licence and/or the provisions of the relevant Bilateral Aviation Agreement.

Award of licences

12. Access licences granted to Community carriers on the basis of this Decision may not be granted or allocated to another carrier or be commercially exploited between carriers.

29 September 2008.

Minister for Communications and Works
