



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.03.1998
COM(1998) 98 final

98/0070 (SYN)

**Proposal for a
COUNCIL DIRECTIVE**

on the registration and use within the Community of certain types of
civil subsonic jet aeroplanes which have been modified and recertificated
as meeting the standards of Volume I, Part II, Chapter 3 of Annex 16
to the Convention on International Civil Aviation,
third edition (July 1993)

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

1. One of the key objectives of the common transport policy is "sustainable mobility"¹. This type of mobility aims at ensuring both the effective functioning of the Community's transport system and the protection of the environment. Technical measures, such as noise standards for aeroplanes, contribute to sustainable mobility by ensuring a reduction in the noise produced by individual aeroplanes. In addition, a further reduction in noise emissions from aeroplanes by the year 2000 is specifically mentioned in the Community programme of policy and action in relation to the environment and sustainable development².
2. The Community started to legislate on noise from aeroplanes almost 20 years ago. The latest Community initiative is Council Directive 92/14/EEC³ of 2 March 1992. This Directive provided for the gradual phase-out between 1 April 1995 and 1 April 2002 of the operation of all civil subsonic jet aeroplanes not complying with the most stringent international noise standards (Chapter 3 of Annex 16 to the Convention on International Civil Aviation). Article 5 of this Directive exempted from the phase-out rules effective from 1995 those aeroplanes which, although not complying with the most stringent standards, could be modified to meet those standards, through so-called "hushkitting", provided that the equipment was ordered by 1 April 1994 and that the earliest delivery date for the modifications was accepted.
3. Directive 92/14/EEC did not, however, mention the subsequent fitting of hushkits to noisier aeroplanes to comply with these phase-out rules.

Currently, hushkits permitting noisy aeroplanes to meet Chapter 3 noise standards already exist for the following aeroplanes types:

Boeing 727 - 100 and 200 series
Boeing 737-200 non ADV and ADV series
Douglas DC-8 - 62 and 63 series
Douglas DC-9 - 10 and 30 series

and hushkits are being developed for the following aeroplanes types:

Boeing 707 - 100 and 200 series
BAC 1-11 400 and 500 series
Douglas DC-8 - 50 serie
Douglas DC-9 - 50 serie

Through the purchase of hushkits air carriers can extend the life of aeroplanes which are more than 25 years old and avoid investment in new aeroplanes.

¹ COM(92) 494 final, 2.12.1992 and COM(95) 302 final, 12.7.1995.

² OJ C 138, 17.5.1993, p. 5.

³ OJ L 76, 23.3.1992, p. 21.

II. Community action

4. In the Community, aeroplanes on Member States' registers which have been hushkitted to meet the Chapter 3 standards currently represent only a very small percentage of the total commercial civil jet fleet, namely 36 aeroplanes out of a total of 2 352⁴, or 1.5%.

In the United States the situation is somewhat different. As opposed to the Community, the US adopted legislation on the "stage 2" (the US equivalent to Chapter 2) which anticipated and does, therefore, not follow Appendix D to the International Civil Aviation Organization (ICAO) Resolution A 31-11 on possible operating restrictions on subsonic jet aircraft which exceed the noise levels in Volume I, Chapter 3 of Annex 16. This Appendix urged states not to begin the phase-out before 1 April 1995 and to allow for a gradual phase-out over a period of not less than seven years. This date and period are an integral part of Directive 92/14/EEC. In the US, however, the airport noise and capacity Act of 1990 required the complete phase-out of large Stage 2 aircraft by 31 December 1999. Moreover, this Act imposed three interim compliance dates, namely 31 December 1994, 31 December 1996 and 31 December 1998, by which a minimum percentage of the fleet had to be Stage 3 (55% in 1994, 65% in 1996 and 75% in 1998) or by which the Stage 2 fleet had to be reduced by a certain percentage (25% in 1994, 50% in 1996, 75% in 1998). The only economically feasible way to meet these interim compliance requirements was by using hushkits on existing Stage 2 aircraft. This explains why by the end of 1996, to meet the US national Stage 2 phase-out programme around 650 aeroplanes had been hushkitted to meet the most stringent noise standards. As part of an economic analysis carried out by ICAO, the Air Transport Association (the US air carriers association) in conjunction with the International Air Transport Association (the international air carriers association) reported that they expected about 1 500 aeroplanes to be hushkitted by 2000.

5. The international noise certification standards as specified in the various Chapters of the aforementioned Annex 16 lay down maximum noise levels at the three measurement points used for certification, namely the lateral, approach and flyover noise measurement point. However, the certification procedure allows to offset any excesses at one of the measurement points by corresponding reductions at the other point or points. Since the standards are defined as noise levels not to be exceeded, most aeroplanes remain well below these maximum levels and have a "margin". Although the noise level of hushkitted aeroplanes formally complies with Chapter 3 noise standards, it is significantly worse, mass for mass, than for current production Chapter 3 aeroplanes. In addition, the majority of hushkitted aeroplanes do not actually meet Chapter 3 at all measurement points, being allowed to offset their debit at one measurement point against a benefit at another measurement point. The use of this so-called "traded margin" together with operational restrictions such as weight and flap limitations allows aeroplanes that would normally have been retired under Directive 92/14/EEC to continue flying beyond their 25 years' life provided for in this Directive. The margins in relation to Chapter 3 noise limits for Chapter 2 aeroplanes hushkitted to meet Chapter 3 noise requirements currently vary between -0.1 and 4.6 EPNdB, whereas for current technology Chapter 3 aeroplanes these margins vary between 6.6 and 26.8 EPNdB.

4 Source, Airclaims Ltd, September 1996.

This implies that the use of hushkitted aeroplanes will make a disproportionate contribution to the noise impact around airports where they are introduced.

6. Moreover, the environmental performance of hushkitted or similarly modified aeroplanes, in terms of fuel burn and atmospheric pollutants is in general worse than that of current production aeroplanes due to the weight and performance penalties resulting from the hushkit, and the older, less fuel efficient original engines, most of which date back to the 1960s. The specific fuel consumption at maximum take-off rating for hushkitted Chapter 2 aeroplanes can be 50% higher compared to current technology Chapter 3 aeroplanes. The emissions of hydrocarbons and nitrogen oxides during the landing and take-off cycle for hushkitted Chapter 2 aeroplanes are about 30% higher compared to current technology Chapter 3 aeroplanes.
7. In order to avoid a further deterioration of the noise situation around Community airports and to limit other environmental damage as well as to prevent between April 1999 and 2002 a transfer of hushkitted aircraft from US, to Member States' registers as a result of the anticipated application by the US of the ICAO Chapter 2 phase-out rules, it is justified to prevent Member States from adding acoustically modified older aeroplanes to their registers through a so-called "non-addition" rule. As has been shown, this type of aeroplane is not yet a problem in relation to aeroplanes on Member States' registers, the aim of this non-addition rule is to ensure that in the future they do not become one and that the environmental benefits of the technical progress achieved since the adoption of the Chapter 3 standards are preserved.

In this context it should be highlighted that as far as Community registers are concerned:

- this proposal is for a non-addition rule; and
 - a clear distinction has to be made between a non-addition rule and a non-operation rule. A non-addition rule, such as the one presented in the present Directive for Community registers, prevents the addition of non-complying aeroplanes to Member States' registers but does not affect the aeroplanes which are already on these registers nor does it limit the possibilities to operate those aeroplanes at Community airports. A non-operation rule, on the contrary, directly affects the use of a non-complying aeroplane, since it prohibits such an aeroplane to land or take-off at Community airports.
8. However, for aeroplanes on the register of a third country it is not possible for the Community to impose a non-addition rule. For such aeroplanes the same objective can be achieved through a non-operation rule which will only affect aeroplanes that have not been operated into the Community and are not on the register of the third country concerned when the non-addition rule comes into effect for aeroplanes registered in the Community. The introduction of equivalent requirements applicable to aeroplanes registered in third countries aims at maintaining the effectiveness of the present initiative and at preventing distortions of competition. In order to be consistent with the phase-out arrangements and the final cut-off date as provided for in Council Directive 92/14/EEC for Chapter 2 aeroplanes, whose overall noise level is in excess of Chapter 2 aeroplanes fitted with hushkits, the non-operation rule for non-complying aeroplanes on third country registers should only come into effect at that final cut-off date. In addition, the provisions,

applicable to aeroplanes on third country registers, should also take into account the scope of the non-addition rule for Chapter 2 aeroplanes, as laid down in Council Directive 89/629/EEC, which applied only to aeroplanes added to Member States' registers.

9. In making its proposal, the Commission has also considered its compatibility with the principle of subsidiarity by addressing the following questions

(a) *What are the objectives of the proposal in relation to the obligations of the Community and what is the Community dimension of the problem?*

As part of the common transport policy, the Community has, under Article 84(2) of the Treaty enacted the third-aviation package which has created an internal market for air transport services where the rules for the operation of such services have been largely harmonized. This harmonization also covers technical standards for noise from civil subsonic aeroplanes. These standards have contributed to the gradual improvement of the noise climate around Community airports. However, high annual growth rates in air transport have to some extent eroded the environmental benefits resulting from the gradual introduction of more stringent noise standards. As set out before, the purpose of the present proposal is to prevent a further deterioration of the noise situation around airports.

(b) *Does competence for the planned activities lie solely with the Community or is it shared with the Member States?*

The Commission has prevented the addition of non-noise certificated aeroplanes to Member States' registers by virtue of Council Directive 80/51/EEC and of Chapter 2 aeroplanes by virtue of Council Directive 89/629/EEC. Moreover, the Community has, by virtue of Council Directive 92/14/EEC, fully harmonized the noise standards which aeroplanes from Member States and third countries must fulfill in order to operate at Community airports. The envisaged strengthening of those standards by the exclusion of acoustically modified Chapter 2 aeroplanes implies modifications to that latter Directive and can, therefore, only be implemented at Community level.

In conformity with the proportionality principle, a Directive is considered sufficient in this case. It leaves each Member State the right to decide on the best implementation tools which fit its internal system.

10. Given the international character of air transport, it would be preferable that any measure aimed at limiting aeroplane noise nuisance should be taken at international rather than at regional or national level. However, since it has so far not been possible to agree on such measures within the framework of ICAO, the Commission feels that some action should now be initiated at Community level. The measures contained in the present proposal are consistent with the obligatory provisions of the Convention on International Civil Aviation.
11. Finally, the measure was part of a number of possible solutions to the noise problem put forward in the Consultation Paper on the limitation of the impact of noise from air transport which has been presented in preparation of the present proposal to all Member States and stakeholders - airport, air carriers, air transport users, aeronautical manufacturing industry, transport workers organizations, international aviation bodies, environmental protection groups as well as local and

regional authorities. In addition, in order to produce the widest possible effect, the Commission services are cooperating with the European Civil Aviation Conference (ECAC) with a view to ensuring a harmonized approach beyond the frontiers of the Community. In this context, the triennial session of ECAC which took place in Strasbourg in July 1997, agreed "that action should be taken at European level to prevent the addition of those aircraft which had been "hushkitted" so that they could only just meet higher- (Chapter 3) noise standards. The measure complies with the ECAC policy objective to reduce the level of noise emissions from aircraft.

III. Contents of the Directive

12. Article 1 lays down the general objective of the Directive. Article 2 contains the definitions which are necessary for the proper interpretation of the Directive.
13. Article 3 is the core of the Directive. In its Paragraph 1, it lays down the non-addition rule for modified aeroplanes. These modifications include hushkits, engine modifications, redesigned nacelles or other technical measures which do not permit full compliance at all measurement points used for Chapter 3 certification, as well as the use of operational restrictions with a view to improving the acoustic performance.

Paragraph 3 aims at ensuring a level playing field between aeroplanes registered in the Community and those registered in third countries by limiting the use of non-complying third-country aeroplanes at Community airports.

14. Article 4 provides for a limited number of exemptions. Amongst these exemptions are aeroplanes operated exclusively outside the Community and "exceptional cases" of a temporary nature.
15. The objective of Article 5 is to ensure that Member States provide for the appropriate measures to guarantee the effective operation of the common rules.
16. Articles 6, 7 and 8 are standard Articles dealing mainly with the incorporation of the Directive into national law.

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(Text with EEA relevance)

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 Commission⁵,

Having regard to the opinion of the Economic and Social Committee⁶,

Acting in accordance with the procedure referred to in Article 189c of the Treaty in cooperation with the European Parliament⁷,

Whereas one of the key objectives of the common transport policy is sustainable mobility; whereas such a policy can be defined as a global approach which aims at ensuring both the effective functioning of the Community's transport systems and the protection of the environment; whereas it is appropriate to take technical measures which contribute to the achievement of sustainable mobility;

Whereas the Commission Communication on the future development of the common transport policy: a global framework to the construction of a Community framework for sustainable mobility⁸ explicitly refers to the introduction of a non-addition rule for the noisiest aeroplanes;

Whereas the fifth action programme of 1992 on the environment, the general approach of which was endorsed by the Council and the Representatives of the Governments of the Member States, meeting within the Council, in their Resolution of 1 February 1993⁹ envisages further legislative measures aimed at reducing noise emissions from aeroplanes; whereas the said programme lays down the objective that no person should be exposed to noise levels which endanger health and quality of life;

Whereas the growth in air transport activities at Community airports is increasingly determined by environmental constraints; whereas the operation of less noisy aeroplanes at these airports can contribute to a better use of available airport capacity;

5 OJ C

6 OJ C

7 Opinion of the European Parliament of(OJ C of ..), Council Common Position of(OJ C) and Decision of the European Parliament of (OJ C ..)

8 COM(92) 494 final, 2.12.1992.

9 OJ C 138, 17.5.1993, p. 1.

Whereas older types of aeroplanes modified to improve their noise certification level, have a noise performance which is significantly worse, mass for mass, than that of modern types of aeroplanes originally certificated to meet the standards of Volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993); whereas those modifications prolong the life of an aeroplane that would normally have been retired; whereas those modifications tend to worsen the gaseous emissions performance and fuel burn of earlier technology aero engines;

Whereas a rule which prohibits the addition of those older modified types of aeroplanes to Member States' registers as from 1 April 1999 can be considered as a protective measure aimed at preventing a further deterioration of the noise situation around Community airports as well as improving the situation regarding fuel burn and gaseous emissions;

Whereas in a Community without internal frontiers, it is appropriate to exclude from this non-addition rule aeroplanes entered in any Member State's register prior to 1 April 1999;

Whereas in view of existing Community legislation on aeroplane noise, the present initiative needs to be taken at Community level by binding Community rules and, thus, is compatible with the subsidiarity principle by leaving to each Member State the right to decide the best implementation tools that fit its internal system;

Whereas a non-addition rule combines technical feasibility with environmental benefits without imposing an undue economic burden;

Whereas it is necessary to minimize possible distortions of competition by establishing equivalent requirements applicable to aeroplanes registered in third countries; whereas since the Community has no competence over third-country registers, that objective can only be achieved by restricting the operation of non-complying aeroplanes registered as from 1 April 1999 in third countries; whereas the date for introducing such restrictions should take account of the final cut-off date for the operation of Chapter 2 aeroplanes as provided for in Council Directive 92/14/EEC of 2 March 1992 on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition 1988)¹⁰, as well as the extent of the non-addition provisions for Chapter 2 aeroplanes as laid down in Council Directive 89/629/EEC of 4 December 1989 on the limitation of noise emission from civil subsonic jet aeroplanes¹¹;

Whereas the main objective of the measure is to limit noise at Community airports, aeroplanes may be exempted from the non-addition rule when they are not operated in the Community territory; whereas exemptions may also apply for aeroplanes operated in the French overseas departments in view of their geographical location, as well as temporary exemptions, in order for the rules to produce their full environmental benefits, for operations of exceptional nature;

Whereas it is important to ensure that infringements of Community law are penalized under conditions which make the penalty effective, proportionate and dissuasive,

¹⁰ OJ L 76, 23.3.1992, p. 21.

¹¹ OJ L 363, 13.12.1989, p. 27.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Objective

The objective of this Directive is to lay down rules to prevent future deterioration in the overall noise impact in the Community of recertificated civil subsonic jet aeroplanes while at the same time limiting other environmental damage.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. "*civil subsonic jet aeroplane*": a civil subsonic jet aeroplane with a maximum certificated take off mass of 34 000 kg or more, or with a certified maximum internal accommodation for the aeroplane type in question consisting of more than 19-passenger seats, excluding any seats for crew only and powered by engines with a by pass ratio of less than three;
2. "*recertificated civil subsonic jet aeroplane*": a civil subsonic jet aeroplane initially certificated to Chapter 2 or equivalent standards, or initially not noise certificated which has been modified to meet Chapter 3 standards either directly through technical measures or indirectly through operational restrictions;
3. "*Chapter 2*" and "*Chapter 3*": the noise standards as defined in Volume I, Part II, Chapter 2 and Chapter 3 respectively, of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993);
4. "*operational restrictions*": weight restrictions imposed on the aeroplane and/or operational limitations within the control of the pilot or the operator, such as reduced flap setting;
5. "*to register an aeroplane*": the formal act whereby the nationality of an aeroplane is established through its entry on the national register of a Member State or a third country;
6. "*the territory of the Community*": the territory subject to the provisions of the Treaty.

Article 3

Non-complying aeroplanes

1. Member States shall ensure that recertificated civil subsonic jet aeroplanes cannot be registered in their territory as from 1 April 1999.
2. The provisions of paragraph 1 shall not affect civil subsonic jet aeroplanes which were already on the register of any Member State before 1 April 1999.

3. Notwithstanding the provisions of Directive 92/14/EEC and in particular Article 2(2) thereof, as from 1 April 2002 Member States shall not allow the operation at airports in their territories of recertificated civil subsonic jet aeroplanes registered in a third country unless they were on the register of that third country before 1 April 1999 and prior to that date have been operated into the territory of the Community.

Article 4

Exemptions

1. Member States may grant temporary exemptions from the provisions of Article 3 for civil subsonic jet aeroplanes whose operations are of such an exceptional nature that it would be unreasonable to withhold a temporary exemption, such as for emergencies or for humanitarian aid.
2. Member States may grant exemptions from the provisions of Article 3 for civil subsonic jet aeroplanes which are exclusively operated outside the territory of the Community and for those exclusively operated in the overseas departments of France.

Article 5

Penalties

Member States shall lay down the system of penalties applicable to infringement of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the relevant provisions to the Commission not later than the date specified in Article 6(1), first subparagraph and shall notify any subsequent changes as soon as possible.

Article 6

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...]. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of domestic law which they adopt in the field governed by this Directive.

Article 7

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

IMPACT ASSESSMENT

Impact of the proposal on businesses with special reference to small and medium-sized enterprises (SMEs)

Title of the proposal:

Proposal for a Council Directive on the registration and use within the Community of certain types of civil subsonic jet aeroplanes which have been modified and recertificated as meeting the standards of Volume I, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993)

Reference number:

The proposal:

The impact on business

1. Who will be affected by the proposal?

- Which sectors of business?

Air carriers (Community carriers initially and carriers from third countries afterwards)

- Which sizes of business (what is the concentration of small and medium-sized firms)

The European air carrier market essentially consists of big companies, which account for 65.4% of the market. Charter companies represent 27.6% and small and medium-sized firms only in the order of 5%.

- Are there particular geographical areas of the Community where these businesses are found?

No

2. What will business have to do to comply with the proposal?

As from 1 April 1999 it will no longer be possible for community air carriers to add to their fleet older aircraft which have been modified (equipped with hush-kits) to meet more stringent noise standards, namely Chapter 3 standards.

3. What economic effects is the proposal likely to have?

It should be noted that the general approach to fleet planning and extension adopted by Community air carriers is not to modify older aircraft through hushkitting, but rather to invest in new less noisy aircraft. In addition, there are no manufacturers of hushkits established in the Community. Therefore, the impact

- on employment;
- on investment and the creation of new businesses;
- on the competitive position of business

will not be significant.

4. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms?

Indirectly, since aircraft of less than 34 000 kg or with less than 20 passenger seats are not affected by the proposal.

Consultation

List of the organizations which have been consulted and outline of their views

5. The issue has been addressed in the context of a consultation paper on the limitation of aircraft noise which has been sent last November to the various parties concerned: Member States, airport operators, air carriers, workers organizations, local and regional authorities, international bodies, consumer organizations and environmental protection groups. A majority of the parties consulted support the initiative contained in the present proposal.

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