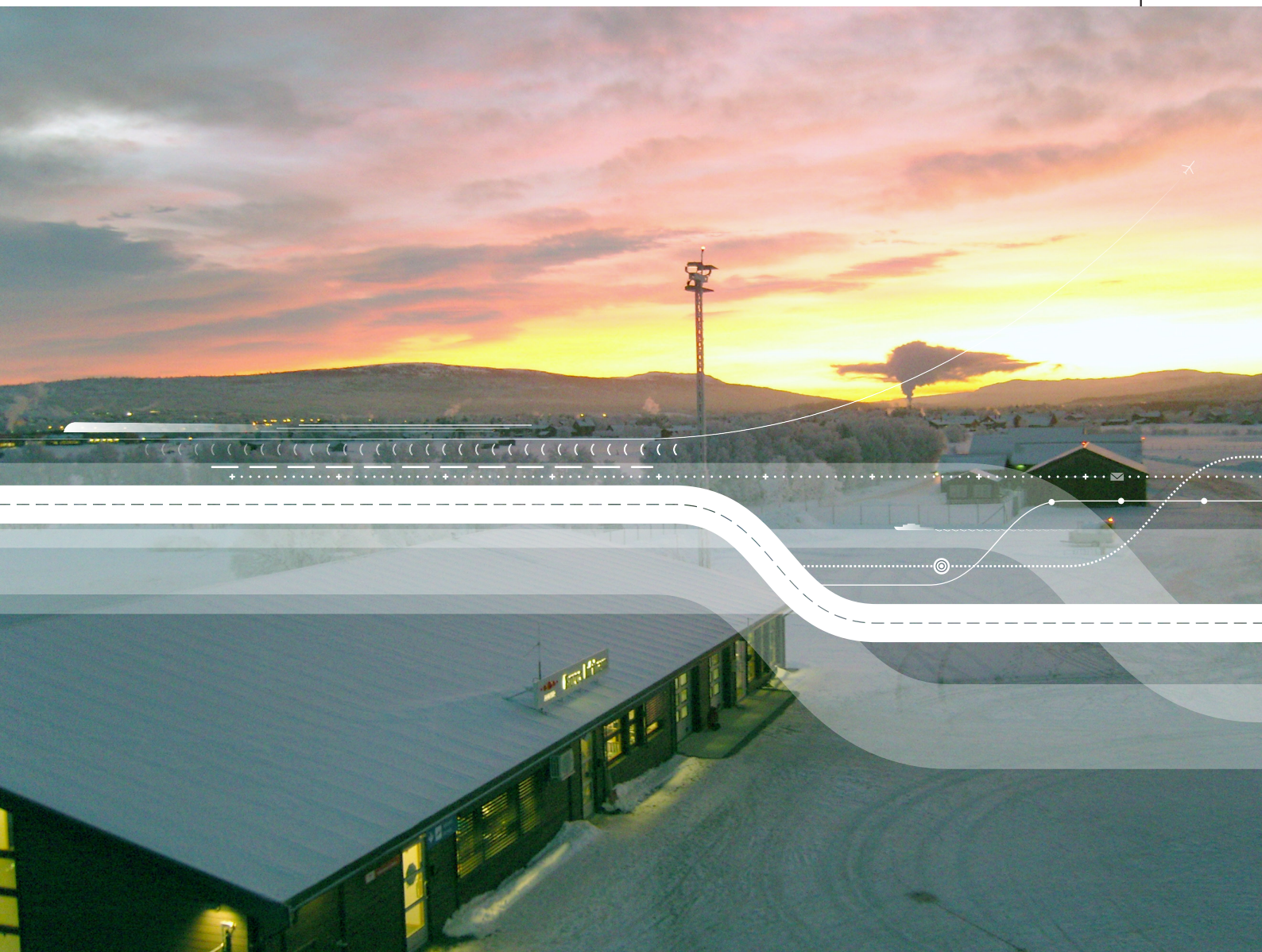




NORWEGIAN MINISTRY
OF TRANSPORT AND COMMUNICATIONS

Invitation to tender

Scheduled regional air services Røros–Oslo v.v.
from 1 December 2012





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I CONDITIONS OF TENDER.....	5
1. THE ASSIGNMENT	5
2. GENERAL RULES FOR IMPLEMENTATION OF THE TENDER PROCEDURE.....	7
3. REQUIREMENTS TO TENDERERS AND PERTAINING DOCUMENTATION REQUIREMENTS	8
4. MATTERS WHICH TENDERERS ARE OBLIGED TO FAMILIARISE THEMSELVES WITH	12
5. REQUIREMENTS FOR TENDERS	12
6. THE MINISTRY OF TRANSPORT AND COMMUNICATIONS' PROCESSING OF TENDERS	16
7. DECIDING THE OUTCOME OF THE TENDER PROCEDURE.....	17
II PUBLIC SERVICE OBLIGATIONS	19
1. INTRODUCTION	19
2. THE FOLLOWING OBLIGATIONS APPLY TO THE INDIVIDUAL ROUTES	19
2.1 RØROS – OSLO V.V.....	19
3. THE FOLLOWING OBLIGATIONS APPLY TO ALL ROUTES	20
4. ADDITIONAL CONDITIONS FOLLOWING A TENDER PROCEDURE	20
5. REPLACEMENT AND LIFTING OF PREVIOUS PUBLIC SERVICE OBLIGATIONS	21
6. INFORMATION.....	21
APPENDIX A –THE PRODUCTION ADJUSTMENT CLAUSE	22
APPENDIX B - PROVISIONS ON SOCIAL DISCOUNTS.....	24
III CONTRACT FOR SCHEDULED AIR SERVICES	25
1. LIST OF THE DOCUMENTS THAT COMPRISE THE CONTRACT	25
2. THE CONTRACT APPLIES TO THE FOLLOWING ROUTE:	25
3. THE CONTRACT PERIOD	25
4. EXCLUSIVE RIGHT TO OPERATE	25
5. OPERATIONAL REQUIREMENTS	25
6. TRAFFIC PROGRAMME	27
7. FARES, DISCOUNTS, SALES CHANNELS AND TERMS.....	27
8. PAYMENT OF COMPENSATION, RISK SHARING ETC.....	28
9. THE MINISTRY OF TRANSPORT AND COMMUNICATIONS' RIGHT OF ACCESS TO INFORMATION AND THE OPERATOR'S DUTY TO REPORT.....	29
10. RENEGOTIATION	31
11. SUSPENSION OF CONTRACTUAL OBLIGATIONS	31
12. TERMINATION, CANCELLATION AND OTHER GROUNDS FOR DISCONTINUATION	31
13. DISPUTES	32
14. ISSUE OF CONTRACT	33
15. CONTRACT SIGNING.....	33
ANNEX 1.....	34
TENDER FORM	34
ANNEX 2.....	36
TENDER BUDGET	36
ANNEX 3.....	42
TRAFFIC INFORMATION (GUIDANCE ONLY).....	42
ANNEX 4.....	44
REGULATION NO. 833 OF 12 AUGUST 2011 ON AIR TRANSPORT SERVICES IN THE EEA.....	44
ANNEX 5.....	53
REGULATION No 1008/2008.....	53
ANNEX 6.....	74
PROCEDURES IN CONNECTION WITH TRAFFIC PROGRAMMES FOR SCHEDULED AIR SERVICES SUBJECT TO PUBLIC SERVICE OBLIGATIONS.	74

I CONDITIONS OF TENDER

1. The assignment

1.1 Principal

The Norwegian Ministry of Transport and Communications invites to an open tender procedure for regional scheduled air services on the route Røros-Oslo v.v. from 1 December 2012 to 31 March 2016.

1.2 Background and objective

With effect from 1 December 2012, the Ministry of Transport and Communications has decided to change previously imposed public service obligations on regional scheduled air services in Norway.

The tender competition is announced according to the Rules of 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*, cf. Annex 5 and the Norwegian regulation of 12 August 2011 no. 833 *on air transport services in the EEA*, cf. Annex 4.

The new obligations were announced on 14 June 2012 in *the Official Journal of the European Union* no. 2012/C 168 and in *the EEA Supplement* no.31/2012, and constitutes Part II of this document.

If no air carrier has commenced or documented to the Ministry of Transport and Communications that it is about to commence sustainable scheduled air services from 1 December 2012 in accordance with the imposed public service obligations for the route area as specified in Part II, the Ministry of Transport and Communications will award exclusive rights to operate the route areas in question.

The objective of this invitation to tender is to solicit tenders that will be used as the basis for awarding such exclusive rights.

1.3 The routes involved and the contract period

The invitation to tender applies to scheduled air services from 1 December 2012 and involves the following route:

Røros – Oslo v.v.

1.4 Regulation and contractual provisions

The agreements which the Ministry of Transport and Communications enters into with the air carriers, shall be regulated by the contractual terms and conditions reproduced as Part III of this document. The air carriers are expected to have familiarised themselves with the complete contract conditions before submitting a tender, and not just the part of the contract conditions that are laid out in this condition of tender.

The regulation on air transport services in the EEA, cf. Annex 4, applies to the agreements.

1.5. Publication

The invitation to tender is published in the *Official Journal of the European Union* and the *EEA supplement*.

1.6 Address of the Ministry of Transport and Communications and contact persons

The address of the Ministry of Transport and Communications is:

The Ministry of Transport and Communications
P.O. Box 8010 Dep
NO-0030 OSLO
Norway

Office address is: Akersgata 59, Oslo, Norway

The contact persons in the Ministry of Transport and Communications are:

Adviser Jens Veberg, tel. +47 22 24 82 64, e-mail: jens.veberg@sd.dep.no
Adviser Andreas Neumann, tel. +47 22 24 83 21, e-mail: andreas.neumann@sd.dep.no
Senior Adviser Thomas Tørmo, tel. +47 22 24 83 12, e-mail: thomas.tormo@sd.dep.no

1.7 Registration of tenderers

Those who are considering submitting a tender must register with the Ministry of Transport and Communications in order to receive possible supplementary information from the Ministry, and in order to receive the file containing the tender budget, cf. Annex 2. Supplementary information will not be published on the Internet or in any other way, unless explicitly said otherwise in the provisions below.

1.8 Supplementary information

If a carrier finds that the tender documents do not provide sufficient guidance, he ought to request supplementary information from the Ministry of Transport and Communication on the address referred in Section 1.6.

If a request for supplementary information in connection with the tender documents is submitted in sufficient time before the deadline for the submission tenders (Section 5.2), the Ministry of Transport and Communications' shall send a reply to all carriers which have registered with the Ministry of Transport and Communications, cf. 1.7, and at the latest six days before the deadline for the submission of tenders.

Written requests for supplementary information shall be marked "Supplementary information tender".

1.9 Corrections, supplements or changes to the conditions of tender

Up until the deadline for the submission of tenders, the Ministry of Transport and Communications is entitled to make changes to the public service obligations as a result of amended conditions for approval of airports or decisions to close airports.

In other respects, the Ministry of Transport and Communications is only entitled to correct, supplement or make changes of a non-material nature to the conditions of tender during the period in question.

Corrections, supplements or changes shall immediately be sent to all tenderers that have registered with the Ministry, cf. Section 1.7. The information will also be made available on the Ministry's website:

<http://www.regjeringen.no/en/dep/sd/Documents/Other-documents/Tenders.html>

If corrections, supplements or changes are made at such a late stage that it is difficult for carriers to take them into account in their tenders, the deadline shall be extended proportionately. All the carriers having registered with the Ministry, cf. Section 1.7, shall be given notice of the extension.

2. General rules for implementation of the tender procedure

2.1 Rules for the tender procedure

The tender procedure shall be in accordance with Regulation (EC) no. 1008/2008 on common rules for the operation of air services in the Community (Annex 5), the supplementary provisions set out in Regulation no. 833 of 12 August 2011 *on air transport services in the EEA (Annex 4)* and the supplementary requirements in these conditions of tender. The Ministry wants to emphasize that the latter regulation in some relations contains more elaborate provisions on the tender procedure than this conditions of tender, and that these also applies to the competition.

2.2 Tender procedure

2.2.1

The procurement will be effected by means of an open tender procedure. Exceptions to this can only be made if the conditions in Section 2.2.2 or 2.2.3 are present.

2.2.2

Open procedures with subsequent negotiations may be used if only one tender is received at the closing date for submission of tender, or if only one tender is not rejected. Such negotiations shall be in accordance with the public service obligations imposed (Part II). In addition, the parties are not entitled to make substantial amendments to the original terms of contract (Part III) during such negotiations.

2.2.3

Procurement by negotiated procedure without prior publication may be used if, at the final date for submission of tender, no tenders are received. In that case, no substantial amendments must be made in the original public service obligations (Part II) or in the original terms of contract (Part III).

2.3 Duty to inform

The Ministry of Transport and Communications shall send written notification, stating the grounds in brief, if:

- a tender is rejected, or
- all tenders are refused or the tender procedure is cancelled.

The tenderer may request in writing more detailed grounds for

- why its tender was rejected, or
- why its tender was not chosen.

The Ministry of Transport and Communications is obliged to reply to such requests 15 days at the latest following receipt of the request.

2.4 Freedom of information

Act of 19 May 2006 no. 16 relating to public access to documents in the public administration (Freedom of Information Act) applies to public access to tenders and the registers of tenders. Access may be restricted pursuant to Section 13 or Section 23 of the Freedom of Information Act.

2.5 Duty of secrecy

The Ministry of Transport and Communications and its employees are obliged to prevent others from gaining access to, or knowledge of, technical devices and methods, or operating and commercial conditions, which it would be important to keep confidential for reasons of competition, out of consideration for the party the information involves.

In order for the Ministry of Transport and Communications to attend to the duty of secrecy, such information must be identified in the submitted tender.

2.6 Disqualification

The rules relating to disqualification in the Public Administration Act Section 6 to 10 apply to the tender procedure.

3. Requirements to tenderers and pertaining documentation requirements

3.1 Introduction

Tenders will be presented to the Civil Aviation Authority for review of technical and operational aspects before a tenderer is chosen. In that connection, the tenderers must be able to document that they have the required technical and operational qualifications for operating the routes in question.

Sections 3.2 to 3.9 provide an overview of the individual requirements for tenderers and the pertaining documentation requirements.

3.2 General requirement

The tenderers are obliged to carry out their operations in accordance with the Norwegian Aviation Act, appurtenant regulations, other applicable rules, and possible orders from public authorities in accordance with such provisions.

3.3 Requirement for operations in accordance with EU-OPS

Aircraft operations shall be made in accordance with Norwegian Regulation of 21 February 2008 no. 189 *implementing Council Regulation (EEC) No 3922/91 on the harmonization of technical requirements and administrative procedures in the field of civil aviation.*

The tenderer is not entitled to (can not assume as a condition for its tender) the airport or other layouts or services that can be used in operations is being run in a different manner than at the time of the publication of the competition, or that an airport, layout or service is being used or rendered in a manner that causes a third party extra costs. See Section 4.2.

The Regulation mentioned in the first paragraph, may be downloaded from.
<http://www.lovdatab.no/cgi-wift/ldles?doc=/sf/sf/sf-20080221-0189.html>.

The Norwegian Civil Aviation Authority may be contacted to obtain the complete and updated EU-OPS.

See the additional documentation requirements in Section 3.9.

3.4 Operating licence

All tenderers must have a valid licence in accordance with Regulation 1008/2008 of 24 September 2008 on common rules on managing air traffic in the Community.

See the additional documentation requirements in Section 3.9.

3.5 Tax certificate

It is a requirement that tenderers are not in default of their tax obligations.

A tax certificate must be submitted to the Ministry of Transport and Communications by the deadline for the submission of tenders. The certificate must be no more than six months old.

3.6 Valued-added tax certificate

It is a requirement that tenderers are not in default of their value-added tax obligations.

A value-added tax certificate must be submitted to the Ministry of Transport and Communications by the deadline for the submission of tenders. The certificate must be no more than six months old.

3.7 Requirements relating to health, safety and the environment

Tenderers must satisfy all statutory and regulatory requirements with respect to health, safety and the environment (HES).

Tenderers must submit a self-declaration confirming that tenderer meet, or, on award of the contract, will meet, statutory requirements as mentioned in the preceding paragraph.

3.8 Start-up date

All tenderers shall document that they will be able to start the operation, and satisfy the required regularity by the start up time of the contract period, as specified in Section 1.3. If a tenderer is not able to document this at the deadline for submission of tender, the tender must give an account of how this requirement will be met not later than the start up time.

See the additional documentation requirements in Section 3.9.

3.9 Documentation requirements

To make it possible for the Civil Aviation Authority to control that the tenderers satisfy the requirements in Section 3.2 to 3.8, the tenderers are requested to prepare additional documentation for the Civil Aviation Authority in accordance with the list below. Even though it is not a requirement in accordance with Section 5.11 that all this documentation shall be enclosed with the tender, it will nevertheless be favourable if it is enclosed.

Organisation:

- a) A valid Air Operator's Certificate (AOC), with pertaining specifications.
- b) Organisational chart containing functions and names.
- c) Number of man-years broken down into:
 - i) Administrative personnel
 - ii) Flight operations personnel
 - iii) Maintenance personnel
- d) Financial aspects
 - i) An account of the tenderer's financial situation. Under this the company shall present complete annual accounts for the last two years and annual reports from the board.
 - ii) Information proving that the company satisfies the Licence Regulation's financial requirements, including documentation in the form of audited financial statements for the last financial year, and the basis and assumptions of the income statement, balance sheet and budget.
 - iii) Traffic forecasts, break-even assessments and other comments and budgetary assumptions.
- e) A progress schedule, including a time schedule for all relevant tasks that must be attended to by the start-up date.

Aircraft:

- f) A brief description of the relevant type.
- g) Basic Performance Data, including performance data for those airports covered by the tender.

- h) The number of aircraft of this type at the carrier's disposal, or a description of plans for the leasing of such aircraft.

Operational aspects:

- i) A description of how it is planned to deal with operational aspects at each individual airport (base) to be served by the tender route.
- j) A description of how substitute aircraft can be put into operation at short notice.
- k) Availability of necessary services required for weight and balance calculations, re-fuelling, loading and unloading.
- l) Availability of qualified personnel (crew), or plans for appointing and qualifying such personnel.
- m) Airport qualifications; how will the required competence/qualifications be achieved at airports in categories B and C (if relevant).
- n) Documentation of aircraft requirements for the operation of the tender route, where this is specified in the tender or published in the AIP for the airport in question.
- o) Documented safety reviews of each route tendered for in accordance with EU-OPS 1.037 and applicable guidelines in ICAO 9859 (Safety Management Manual) chapter 9.8, particularly item 9.8.3 b, as referenced in item 9.6.11.
- p) A description of the training programme demonstrating how the operator will ensure compliance with route and aerodrome competence qualification requirements in EU OPS 1.975, as specified in AMC OPS 1.975 in the former JAR-OPS 1 Section 2, and any special requirements described for the individual airport in AIP Norway AD 2.23.

Technical aspects:

- q) A description of how the performance of technical maintenance is planned in connection with the route(s) to be operated in connection with the tender.
- r) Overnight-parking of aircraft at the terminal airport(s) in question with respect to security, maintenance work and protection against critical weather conditions.
- s) Access to necessary services for the de-icing, towing and servicing of aircraft.
- t) A copy of a contract or equivalent with a PART-145 maintenance facility, or copy of own PART-145 maintenance authorisation as appropriate.

Please note that, after the opening of tenders, the Ministry of Transport and Communications may require carriers to submit information from the licensing authorities at short notice in order to verify the information provided in the tenders or, if such information is not available, the Ministry may directly approach the licensing authority to obtain such verification.

3.10 Extended deadline for documentation requirements

If one or more tenderers have failed to submit a tax certificate, value-added tax certificate, or HSE declaration by the deadline for the submission of tenders, the Ministry of Transport and Communications may grant a short extension for submission of this documents. The same applies if a tenderer has submitted a tax certificate or value-added tax certificate older than six months reckoned from the deadline for the submission of tenders. The tenderer is not entitled to require that the Ministry of Transport and Communications exercise this right.

The extended deadline applies to all participants in the tender procedure, and the Ministry of Transport and Communications shall not commence its assessment of the received tenders until the extended deadline has expired.

4. Matters which tenderers are obliged to familiarise themselves with

4.1 Traffic information

An overview of the historical traffic figures for several of the routes covered by the tender procedure is enclosed as Annex 3. Tenderers are obliged to familiarise themselves with this information and cannot later claim that they did not know about or understand the information. Please note, that the traffic figures are only intended as a guide, and that the tenderers are themselves fully responsible for the traffic figures their tenders are based on.

4.2 Technical and operational requirements at the airports

Tenderers are obliged to familiarise themselves with technical and operational requirements applicable at the relevant airports. More detailed information in this connection can be obtained from the Civil Aviation Authority, P.O. Box 243, 8001 Bodø, or phone +47 75 58 50 60.

4.3 Restrictions on the use of airspace

Tenderers are required to thoroughly familiarise themselves with the specific conditions prevailing at the airports involved, and tenderers must comply with the restrictions relating to military use of airspace that apply on submission of their tenders, cf. Regulation no. 266 of 13 March 2007 relating to the flexible use of airspace:

<http://www.lovdato.no/cgi-wift/ldles?doc=/sf/sf/sf-20070313-0266.html>

The extent of the training areas and activation dates are published in AIP Norway. More detailed information about agreements entered into between the Royal Norwegian Air force and Avinor AS in connection with the above-mentioned regulation is available on request from Avinor AS's head office, P.O. Box 150, NO-2061 Gardermoen.

5. Requirements for tenders

5.1 Form and delivery of tenders

1. The tender must be in writing and contain a filled-in tender form that is dated, signed and marked with the airline's name. A non-filled-in version of the tender form is enclosed as Annex 1.
2. The tender must be sent in a sealed delivery.
3. The tender must be marked: "Tender PSO-routes".
4. The tender must be in a Scandinavian language or in English.
5. The tender can be delivered directly to the delivery address or be sent by post, cf. Section 1.6.
6. The tender must be sent in triplicate.

7. The tender must be delivered as paper documents and may not be submitted by electronic means.

5.2 Deadline for the submission of tenders

The deadline for the submission of tenders is 14 August 2012 at 12:00 hrs. (local time).

The tender must be received by the Ministry of Transport and Communications at the office-address stated in Section 1.6., by the deadline for the submission of tenders.

Tenders that arrive late will be rejected. Reference is nevertheless made to Section 18 second paragraph of the regulation on air transport services in EEA (Annex 4).

5.3 The services for which a tender can be submitted

Tenderers can submit tenders for the route area specified in section 1.3, cf. the public service obligations (Part II) with detailed requirements for the number of flights, seating capacity, routing, timetables, fares, continuity etc. that apply to the individual route areas.

The services which are offered shall at least be specified as follows:

- a) Traffic programme and route structure
 - i) number of departures each day, time tables and possible stops en route
 - ii) seating capacity offered on each route, c.f. the obligations (Part II)
 - iii) planned connecting flights where this is required

Cf. also Section 5.8 as far as requirements to the traffic program is concerned.

- b) Fares
 - structure, level, terms and discounts
- c) Aircraft type
 - size (seating capacity)
 - possible information about pressurised cabin if this is required
 - possible limitations to seating or cargo capacity due to operational minima
- d) The way special requirements as to safety, aircraft or environment will be met in accordance with the total tender documentation.

5.4 Tender form, tender budget, requirement for financial compensation and fares

Tenders shall be calculated in accordance with the form for tender budget presented in Annex 2 and must state the compensation in Norwegian kroner required for operation of the route in question from start-up until expiry of the contract period. All budget posts shall be specified for each operating year and for the entire tender period. Realistic budgeting is required.

The required amount of compensation for each route area is thereafter filled in to the tender form which is Annex 1 to this invitation, and shall be placed in the front of the tender.

The tender shall be based on the price level for the first year of operation (1 December 2012 – 31 March 2013). The exact compensation for the operating years that begin 1 April 2013, 1 April 2014 and 1 April 2015 shall be based on adjustments of the operating revenues and operating costs in the tender budget. These adjustments shall be within the limits defined by Statistics Norway's consumer price index for the 12-month period that ends on 15 February the same year.

Tenderers must base their tenders on their retaining all the revenues from the activity covered by the tender and on their being fully responsible for the costs. Clarifications and exceptions from this are stated in the contractual terms and conditions (Part III) section 8, 10, 11 and 12.

Tenders shall specify the fares and pertaining terms and conditions. Reference is made to the provisions on fares in the contractual terms and conditions (Part III) section 7 and in the public service obligations (Part II) Appendix B (Provisions on social discounts).

5.5 Combining route areas

N/A

5.6 "Zero tender"

If an air carrier submits a tender in which the compensation requirement is stipulated as zero, this shall be understood to mean that the carrier wishes an exclusive right to operate the scheduled air service, but requires no compensation from the state.

5.7 Deviation from the tender documents

Any deliberate deviation from the tender documents must be clearly stated. Deviations shall be specified in the tender, where appropriate with reference to the place in the tender where the deviation is described. This description must be precise and unambiguous and enable the Ministry of Transport and Communications to assess the deviation without contacting the tenderer. Tenderers may not make reservations which imply that the items in the tender budget will be used to balance the accounts, since this would be in conflict with the assumptions on which the requirements in Section 5.4 and the contractual terms and conditions (Part III) Section 8 are based.

5.8 Traffic programme

Within the framework that follows from the public service obligations (Part II), the tenderer shall itself prepare the required traffic programme for the individual route areas, cf. the contractual terms and conditions section (Part III) section 6. This traffic programme shall be enclosed with the tenders submitted and shall contain a specification of the number of seats offered on each of the routes in question. As stated in Section 7.2 this may be used as an assessment criterion when awarding the contract.

5.9 Wet-lease of aircrafts

The tender shall not be based on leasing of aircraft with crew (Wet-lease).

5.10 Airline Codes

The flights cannot carry any other airline codes than the tenderer's own and cannot be part of any code-sharing agreement.

5.11 Complete tender

A complete tender shall at least consist of:

1. Completed tender form, as specified in Section 5.4 second paragraph,
2. Completed tender budget for each tender area, as specified in Section 5.4 first paragraph,
3. Traffic programme, as specified in Section 5.3 third paragraph letter a) and Section 5.8,
4. Other information, as specified in Section 5.3
5. Documentation requirements for qualifications:
 - a) copy of licence, AOC etc., as specified in Section 3.4 and 3.9
 - b) tax certificate, as specified in Section 3.5
 - c) value-added tax certificate, as specified in Section 3.6
 - d) HSE declaration, as specified in Section 3.7

5.12 Submission of tenders

Tenders may either be delivered in person to the Ministry of Transport and Communications office address stated in Section 1.6 or be sent by registered post. A receipt for the handing in of a registered letter is deemed to constitute proof that a tender has been sent and of its date of dispatch.

5.13 Changes to and withdrawal of tenders

A tender can be withdrawn or changed prior to the deadline for the submission of tenders. Such withdrawal must be in writing. A change to a tender is deemed to constitute a new tender, which must be prepared in accordance with the requirements in this Section 5.

5.14 Binding period

Tenderers are bound by their tenders until the Ministry of Transport and Communications has concluded the tender procedure pursuant to the rules in Section 7.1, or until such time as they receive notification of a recommendation of the award of contract to another tenderer, as mentioned in Section 7.3.

If there is a dispute about the tendering process, the first paragraph is not an impediment for the tenderer, on his own initiative and one-sided, to declare that his tender stands for a longer period of time or that the Ministry of Transport and Communications requests all tenderers to give such a declaration.

6. The Ministry of Transport and Communications' processing of tenders

6.1 Registration of tenders

The date of receipt shall be recorded on tenders as they are received. On request, the Ministry of Transport and Communications shall confirm in writing when a tender was received.

6.2 Opening of tenders

The opening of tenders shall take place on 16 August 2012 at 12:00 hrs. (local time) at the Ministry of Transport and Communications' premises in Akersgt. 59 in Oslo. The opening will be carried out by two representatives of the Ministry of Transport and Communications. Tenderers are entitled to attend with two representatives each. A copy of the minutes will be sent to all tenderers after the opening.

6.3 Rejection of tenders received too late

The Ministry of Transport and Communications is obliged to reject tenders which are not received within the deadline for submission of tenders as specified in Section 5.2. Cf. nevertheless the provision in Section 18 second paragraph of the regulation on air transport services in EEA (Annex 4).

6.4 Rejection related to the tenderer

The Ministry of Transport and Communications is obliged to reject tenderers that

1. do not have a valid licence as mentioned in Section 3.4,
2. have not submitted a tax certificate as mentioned in Section 3.5,
3. have not submitted a value-added tax certificate as mentioned in Section 3.6, or
4. have not submitted a self-declaration on health, safety and the environment as mentioned in section 3.7.

The Ministry of Transport and Communications may reject tenderers which are liable to rejection under the rejection alternatives in the regulation on air transport services in EEA, Section 22 no. 2 (Annex 4).

6.5 Rejection related to the tender

The Ministry of Transport and Communications is obliged to reject a tender if it

1. has not been submitted in writing, as specified in Section 5.1 no. 1,
2. is not submitted in accordance with Section 5.1 no. 2,
3. contains combinations of route areas or deviations from the tender documents that are not permitted, or
4. contains reservations or errors, ambiguities, deficiencies or similar that may result in doubt as to how the tender shall be assessed in relation to the other tenders.

The Ministry of Transport and Communications may reject a tender if it

1. does not contain all the information and documents requested,
2. does not state the compensation required, as specified in Section 5.4,
3. at the time the Ministry awards, or has to award, a contract, is not probable that the tenderer will be able to be start operating as intended, as specified in Section 3.8, Such a rejection may happen even if the tenderer has notified that such information will be sent later.

4. appears to be abnormally low in relation to the services offered, cf. however section 21 of the regulation on air transport services in EEA (Annex 4).
5. does not fulfil the requirements of the tender mentioned in Section 5.9 or 5.10.
6. is not probable that the tenderer will be able to operate one or several routes with a regularity that is socially acceptable, independent of the requirements set out in the conditions of tender Section 8.4

6.6 Clarification

It is not permitted to change tenders after the deadline for submission of tender or attempt to change tenders through negotiations. The following clarifications of tenders are permitted:

1. clarification of ambiguities, insofar as the ambiguity is not such that the tender should have been rejected.
2. if it is necessary for technical or functional reasons, minor adjustments may be made to solutions proposed by the tenderer
3. if the tender does not make it clear that all the requirements set out in the conditions of tender are met, but at the same time it is clear that the tenderer will have the same or higher costs if he, in a clarification, makes it clear that he will meet the requirements set out in the conditions of tender.
4. if it is necessary to clarify if a tender is abnormally low as mentioned in Section 6.5, Paragraph 4.

6.7 Corrections

If the Ministry of Transport and Communications becomes aware of errors in a tender, these shall be corrected if there is no doubt concerning how the error is to be corrected.

6.8 Return of received tenders

Received tenders will not be returned.

7. Deciding the outcome of the tender procedure

7.1 Cancellation of the tender procedure and total refusal

The Ministry of Transport and Communications reserves the right to cancel the call for tender or parts of the call for tender if there are reasonable grounds for doing so, for example if the political authorities fail to grant approval, or because it, after the tender procedure is published, becomes clear that the service requirements set, is not politically acceptable.

The Ministry of Transport and Communications may cancel the call for tender if an EEA air carrier that can be given permission to exercise traffic rights in one or more of the announced areas documents that it will start sustainable flights without having been granted an exclusive right as described in Regulation no. 1008/2008 before a final contract has been signed with one of the tenderers. Reference is made to Section 1.2 second last paragraph.

The deadline for announcing commercial service, is the day before the decision about to whom the contract is awarded is publicised, cf. Section 7.3.

The Ministry of Transport and Communications may refuse all tenders if the result of the tender procedure gives reasonable grounds for doing so.

If a call for tender is cancelled, or if all tenders are refused, the Ministry of Transport and Communications shall notify those who have submitted tenders of the cancellation, in accordance with Section 2.3.

7.2 Award criteria

7.2.1

The contract shall, as the principle rule, be awarded to the tender that has the lowest claim for compensation for the whole contract period from 1 December 2012 until 31 March 2016.

7.2.2

In case award cannot be made according to the principle rule because there are tenders requiring identical amounts of compensation, the award shall be made to the tender offering the highest number of seats for the whole contract period.

7.3 Recommendation concerning award of the contract

Notification of the Ministry of Transport and Communications' decision regarding who is to be awarded the contracts, shall be given in writing to all participants concurrently and in good time before each contract is entered into. The contract is deemed to have been entered into when both parties have signed it. The notification shall state the grounds for the award.

The decision about to whom the contract is awarded, will be publicised on the Ministry of Transport and Communications' web site.

II PUBLIC SERVICE OBLIGATIONS

1. Introduction

Pursuant to Article no. 16 no. 1 and 2 in Regulation (EC) No 1008/2008 of the European Parliament and Council Regulation (EC) of 24 September 2008 on common rules for the operation of air services in the Community, Norway has decided to impose public service obligations as of 1 December 2012 in respect of scheduled air services on the following route:

Røros–Oslo v.v.

2. The following obligations apply to the individual routes

2.1 Røros – Oslo v.v.

2.1.1 Minimum frequencies, seating capacity, routing and timetables

The requirements apply throughout the year. A daily service obligation applies in both directions, except Saturdays.

Frequencies:

- Minimum two daily return services Monday – Friday and minimum two daily return service Saturday-Sunday combined

Seating capacity:

- In both directions at least 300 seats shall be offered Monday – Friday combined and at least 60 seats Saturday-Sunday combined.
- The number of seats offered shall be adjusted in accordance with the rules laid down by the Ministry of Transport and Communications in Appendix A to this publication.

Routing:

- The required services shall be non-stop.

Timetables:

Account shall be taken of the public demand for air travel.

In addition, the following apply to the required flights on Monday – Friday (local times):

- First departure from Røros no later than 07.00 hrs.
- Last departure from Oslo no earlier than 18.00 hrs.

2.1.2 Aircraft category

Aircraft registered for minimum 30 passengers and with pressurized cabin shall be used for the required flights.

3. The following obligations apply to all routes

3.1 Technical and operative conditions

Carriers' attention is especially drawn to technical and operative conditions applying at the airports. For further information, please contact:

Luftfartstilsynet (Civil Aviation Authority), P. O. Box 243, N- 8001 BODØ,
tel. + 47 75 58 50 00

3.2 Fares

The maximum basic fully flexible one-way fare (Maximum fare) in the operating year beginning 1 December 2012 and ending on 31 March 2013, must not exceed the following amounts in NOK.

Røros–Oslo	NOK	1 995,–
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For each subsequent operating year the maximum fare shall be adjusted on 1 April within the limit of the consumer price index for the 12-month period ending 15 February the same year, as made public by Statistics Norway (<http://www.ssb.no>).

The carrier shall offer tickets through at least one sales channel belonging to the carrier. The carrier is responsible for making tickets available at a price not exceeding the maximum fare through all sales channels belonging to the carrier.

Maximum fare applies also to tickets offered by other companies controlled by the carrier. The carrier is responsible for the compliance of the maximum fare by such companies.

The maximum fare shall include all taxes and fees to the authorities, and all other extra charges (service-fees etc.) the carrier adds on when issuing the tickets.

The carrier shall be party to the domestic interline agreements in force at any time, and shall offer all discounts available under such agreements.

4. Additional conditions following a tender procedure

Following a tender procedure, which limits access to the routes to one carrier, these conditions apply in addition:

Fares:

- All connecting fares to/from other air services shall be offered on equal terms for all carriers. Exempted from this are connecting fares to/from other services carried out by the tenderer, provided that the fare is maximum 40 per cent of the fully flexible fare.
- Bonus points from frequent flyer programmes can neither be earned nor redeemed on the flights.
- Social discounts shall be granted in accordance with the guidelines published in Appendix B to this notification.

Transfer conditions:

- All conditions set out by the carrier for the transfer of passengers to and from other carriers' routes, including connecting times and through check-in of tickets and baggage, shall be objective and non-discriminatory.

5. Replacement and lifting of previous public service obligations

These public service obligations replace those previously published in *the Official Journal of the European Union* No. C 247 and *the EEA supplement* No. 47 of 25 August 2011.

6. Information

Further information can be obtained from:

The Ministry of Transport and Communications
PO Box 8010 Dep
N-0030 OSLO

Telephone + 47 22 24 83 53, facsimile + 47 22 24 56 09

Appendix A –The production adjustment clause

1. Purpose of the production adjustment clause

The purpose of the production adjustment clause is to ensure that supplied capacity/seats offered by the operator are adjusted to changes in market demand. Whenever the number of passengers increases significantly and exceeds the following specified limits for the percentage of seats occupied at any time (the passenger load factor), the operator *shall* increase available seats offered. The operator *may* accordingly decrease available seats offered when the number of passengers decreases significantly. See specification below in 3.

2. Periods for measuring passenger load factors

The periods during which the passenger load factor shall be monitored and assessed range from 1 January to 30 June inclusive and 1 August to 30 December inclusive.

3. Conditions for changing production/available seats offered

3.1. Conditions for increasing production

- 3.1.1. An increase in production/available seats offered *shall* take place when the average passenger load factor on each single route encompassed by public service obligations is higher than 80 per cent. When the average passenger load factor on these routes exceeds 80 per cent in any of the periods mentioned in 2, the operator shall increase production/available seats offered by at least 10 per cent on these routes, at latest from the start of the following IATA traffic season. Production/available seats offered shall be increased at least so that the average passenger load factor does not exceed 80 per cent.
- 3.1.2. When increasing production/available seats offered according to the above, the new production may take place by using aircraft with lower seating capacity than specified in the original tender, if preferred by the operator.

3.2. Conditions for decreasing production

- 3.2.1. A decrease in production/available seats offered *may* take place when the average passenger load factor on each single route encompassed by public service obligations is lower than 35 per cent. When the average passenger load factor on these routes is lower than 35 per cent in any of the periods mentioned in 2, the operator *may* decrease production/available seats offered by no more than 25 per cent on these routes from the first day after the end of the above mentioned periods.
- 3.2.2. On routes with more than two daily frequencies offered in each direction, reduction in production according to 3.2.1 shall take place by reducing frequencies offered. The only exception from this is when the operator uses aircraft with larger seating capacity than the minimum specified in the imposition of public service obligations. The operator may then use smaller

aircraft, however, not with lower seating capacity than the minimum specified in the imposition of public service obligations.

- 3.2.3. On routes with only one or two daily frequencies offered in each direction, reduction in available seats offered can only take place by using aircraft with lower seating capacity, even if this involves reduced seating capacity than specified in the imposition of public service obligations.

4. Procedures for changes in production

- 4.1. The Norwegian Ministry of Transport and Communications has the responsibility for approving proposed time schedules submitted by the operator, including changes in production / number of provided seats. Reference is made to Circular N-3/2005 by the Norwegian Ministry of Transport and Communications, included in the tender file.
- 4.2. If production/available seats offered shall be reduced according to 3.2, a proposal for a new traffic program shall be circulated to the affected county councils, and these shall have sufficient time to make a statement before the change is put into effect. If the proposed new traffic program includes changes violating any other requirements than the number of flights and seat capacity, laid down in the public service obligations, the new traffic program must be sent to the Ministry of Transport and Communications for approval.
- 4.3. When production / number of provided seats shall be increased according to 3.1, time schedules for new production/new seats should be agreed between the operator and the county (counties) as administrative unit affected.
- 4.4. If new production / number of provided seats shall be offered according to 3.1, and the operator and the county (counties) as administrative unit affected cannot agree upon time schedules according to 4.3, the operator can seek approval according to 4.1 for a different time schedule for the new production/ provided seats from the Norwegian Ministry of Transport and Communications. This does not mean that the operator may apply for approval of a time schedule that does not include the required increase in production. There must exist substantial reasons if the Ministry shall approve proposals that diverge from those which could be agreed by the counties.

5. Unchanged financial compensation when changing production

- 5.1. The financial compensation to the operator remains unchanged when increasing production according to 3.1.
- 5.2. The financial compensation to the operator remains unchanged when decreasing production according to 3.2.

Appendix B - Provisions on social discounts

1.

On routes where the Norwegian Ministry of Transport and Communication purchases air services in accordance with the public service obligations, the following groups of people are entitled to social discounts:

- a. Persons aged from 67 years at the day of departure,
- b. Blind persons aged from 16 years,
- c. Disabled persons aged from 16 years who receive disability pension according to the Norwegian act of 28 February 1997 No. 19 on National insurance 'Folketrygdloven' chapter 12, or similar law in any EEA country.
- d. Students aged from 16 years attending special schools for people with hearing problems.
- e. Accompany spouse/partner irrespective of age, or a person who has to accompany persons included in a) – d). The person entitled to discount decides the need for escort.
- f. Travellers aged under 16 years at the day of departure

2.

The discount for people included in section 1 shall be 50 per cent of the maximum fare.

3.

This discount is not applicable when the travel is paid for by the government and/or social security office.

4.

An adult (aged from 16 years) may carry a child aged under 2 years for free, provided that the child does not occupy its own seat and when travelling together on the entire journey.

5.

Following documents may be required by the passenger:

- a. Persons mentioned in section 1 letter a) must show an official document with picture and day of birth.
- b. Persons mentioned in section 1 letter b and c) must provide proof of eligibility by means of official documentation from the Norwegian National insurance or 'Norges Blindforbund'. Persons from other EEA countries must provide similar documentation from their home country.
- c. Persons mentioned in section 1 letter d) must present a student certificate and a letter from the social security office stating that the student is receiving pension according to the Norwegian act of National insurance. Persons from other EEA countries must provide similar documentation from their home country.

III CONTRACT FOR SCHEDULED AIR SERVICES

Pursuant to Article 16 of European Parliament and Council Regulation (EC) no. 1008/2008 on common rules for the operation of air services in the Community, and the supplementary provisions set out in Regulation on EEA Air Services, a contract has been entered between [] (hereafter the Operator) and the Ministry of Transport and Communications for the operation of the scheduled air services listed in Section 2 below.

1. List of the documents that comprise the contract

The contract comprises of the following documents:

1. These general contractual terms and conditions
2. The public service obligations (Part II) relating to the route(s) listed in Section 2, also including the production adjustment rules set out in Appendix A to Part II and provisions regulating social discounts in Appendix B to Part II
3. The Operator's tender
4. The approved traffic programme at any given time for the relevant route(s), in accordance with Section 6

Possible amendments to the contract shall be made in writing.

2. The contract applies to the following route:

Røros – Oslo v.v.

3. The contract period

The contract is for the period from 1 December 2012 until 31 March 2016, with the first operating year being from 1 December 2012 to 31 March 2013, the second from 1 April 2013 to 31 March 2014 and so on. Cf., however, Section 8.5 second sentence and Section 9.8.

4. Exclusive right to operate

The contract gives the Operator an exclusive right to operate the route mentioned in Section 2 during the contract period.

5. Operational requirements

5.1 As a main rule, the Operator is obliged to conduct operations in the manner and with the production volume stated in its tender throughout the contract period.

The Operator is nevertheless obliged to adjust the production volume upwards in the cases dealt with in Section 3.1 of Appendix A to the public service obligations (Part II), and is entitled to adjust it downwards in the cases dealt with in Section 3.2 of the same appendix.

The Ministry of Transport and Communications is also entitled to approve changes in the way operations are conducted pursuant to the rules concerning traffic programmes, cf. Sections 6.3 to 6.5. It is a precondition for such changes that the production volume does not fall below the lower limit defined by the first and second paragraphs above. It is also a precondition that the Ministry of Transport and Communications deems it to be proven that the change will result in an equally good, or better, service for travellers.

- 5.2 Operations shall be conducted using the aircraft type specified by the Operator in its tender. Other aircraft types may nevertheless be used
- insofar as this is permitted pursuant to the rules in Appendix A to the public service obligations (Part II) Sections 3.1.2, 3.2.2 or 3.2.3.
 - if the alteration satisfies the requirements of public service obligations and the Ministry of Transport and Communications approves.
- 5.3 The Operator shall conduct operations in compliance with the Aviation Act, pertaining regulations, other rules governing the area and any orders issued by official authorities pursuant to such rules.

The Operator may be required to carry mailbags in return for compensation pursuant to the provisions of the Postal Services Act Section 16. The determination of compensation for such imposed services shall not affect the compensation entitlement that follows from this agreement, cf. Section 8.

- 5.4 The Operator is at all times responsible for performance of the traffic service that follows from the provisions in Section 5.1.

This includes an obligation on the Operator to procure, at his own expense, substitute aircraft and/or substitute personnel in the event of interruptions to operations. If transport cannot be carried out by air transport, the Operator shall organize alternate transport where this is possible and expedient for the passengers.

In the event of material non-conformance with the agreed service, the Operator shall immediately notify the Ministry of Transport and Communications, stating the reasons in writing. The Operator shall also provide information about measures that have been instigated to remedy the situation.

- 5.5 The Operator is obliged to operate its services in accordance with the Norwegian regulation of 28 January 2008 no. 69 *concerning the rights of disabled persons and persons with reduced mobility when travelling by air*:

<http://www.lovdata.no/cgi-wift/ldles?doc=/sf/sf/sf-20080128-0069.html>.

- 5.6 Flights covered by the contract cannot carry any other airline codes than the tenderer's own and cannot be part of any code-sharing agreement.
- 5.7 There is no service obligation on Christmas Day and on Good Friday

On the following days it is allowed to operate with a reduced flight schedule such that

the traffic on each route will be equivalent to that on Saturday or Sunday according to the approved flight schedule:

- New Year's Eve
- New Year's Day
- Maundy Thursday
- 1 May
- Ascension Day
- With Monday
- 17 May
- Christmas Eve
- Boxing Day

5.8 At airports that have installed equipment for satellite based glide path (SCAT -1), it is assumed that the Operator shall be able to use this type of satellite based approach or a similar system that provides precision approach.

6. Traffic programme

6.1 The Operator is itself responsible for having a traffic programme at all times that satisfies the requirements of the public service obligations. The traffic programme shall contain the following information about each of the routes covered by the agreement:

- a) Days with scheduled flights
- b) The number of return journeys per day
- c) The number of stops en route and the capacity in the tender area

6.2 The traffic programme that accompanied the Operator's tender shall be approved pursuant to the procedural rules in circular N-3/2005, and shall apply from the contract's entry into force on 1 December 2012.

6.3 The Operator is obliged to carry out one total revision of the traffic programme during the contract period. The revision shall be within the frame defined by Section 5.1 third paragraph, and follow the procedural rules in circular N-3/2005. The Operator is itself responsible for ensuring that the revised traffic programme enters into force on 1 April 2013 at the earliest and by 1 April 2015 at the latest.

6.4 Any changes in the traffic programme other than those mentioned in section 6.3 shall also follow the procedural rules in circular N-3/2005.

6.5 The Ministry of Transport and Communications is entitled to amend circular N-3/2005 in such a way that the amended provisions replaces those provisions it is referred to in the preceding provisions.

7. Fares, discounts, sales channels and terms

7.1 The maximum basic fully flexible one-way fare (the maximum fare) shall, during the period 1 December 2012 to 31 March 2013 not exceed the amount stipulated for the relevant route area in section 3.2 of the public service obligations (Part II).

For each subsequent year, the maximum fares shall be adjusted from 1 April in accordance with Statistics Norway's consumer price index for the 12-month period ending on 15 February of the same year.

- 7.2 The carrier shall offer tickets through at least one sales channel belonging to the carrier. The carrier is responsible for making tickets available at a price not exceeding the maximum fare through all sales channels belonging to the carrier.

The maximum fare applies also to tickets offered by other companies controlled by the carrier. The carrier is responsible for the compliance of the maximum fare by such companies.

The maximum fare shall include all taxes, charges and fees to the authorities, and all other extra charges the carrier adds on when issuing the tickets.

- 7.3 The Operator shall be party to domestic interline agreements in force at any time, including offering all discounts embraced by such schemes.
- 7.4 All connecting fares to and from other flights shall be offered on identical terms by all carriers. Connecting fares to or from other flights operated by the Operator are exempt from this requirement, provided that the fare is maximum 40 per cent of the fully flexible fare.
- 7.5 Bonus points from frequent flier programmes may neither be earned nor redeemed on flights covered by this agreement.
- 7.6 The Operator is obliged to grant social discounts in accordance with Appendix B to the public service obligations (Part II).
- 7.7 All terms and conditions applying to the transfer of passengers to and from other carriers' flights, including transfer times and through check-in of tickets and luggage, shall be objective and non-discriminatory.

8. Payment of compensation, risk sharing etc.

- 8.1 The Operator is entitled to compensation from the Ministry of Transport and Communications for the following route(s):

Røros – Oslo v.v.

The compensation amounts to:

- For the first operating year:	_____	NOK
- For the second operating year:	_____	NOK
- For the third operating year:	_____	NOK
- For the fourth operating year:	_____	NOK

No adjustment of the compensation shall be made for the first operating year.

For the second to fourth operating years, the final compensation will be recalculated on the basis of the tender budget that accompanied the tender adjusted for operating revenues and expenses. These adjustments must be within the limits defined by Statistics Norway's consumer price index for the 12-month period ending on 15 February the same year.

No change shall be made in the compensation as a result of the production volume being adjusted upwards or downwards pursuant to Section 5.1 second paragraph.

This is subject to the proviso that the Storting (the Norwegian Parliament), when adopting its annual budget, makes the necessary funds available to the Ministry of Transport and Communications to cover the compensation requirements.

- 8.2 The Operator shall retain all revenues generated by the service. If the revenues are greater or the expenditure smaller than the figures on which the tender budget that accompanied the tender is based, the Operator may retain the balance. Correspondingly, the Ministry of Transport and Communications is not obliged to cover any negative balance in relation to the tender budget.
- 8.3 All public charges, including aviation charges, are payable by the Operator.
- 8.4 Notwithstanding any action for damages, the financial compensation shall be reduced in proportion to the total number of flights cancelled for reasons the Operator could have avoided if all reasonable measures had been taken, if the total number of flights cancelled for such reasons exceed 1.5 per cent of the planned number of flights according to the approved traffic programme at any given time.
- 8.5 The Ministry of Transport and Communications shall pay compensation in arrears in twelve monthly pro rata amounts per operating year. With the aim to assess eventual reductions in compensation, the final payment may be withheld pending the Operator's report pursuant to Section 9.2 and discussions according to Section 9.8, so that any reductions in the compensation can be made.

9. The Ministry of Transport and Communications' right of access to information and the Operator's duty to report

- 9.1 By 15 May 2013, 2014, 2015 and 2016 the Operator shall on its own initiative send audited accounts for the preceding financial year, for both the tender area and for the Operator's total business, to the Ministry of Transport and Communications.
- 9.2 Every second month, the Operator shall send a report to the Ministry of Transport and Communications containing information about:
 1. Accounts for the route or route area
 2. Interruptions to operations during the period and an account of the cause(s)
 3. Punctuality (within 15 minutes of planned departure times)
 4. Regularity (the proportion of cancelled flights and reasons). It shall be clearly stated which flights have been cancelled for reasons mentioned in Section 8.4.

5. Amount of traffic for each route (number of passengers and load factor)
6. Passenger revenues, proportion of passengers in C class, the proportion of passengers in transfer to/from other air routes, freight and mail revenues
7. Actual production for the route (the number of seat and tonne kilometres, number of landings and number of flying hours)
8. Average fare per route

For the tender operations, accounts and deviations shall be reported with relation to the tender budget.

The Ministry of Transport and Communications is also entitled to instruct the Operator to provide other information in the reports.

The reports must be received by the Ministry of Transport and Communications at the latest by the 15th of the second month following the last of the two months covered by the report – the first report being due by 15 February 2013.

- 9.3 The Operator shall, without unnecessary delay, inform the Ministry of Transport and Communications if substantial deviations arise between the traffic volume on which the tender was based and the actual traffic volume.
- 9.4 Pursuant to Section 7.1 second paragraph the Operator shall notify the Ministry of Transport and Communications of changes to fares at the latest at the same time as they enter into force.
- 9.5 Traffic information received pursuant to Section 9.2 no. 5 can be made public, for example as background documentation in subsequent tender procedures.

Even though the traffic information which the Ministry of Transport and Communications receives from the Operator is subject to a duty of secrecy, cf. the Freedom of Information Act Section 13 and the Public Administration Act section 13 first paragraph no. 2, the duty of secrecy is not an obstacle to using the information to achieve the objective for which it was provided or obtained, cf. the Public Administration Act Section 13 b first paragraph no. 2.

- 9.6 The Ministry of Transport and Communications may at any time request the Operator to provide information relating to the contractual relationship. If it is deemed necessary, the Ministry of Transport and Communications can require the information to be confirmed by an auditor. A deadline can be stipulated for the submission of such information.
- 9.7 If the Operator's reporting is inadequate or is submitted after the deadlines stipulated according to the above provisions of Section 9, the Ministry of Transport and Communications is entitled to withhold compensation.
- 9.8 The Ministry of Transport and Communications shall, together with the Operator, be entitled to discuss the work performed under the contract during the first eight weeks following the end of the contract period. In such case, the Ministry of Transport and Communications may withhold compensation in accordance with Section 8.5 second sentence.

10. Renegotiation

- 10.1 If, during the contract period, material or unforeseen changes occur in the assumptions on which this contract is based, each of the parties may request negotiations for revision of the contract. Such request must be made three months at the latest after the change has occurred. The right to request negotiations does not entail restrictions in the right to apply sanctions in case of breach of the contract or general rules of contract law.
- 10.2 Material changes in the public charges for which the Operator is liable pursuant to Section 8.3 always constitute grounds for renegotiation.
- 10.3 If new statutory or regulatory requirements, or orders issued by the Civil Aviation Authority result in an airfield having to be used in a different manner than originally assumed by the Operator, the parties shall endeavour to negotiate changes in the contract that allow the Operator to continue operations for the rest of the contract period. If the parties fail to reach agreement, the Operator is entitled to compensation pursuant to the rules relating to shutting down or closure in Section 12.4, insofar as they are applicable.
- 10.4 If the Ministry of Transport and Communications presumes that demands for renegotiations would be ineffective, the Ministry may decide instead to put the route up for tender anew.

11. Suspension of contractual obligations

- 11.1 The Ministry of Transport and Communications is entitled to suspend the contract if the Operator does not fulfil its reporting duty or prevents access pursuant to Sections 9, provided he has received written notice with a time-limit of a minimum of two weeks to rectify the situation. Such suspension may remain in effect until the situation is rectified.
- 11.2 Similarly, the Ministry of Transport and Communications may suspend the contract if the Operator's aircraft is/are involved in an aviation accident or serious aviation incident. Suspension pursuant to this provision may last until the investigating authority have completed its investigation of the accident or occurrence, and the Civil Aviation Authority has had an opportunity to assess whether the aircraft involved is/are in safe working order.
- 11.3 Suspension does not entail restrictions in the right to apply sanctions in case of breach of contract.

12. Termination, cancellation and other grounds for discontinuation

- 12.1 Subject to the restrictions following from insolvency law, the Ministry of Transport and Communications may terminate the contract with immediate effect if the Operator becomes insolvent, initiate debt settlement proceedings or goes bankrupt. Equally, the Ministry of Transport and Communications may cancel the contract

with immediate effect in the other cases dealt with in Section 22 no. 2 in Regulation on air transport services in the EEA (Annex 4).

- 12.2 The Ministry of Transport and Communications can terminate the contract with immediate effect if the Operator loses its licence or fails to have it renewed.
- 12.3 If, due to *force majeure* or other circumstances beyond the Operator's control, the Operator has been unable to fulfil its contractual obligations for more than four of the last six months, the contract can be terminated by both parties by giving one month's written notice. Failure to fulfil contractual obligations as a result of the shutting down or closure of airfields is regulated in Section 12.4.
- 12.4 If the Storting decides to close an airfield, or if an airfield is closed as a result of an order issued by the Civil Aviation Authority, the parties' ordinary contractual obligations lapse from such time as the airfield is actually shut down or closed.

If the period of time between the Operator first being informed about the shutting down or closure and the actual shutting down or closure is greater than one year, the Operator is not entitled to compensation for any financial loss it incurs as a result of the termination of the contract. If the period mentioned is less than one year, the Operator is entitled to be restored to the financial situation it would have been in had operations been continued for one year from the date it was notified of the shutting down or closure, or alternatively until 31 March 2016 if this date is earlier.

- 12.5 In the event of material breach of contract, the contract may be cancelled with immediate effect by the other party.

13. Disputes

The parties shall endeavour to resolve any disputes concerning interpretation of the contract through negotiation. If these fail to resolve the matter, the case may be brought before the ordinary courts for a decision, unless the parties agree to resolve the matter by arbitration.

Unless the parties agree otherwise, Oslo District Court is the legal venue for all disputes concerning this contract.

14. Issue of contract

Two – 2 – originals of this contract have been drawn up, one to be retained by the Ministry of Transport and Communications and one by the Operator.

15. Contract signing

Place: _____

Place: _____

Date: _____

Date: _____

The Ministry of Transport
and Communications:

The Operator:

ANNEX 1

Tender form

THE MINISTRY OF TRANSPORT AND COMMUNICATIONS' TENDER ON SCHEDULED REGIONAL AIR SERVICES IN NORWAY FROM 1 DECEMBER 2012

In this form the tenderers shall fill in the required amount of compensation for each route area and if relevant for permitted combinations of route areas that they tender for. Each tender shall be calculated individually in accordance with the tender budget in Annex 2.

The amounts of compensation that are entered into the form shall be for the entire contract period based on the price level for the first operating year (1 December 2012 – 31 March 2013). The amounts of compensation shall be given in NOK 1000.

To be able to submit tenders for combinations the tenderers must also submit tenders for each individual route area in case they are chosen for one alone and for all underlying partial combinations, in case they are chosen for only such a partial combination.

1. Identification of the tenderer

Name of tenderer	
Address	
Telephone	
Facsimile	
E-mail	
Contact person (s)	

2. Specification of the tender(s) submitted by stating the need for compensation in NOK 1000 for the entire contract periode based on the price level for the first operating year (1 December 2012 – 31 March 2013)

Subject to tender:	<i>Compensation required, c.f. post 26 in the tender budget (in NOK 1000)</i>
<i>Røros – Oslo v.v.</i>	

3. Signature

Place	Date	Binding signature

ANNEX 2

Tender budget

This chapter contains the tender budgets to be completed for each tender, c.f. Part I section 5.4. The tender budgets shall be drawn up for the entire tender period as well as for each single operating year, the periods being indicated on the budget sheets. The tender budget shall be completed for each route area where tender is submitted. In addition, when tender is submitted on allowed combinations of route areas, a tender budget shall be completed for each route that is part of the combination. In addition to the completion of the budget sheets, the tender budget shall also be enclosed electronically. The Ministry of Transport and Communications may on request provide a computer file with framework for the tender budgets in Microsoft Excel format, c.f. Part I section 1.7.

All figures shall be given in NOK 1000 and in the price level for the first operating year, defined to be 1 December 2012 – 31 March 2013. The tender budgets for the second operating year, 1 April 2013 – 31 March 2014, the third operating year, 1 April 2014 – 31 March 2015 and the fourth operating year, 1 April 2015 – 31 March 2016, shall form the basis for the operating revenue and operating cost adjustments, i.e. adjustments of items 1-27 inclusive, to be carried out by the Ministry of Transport and Communications, c.f. Part III section 8.1.

All figures in the tender budget shall be specified with amounts. This also applies when the figure is NOK 0, e.g. when the tender is based on marginal cost or in case the revenue or cost concerned is irrelevant for the operations offered.

TENDER BUDGET

Route area: _____

Overall period: 1 December 2012 – 31 March 2016

All figures in NOK 1000 and based on the price level for the operating year 1 December 2012 – 31 March 2013

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Other operating revenues	_____
4	Total operating revenues (1...3)	_____
5	Passenger charges	_____
6	Take-off charges	_____
7	Terminal navigation charges (TNC)	_____
8	En route charges	_____
9	Security charges	_____
10	Fuel expenses	_____
11	Crew expenses	_____
12	Maintenance expenses	_____
13	Handling/station services	_____
14	De-icing	_____
15	Leasing of aircraft	_____
16	Ticket and distribution expenses	_____
17	Irregular passenger service	_____
18	Fixed administrative expenses	_____
19	Depreciation	_____
20	Other operating costs	_____
21	Total operating costs (5...20)	_____
22	Financial revenues	_____
23	Financial expenses	_____
24	Financial items (-22+23)	_____
25	Profit margin	_____
26	Compensation required (-4+22+24+25)	_____

TENDER BUDGET

Route area: _____

1st operating year: 1 December 2012 – 31 March 2013

All figures in NOK 1000 and based on the price level for the operating year 1 December 2012 – 31 March 2013

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Other operating revenues	_____
4	Total operating revenues (1...3)	_____
5	Passenger charges	_____
6	Take-off charges	_____
7	Terminal navigation charges (TNC)	_____
8	En route charges	_____
9	Security charges	_____
10	Fuel expenses	_____
11	Crew expenses	_____
12	Maintenance expenses	_____
13	Handling/station services	_____
14	De-icing	_____
15	Leasing of aircraft	_____
16	Ticket and distribution expenses	_____
17	Irregular passenger service	_____
18	Fixed administrative expenses	_____
19	Depreciation	_____
20	Other operating costs	_____
21	Total operating costs (5...20)	_____
22	Financial revenues	_____
23	Financial expenses	_____
24	Financial items (-22+23)	_____
25	Profit margin	_____
26	Compensation required (-4+22+24+25)	_____

TENDER BUDGET

Route area: _____

2nd operating year: 1 April 2013 – 31 March 2014

All figures in NOK 1000 and based on the price level for the operating year 1 December 2012 – 31 March 2013

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Other operating revenues	_____
4	Total operating revenues (1...3)	_____
5	Passenger charges	_____
6	Take-off charges	_____
7	Terminal navigation charges (TNC)	_____
8	En route charges	_____
9	Security charges	_____
10	Fuel expenses	_____
11	Crew expenses	_____
12	Maintenance expenses	_____
13	Handling/station services	_____
14	De-icing	_____
15	Leasing of aircraft	_____
16	Ticket and distribution expenses	_____
17	Irregular passenger service	_____
18	Fixed administrative expenses	_____
19	Depreciation	_____
20	Other operating costs	_____
21	Total operating costs (5...20)	_____
22	Financial revenues	_____
23	Financial expenses	_____
24	Financial items (-22+23)	_____
25	Profit margin	_____
26	Compensation required (-4+22+24+25)	_____

TENDER BUDGET

Route area: _____

3rd operating year: 1 April 2014 – 31 March 2015

All figures in NOK 1000 and based on the price level for the operating year 1 December 2012 – 31 March 2013

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Other operating revenues	_____
4	Total operating revenues (1...3)	_____
5	Passenger charges	_____
6	Take-off charges	_____
7	Terminal navigation charges (TNC)	_____
8	En route charges	_____
9	Security charges	_____
10	Fuel expenses	_____
11	Crew expenses	_____
12	Maintenance expenses	_____
13	Handling/station services	_____
14	De-icing	_____
15	Leasing of aircraft	_____
16	Ticket and distribution expenses	_____
17	Irregular passenger service	_____
18	Fixed administrative expenses	_____
19	Depreciation	_____
20	Other operating costs	_____
21	Total operating costs (5...20)	_____
22	Financial revenues	_____
23	Financial expenses	_____
24	Financial items (-22+23)	_____
25	Profit margin	_____
26	Compensation required (-4+22+24+25)	_____

TENDER BUDGET

Route area: _____

4rd operating year: 1 April 2015 – 31 March 2016

All figures in NOK 1000 and based on the price level for the operating year 1 December 2012 – 31 March 2013

1	Passenger revenues	_____
2	Freight and post revenues	_____
3	Other operating revenues	_____
4	Total operating revenues (1...3)	_____
5	Passenger charges	_____
6	Take-off charges	_____
7	Terminal navigation charges (TNC)	_____
8	En route charges	_____
9	Security charges	_____
10	Fuel expenses	_____
11	Crew expenses	_____
12	Maintenance expenses	_____
13	Handling/station services	_____
14	De-icing	_____
15	Leasing of aircraft	_____
16	Ticket and distribution expenses	_____
17	Irregular passenger service	_____
18	Fixed administrative expenses	_____
19	Depreciation	_____
20	Other operating costs	_____
21	Total operating costs (5...20)	_____
22	Financial revenues	_____
23	Financial expenses	_____
24	Financial items (-22+23)	_____
25	Profit margin	_____
26	Compensation required (-4+22+24+25)	_____

ANNEX 3

Traffic information (Guidance only)

In this chapter certain traffic and revenue information for the route areas encompassed by the public service obligations is offered.

This information is based on rapports from the operating airlines to the Ministry of Transport and Communications. The information includes such data that was available considering the number of passengers, passenger revenues, and also freight- and post revenues.

The figures relate to the periods specified for all tables and have to be seen in accordance with the traffic programmes and interline agreements, as well as the amounts of post and freight, actual for the said periods.

Freight and post are not encompassed by the public service obligations and the tenderers themselves are responsible for the budgeting of such revenues and for concluding possible contracts with post and freight customers.

The tenderers themselves are responsible for calculating the revenues generated from the routes encompassed by the public service obligations, taking into account the revenue reductions related to transfer discounts.

The tenderers attention is especially drawn to the fact that this traffic information is offered for guidance purposes only, and that the tenderers themselves are fully responsible for the tender budgeting, cf. Part I, section 4.1 and 5.4. Tenderers may not make reservations as to the traffic information.

Tenderers are fully responsible for developing traffic programmes in accordance with the public service obligations at all times.

Carriers may also find traffic information for all airports concerned on the web pages of Avinor: (<http://www.avinor.no>)

Number of passengers

April 2009-March 2010

RRS – OSL 13 831

April 2010-March 2011

RRS – OSL 14 621

April 2011-March 2012

RRS – OSL 15 061

Passenger revenues (NOK 1000)

April 2009-March 2010

RRS – OSL 8 340

April 2010-March 2011

RRS – OSL 10 277

April 2010-March 2011

RRS – OSL 12 490

Freight- and post revenues (NOK 1000)

April 2009-March 2010

Freight revenues Oslo-Røros 20

April 2010-March 2011

Freight revenues Oslo-Røros 27

April 2010-March 2011

Freight revenues Oslo-Røros 29

ANNEX 4

Regulation No. 833 of 12 August 2011 on air transport services in the EEA

Translated by the Ministry of Transport and Communications

Legal basis: Laid down by the Ministry of Transport and Communications on 12 August 2011 pursuant to Act No. 101 of 11 June 1993 on Aviation, Sections 9(1), 10(42), 10(43), 15(4) and 16(1), cf. Delegation Enactment No. 321 of 6 April 2001.

EEA Reference: EEA Agreement, Annex XIII, Article 64a, 65 and 66b, cf. the EEA-committee decision 90/2011

1. Miscellaneous

§ 1. *Implementation of Regulation (EC) No 1008/2008*

Annex XIII No 64a of the EEA Agreement, (Regulation (EC) No1008/2008) on common rules for the operation of air services in the Community (hereinafter referred to as the Air Services Regulation), as amended by Annex XIII, Protocol 1 to the Agreement and otherwise by the Agreement, applies as a regulation.

§ 2. *Scope of Application*

The regulation applies nationally, with the exception of Svalbard.

§ 3. *Competent authorities responsible for each section of the regulation*

(1) Luftfartstilsynet (the Norwegian Civil Aviation Authority) is responsible for supervision of the provisions in Chapter II of the Air Services Regulation, and of chapter 3 of this regulation. This includes the imposition of sanctions by Luftfartstilsynet in accordance with the provisions in Chapter II of the Air Services Regulation.

(2) Forbrukerombudet (the Norwegian Consumer Ombudsman), as Aviation Authority, is responsible for supervision pursuant to the provisions in Article 23 of the Air Services Regulation, cf. the provisions relating to sanctions in Section 26 in this Regulation.

(3) Samferdselsdepartementet (the Norwegian Ministry of Transport and Communications) is responsible for the administration of all the provisions in the Air Services Regulation and in this Regulation that are not covered by subsection (1) and (2).

§ 4. *Definitions*

For the purposes of this Regulation:

1. *Tenderer* shall mean an air carrier that submits a tender;
2. *Dry lease* shall mean the lease of an aircraft where the lessee/carrier assumes the technical and operational responsibility during the lease period;

3. *Award of contract by negotiated procedure* shall mean a procurement procedure whereby the principal consults air carriers of its choice and negotiates the terms of the contract with one or more of them;
4. *Commercial responsibility* shall mean that the lessee assumes all financial liability, i.e. the lessor's compensation shall be tied to a fixed time period and not to the aircraft's revenue;
5. *Operator* shall mean any company which holds a valid licence or equivalent authorisation;
6. *Principal* shall mean Samferdselsdepartementet (the Norwegian Ministry of Transport and Communications), the executive agency, or local authority or county appointed by Samferdselsdepartementet;
7. *Wet lease* shall mean the lease of aircraft including crew, where the aircraft is operated by the lessor, and the lessor assumes technical and operational responsibility during the lease period;
8. *Open tender procedure* shall mean a procurement procedure whereby all air carriers may submit tenders; and
9. *Open tender procedure with subsequent negotiations* shall mean a procurement procedure whereby the principal, having applied an open tender procedure in accordance with subsection 3 above, consults one or more tenderers of its choice and negotiates the terms of the contract with one or more of them.

2. Supplementary provisions regarding the award of an operating licence

§ 5. *The relationship to other provisions regarding operating licence*

Carriers to which the licensing provisions in Chapter II of the Air Services Regulation do not apply are governed by regulation No. 4166 of 25 April 1974 on commercial aviation, as far as it follows from the scope of application of this regulation.

3. Supplementary provisions regarding the lease of aircraft

§ 6. *Approval of dry lease*

(1) An agreement for dry lease shall be submitted to Luftfartstilsynet for approval, cf. Article 13 (1)–(2) of the Air Services Regulation. The agreement must be approved before the lease comes into effect.

(2) The lease agreement, along with a certificate of insurance, shall be attached to the application. The agreement shall be dated, signed by both parties, and shall as a minimum contain the following information:

- a) Name of the owner/lessor and lessee/operator;
- b) Aircraft model, serial number and registration mark;
- c) MTOW in the event that the aircraft is leased from abroad;
- d) Lease period (from date to date);
- e) Lessee's/operator's commercial responsibility/risk for operation of the aircraft during the lease period;
- f) Lessee's/operator's responsibility as regards insurance; and
- g) Any valid sub-leasing agreement between the owner and lessor, in the event that the lessor is not the owner of the aircraft.

(3) In addition to the items set out in subsection (2), the following conditions shall apply, which must also be evident from the application:

a) Operative conditions:

1. Operational responsibility must clearly rest with the lessee;
2. The aircraft shall be operated entirely by crews employed by the lessee;
3. Required type checking/ rating of the lessee's crew;
4. Required "Difference list" – training;
5. Type of operation, IFR/VFR (or both);
6. Possible validation of the crew's certificates;
7. The Lessee's Operational Handbook sufficient for the planned operation;
8. Transfer/training programme for the crew;
9. Available and qualified instructors;
10. The lessee's organisation should be of sufficient size to handle the expansion; and
11. The base/stationing location must be settled.

b) Technical condition: The lessee shall be approved for the model of aircraft concerned.

§ 7. Approval of wet lease

(1) An agreement for wet lease shall be submitted to Luftfartstilsynet for approval, cf. Article 13(1)–(2) of the Air Services Regulation. The agreement must be approved before the lease comes into effect.

(2) In order for the application to be approved it is required that:

- (a) the lessor has a valid licence and AOC,
- (b) the lessee operates aircraft of the same category,
- (c) the operational and technical responsibility rest with the lessor, and
- (d) the lessee has the commercial responsibility.

(3) Both the operational and technical responsibility rest with the lessor, but the lessee has the commercial responsibility.

§ 8. Registration

Aircraft leased for more than 6 months shall be registered in Norway. Luftfartstilsynet may, in special circumstances, grant an exemption from this requirement for up to 6 months.

§ 9. Leasing

(1) Luftfartstilsynet shall be notified when a Norwegian registered aircraft is dry leased to a foreign operator, as well as when the lease ends and the aircraft is returned to its owner. The lease agreement shall be attached to the notification.

(2) The lessor shall request that Luftfartstilsynet asks the foreign authority to assume supervisory responsibility.

4. Supplementary provisions regarding the imposition of public service obligations and completion of the tender procedure

§ 10. Authority responsible for imposing public service obligations

Samferdselsdepartementet has exclusive authority to impose public service obligations for routes within, into or out of Norway in accordance with Article 16 of the Air Services Regulation. Anyone who desires new or altered public service obligations must direct their request to the Ministry.

§ 11. Award of exclusive rights to operate a route after tender procedure

According to Article 16 (10) of the Air Services Regulation, exclusive rights to operate a flight route shall be awarded by public tender in accordance with Article 17 of the same Regulation. The provisions in this Chapter supplement the requirements on choosing and carrying out a tender procedure in the Regulation.

§ 12. General requirements for tenderers

(1) Any entity which submits a tender must have a valid licence issued by Luftfartstilsynet in accordance with the requirements in Chapter II of the Air Services Regulation.

(2) All Norwegian tenderers shall provide a tax certificate for value added tax and tax. The tax certificate must be received by the principal no later than the closing date for submission of tenders. The tax certificate shall be no more than six months old on the date on which the principal receives the certificate.

(3) Any entity which submits a tender must be able to prove that it is able to fulfil special requirements, if any, as to safety, materials and the protection of the environment in accordance with specifications set out in the invitation to tender.

(4) Any tenderer receiving financial compensation in connection with the operation of other routes on which its traffic rights are granted without competition shall separate such grant-aided activity from tender activity for accounting purposes.

§ 13. Choice of procurement procedure

Procurement shall be effected by means of an open tender procedure. Exceptions may be made from this provision provided that the conditions of subsections 1 to 4 are satisfied.

1. An open tender procedure with subsequent negotiations may be applied if, after the closing date for submission of tenders, there proves to be only one tenderer or if only one tender remains after the other tenders have been rejected in accordance with the rules in Sections 18, 20, 21 or 22. Negotiations pursuant to subsection 1 shall be in accordance with the public service obligations. No significant changes may be made in the original contract terms during such negotiations.
2. A tender procedure without preceding negotiations may be applied if after the closing date for submission of tenders there proves to be no tender. In this case no significant changes may be made in the original public service obligations or in other contract terms.
3. If the principal reserves the right to apply negotiations pursuant to subsection 1 or 2, this must be clear from the invitation to tender.
4. A procurement procedure with negotiations without prior publication may also be applied if, due to special circumstances unforeseeable by the principal (see Article 16 (12) of the

Air Services Regulation), it is impossible to meet the time limits laid down for the open tender procedure.

§ 14. *Publication*

(1) The principal shall publish a notice of the tender competition in the Official Journal of the European Communities.

(2) The notice in the Official Journal of the European Communities shall be worded and published in its entirety in one of the official languages of the European Union.

§ 15. *Deadlines*

(1) The closing date for submission of tenders shall be no earlier than two months after the day of publication.

(2) The period between submission of tenders and opening of tenders should be at least 24 hours.

(3) Provided they have been requested in good time, the tender documents and supporting documents shall be sent to tenderers by the principal within a reasonable period.

(4) In urgent cases where it is impossible to apply the deadlines mentioned in sub-sections (1) to (3), the principal may, after a concrete assessment, lay down shorter deadlines.

§ 16. *Content of the notice of the tender competition*

The notice of the tender competition shall normally contain:

- a) the principal's name, postal address, telephone number, fax number and e-mail address;
- b) the name and address of the agency to which requests for relevant documents may be directed as well as the final date for making such requests;
- c) special requirements, if any, as to safety, materials and the environment;
- d) the geographical location of the route area or the route;
- e) the minimum transport standard desired, including type of materials, frequency, number of stops en route, fares, service, etc,
- f) details of how to use the standard tender form;
- g) how the tender shall be presented, including requirements as to documentation of revenues, costs and traffic volume, as well as a statement of methods of calculation and basis for analysis and any use of special forms;
- h) how compensation requirements, if any, shall be presented;
- i) closing date and specification of time and place for submission of tenders, including the address to which the tender shall be sent;
- j) the language that may be used;
- k) a statement that the principal reserves the right to reject all tenders;
- l) the persons authorised to be present at the opening of the tenders and the date, hour and place of such opening;
- m) a statement that overdue tenders and tenders not in conformity with the invitation to tender will be rejected;
- n) a statement that the principal reserves the right to apply subsequent negotiations;
- o) the period during which the tenderer is bound to keep open his tender (validity period);

- p) the period of validity of the contract and the starting date;
- q) criteria that will be applied when awarding the contract, where possible in descending order of priority, cf. Section 25;
- r) information concerning use of a standardised contract; and
- s) information concerning sanctions in the event of breach of contract.

§ 17. Formulation of the tender

The tender must be in writing and submitted in a closed and marked cover, either directly or by post. The tender may also be submitted by electronic means, provided that this is permitted in the tender documents and provided that:

- a) the tender contains all the required information;
- b) the confidentiality of the tender is maintained until evaluation takes place;
- c) the tender is, for reasons of proof, confirmed in writing or by sending a confirmed copy as soon as possible if this is necessary; and
- d) the tender is not opened until after the closing date for receipt of tenders.

§ 18. Rejection of overdue tenders

(1) Tenders arriving after the closing date for submission of tenders, cf. Section 16 character i, shall be rejected as overdue and returned.

(2) However, this does not apply to tenders which arrive after the closing date but before the opening of the tenders, provided it is clear from the postmark that, given normal postal service schedules, the tender was mailed early enough for it to have arrived before the closing date, or the tenderer in question is able to substantiate this by means of a receipt from the postal carrier to which the tender was delivered, before the opening of the tenders.

(3) The rejection decision including the grounds for it shall be entered in the register of tenders.

§ 19. Procedure for the opening of tenders

(1) Tenders received in due time shall be opened at the place and hour stated in the tender documents. At the opening of the tenders a representative of the principal, duly designated beforehand, shall undertake the opening of the tenders and sign the register of tenders. Each tenderer is entitled to have one representative present.

(2) During the opening of the tenders the name of the tenderer shall be read out, but not the compensation required and the proposed transport standard. Once the principal, in accordance with Section 13(1), has resolved that there is no need for subsequent negotiations, the required compensation shall be made public. In the case of subsequent negotiations, the required compensation will be made public once the negotiations are closed.

(3) The following shall be entered in the register of tenderers:

- a) date and hour of the opening;
- b) the tender's identification mark;
- c) which route area or routes are covered by the invitation to tender;
- d) persons present;
- e) the amount of compensation required in the tender as well as the name of the tenderer; and

f) any rejections of the tenderers or tender.

§ 20. Rejection because of features of the tender

(1) A tender shall be rejected if:

- a) it is not submitted in compliance with Section 17;
- b) it contains deviations which conflict with what is expressly permitted in the tender documents; or
- c) doubt arises due to reservations, errors, lack of clarity, lack of information or similar as to whether the tender can be compared with the other tenders.

(2) A tender may be rejected after closer assessment if:

- a) the tender does not contain all the information prescribed in the invitation to tender;
- b) the tender fails to state the compensation required as prescribed in the invitation to tender (cf. Section 16, character h);
- c) the tenderer is unable to start up within the time-limit prescribed in the invitation to tender (cf. Section 16, character p); or
- d) the tender states a compensation requirement that is unreasonably low in relation to the service to be provided, cf. Section 21.

(3) It shall be clear from the register of tenders which tenders are rejected and the reason for rejection (cf. Section 19, character f).

§ 21. Procedure for rejection when the demand for compensation is abnormally low

(1) Before a tender is rejected because the need for compensation is abnormally low, the principal shall demand in writing relevant information about the individual parts of the offer/tender and review these on the basis of the explanations that are given.

(2) The principal may take into account explanations that are justified on objective grounds, including savings in the production of the service, technical solutions or innovative ways of organising the activities.

§ 22. Rejection because of features of the tenderer

(1) The Principal may reject tenders from any tenderer which:

- a) do not satisfy the requirements in Section 12, or
- b) do not satisfy other requirements on tenderers set out in the tender documents.

(2) The Principal may reject any tenderer:

- a) which is bankrupt, is engaged in debt settlement proceedings or under liquidation, or which has suspended its business activities or which is in any analogous situation arising from a similar procedure pursuant to national laws or regulations;
- b) which is the subject of proceeding for a declaration of bankruptcy, for debt settlement, for an order for compulsory liquidation or is the subject of any other similar proceedings pursuant to national laws or regulations;
- c) which has been convicted by final judgement of an offence concerning its professional conduct;
- d) which has been guilty of grave breaches of professional and ethical standards in its line of business;

- e) which has not fulfilled its obligations relating to the payment of taxes and levies in accordance with national laws of the state in which it is established; or
 - f) which is guilty of serious misrepresentation in its supply of information.
- (3) Where the principal requires proof that none of the cases mentioned in nr. 2 letter a), b), c), e) or f), the following documents may be accepted as sufficient evidence:
- a) for the cases mentioned in a), b) or c): an extract from the Criminal Records Bureau or the National Register of Insolvencies. Failing this, an equivalent document issued by a judicial or administrative authority in the tenderer's home state or state where it is currently resident showing that none of these cases applies to the tenderer, or
 - b) for the cases mentioned in e) or f): a certificate issued by the competent authority in the state concerned.

§ 23. *Supplementary information*

The principal may request tenderer(s) to supplement or elucidate the certificates and documents which they have submitted.

§ 24. *Cancellation of the tender procedure and total rejection*

- (1) The principal may cancel the tender procedure or parts of the tender procedure with immediate effect if justifiable grounds exist.
- (2) The principal may reject all tenders if the result of the tender procedure gives justifiable grounds for so doing.
- (3) The principal shall inform all participants in the tender procedure of such decisions as mentioned in (1) and (2), and whether a new tender procedure will be implemented.

§ 25. *Criteria for selection of tender*

- (1) The Principal shall base the award of a contract either solely on the lowest required compensation, or on the overall economically most advantageous tender.
- (2) If, based on an overall assessment, the award is made to the economically most advantageous tender, but the required compensation alone is not the decisive criterion, all criteria that the principal intends to apply to the award must have been stated in the invitation to tender, where possible in descending order of priority. Criteria such as the scope of the demand for compensation, ticket prices, capacity, service quality, ticket systems and environmental friendliness may be applied.

5. Sanctions

§ 26. *Violation of rules concerning information for and non-discriminatory treatment of passengers*

Persons or companies which do not comply with the obligations to provide information regarding prices, taxes, levies, supplements, fees and other terms in Article 23 (1) of the Air Services Regulation may be subject to a fine or charges as set out in Sections 10 (42) fourth paragraph and Section 10 (43). The same applies to persons or undertakings which do not

comply with the prohibition against discriminatory practices in Article 23 (2) of the mentioned Regulation.

6. Final provisions

§ 27. *Repeal and amendments to other regulations*

(1) Regulation No 256 of 15 April 1994 on implementation of tender procedures in connection with public service obligations shall be repealed.

(2) The following amendments shall be made to Regulation No 691 of 15 July 1994 on implementation and enforcement of the EEA Agreement regarding civil aviation:

Section 1, subsections (4), (6) and (8) shall be repealed, without any alteration of the numbering of remaining subsections.

Section 2 shall have the following wording:

Samferdselsdepartementet shall enforce the provisions in Section 1, subsections (1), (3), (5) and (7).

Section 3 shall be repealed.

§ 28. *Entry into force*

The Regulation also applies to contracts which are entered into before the Regulation has entered into force and for licences which have been issued in accordance with the Regulations which are replaced by the Air Services Regulation.

ANNEX 5

Regulation No 1008/2008

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)

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) A number of substantial changes are to be made to Council Regulations (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁴, (EEC) No 2408/92 of 23 July 1992 on access of Community air carriers to intra-Community air routes⁵, and (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services⁶. In the interests of clarity, these Regulations should be recast and consolidated into one single Regulation.
- (2) In order to ensure a more efficient and consistent application of Community legislation for the internal aviation market a series of adjustments to the current legal framework is required.
- (3) Recognising the potential link between the financial health of an air carrier and safety, more stringent monitoring of the financial situation of air carriers should be established.
- (4) Given the growing importance of air carriers with operational bases in several Member States and the need to ensure the efficient supervision of these air carriers, the same Member State should be responsible for the oversight of the air operator certificate and of the operating licence.

¹ OJ C 175, 27.7.2007, p. 85.

² OJ C 305, 15.12.2007, p. 11.

³ Opinion of European Parliament of 11 July 2007 (OJ C 175 E, 10.7.2008, p. 371), Council Common Position of 18 April 2008 (OJ C 129 E, 27.5.2008, p. 1) and Position of the European Parliament of 9 July 2008 (not yet published in the Official Journal).

⁴ OJ L 240, 24.8.1992, p. 1.

⁵ OJ L 240, 24.8.1992, p. 8.

⁶ OJ L 240, 24.8.1992, p. 15.

- (5) To ensure consistent monitoring of the compliance with the requirements of the operating licences of all Community air carriers, licensing authorities should carry out regular assessments of the air carriers' financial situation. Therefore, the latter should provide sufficient information on their financial situation, especially in the first two years of their existence as these are particularly critical for the survival of an air carrier on the market. In order to avoid a distortion of competition arising from the different application of the rules at national level, it is necessary to reinforce the financial oversight of all Community air carriers by Member States.
- (6) To reduce risks to passengers, Community air carriers failing to fulfil the requirements for maintaining a valid operating licence should not be allowed to continue operations. In such cases, the competent licensing authority should revoke or suspend the operating licence.
- (7) According to 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 operators⁷ an air carrier should be insured to cover liability in case of accidents with respect to passengers, cargo and third parties. Obligations should also be placed upon air carriers for insurance to cover liability in case of accidents with respect to mail.
- (8) In order to avoid excessive recourse to lease agreements of aircraft registered in third countries, especially wet lease, these possibilities should only be allowed in exceptional circumstances, such as a lack of adequate aircraft on the Community market, and they should be strictly limited in time and fulfil safety standards equivalent to the safety rules of Community and national legislation.
- (9) With respect to employees of a Community air carrier operating air services from an operational base outside the territory of the Member State where that Community air carrier has its principal place of business, Member States should ensure the proper application of Community and national social legislation.
- (10) In order to complete the internal aviation market, still existing restrictions applied between Member States, such as restrictions on the code sharing on routes to third countries or on the price setting on routes to third countries with an intermediate stop in another Member State (sixth freedom flights) should be lifted.
- (11) To take into account the special characteristics and constraints of the outermost regions, in particular their remoteness, insularity and small size, and the need to properly link them with the central regions of the Community, special arrangements may be justified regarding the rules on the period of validity of the contracts for public service obligations covering routes to such regions.
- (12) The conditions under which public service obligations may be imposed should be defined clearly in an unambiguous way, while the associated tender procedures should allow a sufficient number of competitors to take part in the tenders. The Commission should be able to obtain as much information as necessary to be able to assess the economic justifications for public service obligations in individual cases.
- (13) The rules in force with regard to traffic distribution between airports serving the same city or conurbation should be clarified and simplified.

⁷ OJ L 138, 30.4.2004, p. 1.

- (14) It is appropriate to ensure that Member States have the possibility to react to sudden problems resulting from unforeseeable and unavoidable circumstances, which make it technically or practically very difficult to carry out air services.
- (15) Customers should have access to all air fares and air rates irrespective of their place of residence within the Community or their nationality and irrespective of the place of establishment of the travel agents within the Community.
- (16) Customers should be able to compare effectively the prices for air services of different airlines. Therefore the final price to be paid by the customer for air services originating in the Community should at all times be indicated, inclusive of all taxes, charges and fees. Community air carriers are also encouraged to indicate the final price for their air services from third countries to the Community.
- (17) 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 Commission⁸.
- (18) Since the objective of this Regulation, namely more homogeneous application of Community legislation with regard to the internal aviation market cannot be sufficiently achieved by the Member States because of the international character of air transport, 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.
- (19) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006, during the first ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on the airport made in London on 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 declaration.
- (20) It is therefore necessary to repeal Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92,

HAVE ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate intra-Community air services and the pricing of intra-Community air services.
2. The application of Chapter III 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.

⁸ OJ L 184, 17.7.1999, p. 23.

Article 2

Definitions

For the purposes of this Regulation:

1. "operating licence" means an authorisation granted by the competent licensing authority to an undertaking, permitting it to provide air services as stated in the operating licence;
2. "competent licensing authority" means an authority of a Member State entitled to grant, refuse, revoke or suspend an operating licence in accordance with Chapter II;
3. "undertaking" means any natural or legal person, whether profit-making or not, or any official body whether having its own legal personality or not;
4. "air service" means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;
5. "flight" means a departure from a specified airport towards a specified destination airport;
6. "local flight" means a flight not involving carriage of passengers, mail and/or cargo between different airports or other authorised landing points;
7. "airport" means any area in a Member State especially adapted for air services;
8. "air operator certificate (AOC)" means a certificate delivered to an undertaking confirming that the operator has the professional ability and organisation to ensure the safety of operations specified in the certificate, as provided in the relevant provisions of Community or national law, as applicable;
9. "effective control" means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
 - (a) the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;
10. "air carrier" means an undertaking with a valid operating licence or equivalent;
11. "Community air carrier" means an air carrier with a valid operating licence granted by a competent licensing authority in accordance with Chapter II;
12. "business plan" means a detailed description of the air carrier's intended commercial activities for the period in question, in particular in relation to the expected market development and the investments to be carried out, including the financial and economic implications of these activities;
13. "intra-Community air service" means an air service operated within the Community;
14. "traffic right" means the right to operate an air service between two Community airports;
15. "seat-only sales" means the sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorised agent or a charterer;
16. "scheduled air service" means a series of flights possessing all the following characteristics:

- (a) on each flight seats and/or capacity to transport cargo and/or mail are available for individual purchase by the public (either directly from the air carrier or from its authorised agents);
 - (b) it is operated so as to serve traffic between the same two or more airports, either:
 - according to a published timetable, or
 - with flights so regular or frequent that they constitute a recognisably systematic series;
17. "capacity" means the number of seats or the payload offered to the general public on a scheduled air service over a given period;
 18. "air fares" means the prices expressed in euro or in local currency to be paid to air carriers or their agents or other ticket sellers for the carriage of passengers on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
 19. "air rates" means the prices expressed in euro 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;
 20. "Member State(s) concerned" means the Member State(s) between or within which an air service is operated;
 21. "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;
 22. "conurbation" means an urban area comprising a number of cities or towns which, through population growth and expansion, have physically merged to form one continuous built up area;
 23. "management account" means a detailed statement of income and costs of an air carrier for the period in question including a breakdown between air-transport-related and other activities as well as between pecuniary and non-pecuniary elements;
 24. "dry lease agreement" means an agreement between undertakings pursuant to which the aircraft is operated under the AOC of the lessee;
 25. "wet lease agreement" means an agreement between air carriers pursuant to which the aircraft is operated under the AOC of the lessor;
 26. "principal place of business" means the head office or registered office of a Community air carrier in the Member State within which the principal financial functions and operational control, including continued airworthiness management, of the Community air carrier are exercised.

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 100000 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 100000 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.

CHAPTER III
ACCESS TO ROUTES

Article 15

Provision of intra-Community air services

1. Community air carriers shall be entitled to operate intra-Community air services.
2. Member States shall not subject the operation of intra-Community air services by a Community air carrier to any permit or authorisation. Member States shall not require Community air carriers to provide any documents or information which they have already supplied to the competent licensing authority, provided that the relevant information may be obtained from the competent licensing authority in due time.
3. If the Commission, on the basis of information obtained under Article 26(2), finds that the operating licence granted to a Community air carrier is not in compliance with the requirements of this Regulation it shall forward its findings to the competent licensing authority which shall send its comments to the Commission within 15 working days.

If the Commission, after examining the comments of the competent licensing authority, maintains that the operating licence is not compliant, or no comments have been received from the competent licensing authority it shall, in accordance with the procedure referred to in Article 25(2), take a decision to request the competent licensing authority to take the appropriate corrective measures or to suspend or revoke the operating licence.

The decision shall set a date by which the corrective measures or actions by the competent licensing authority shall be implemented. If the corrective measures or actions have not been implemented by that date the Community air carrier shall not be entitled to exercise its rights under paragraph 1.

The Community air carrier may resume exercising its rights under paragraph 1 upon notification to the Commission by the competent licensing authority that the corrective measures have been implemented and that the competent licensing authority has verified the implementation.

4. When operating intra-Community air services, a Community air carrier shall be permitted to combine air services and to enter into code share arrangements, without prejudice to the Community competition rules applicable to undertakings.

Any restrictions on the freedom of Community air carriers to operate intra-Community air services arising from bilateral agreements between Member States are hereby superseded.

5. Notwithstanding the provisions of bilateral agreements between Member States, and subject to the Community competition rules applicable to undertakings, Community air carriers shall be permitted by the Member State(s) concerned to combine air services and to enter into code share arrangements with any air carrier on air services to, from or via any airport in their territory from or to any point(s) in third countries.

A Member State may, in the framework of the bilateral air service agreement with the third country concerned, impose restrictions on code share arrangements between Community air carriers and air carriers of a third country, in particular if the third country concerned does not allow similar commercial opportunities to Community air carriers operating from the Member State concerned. In doing so, Member States shall ensure that restrictions imposed under such

agreements do not restrict competition and are non-discriminatory between Community air carriers and that they are not more restrictive than necessary.

Article 16

General principles for public service obligations

1. A Member State, following consultations with the other Member States concerned and after having informed the Commission, the airports concerned and air carriers operating on the route, may impose a public service obligation in respect of scheduled air services between an airport in the Community and an airport serving a peripheral or development region in its territory or on a thin route to any airport on its territory any such route being considered vital for the economic and social development of the region which the airport serves. That obligation shall be imposed only to the extent necessary to ensure on that route the minimum provision of scheduled air services satisfying fixed standards of continuity, regularity, pricing or minimum capacity, which air carriers would not assume if they were solely considering their commercial interest.

The fixed standards imposed on the route subject to that public service obligation shall be set in a transparent and non-discriminatory way.

2. In instances where other modes of transport cannot ensure an uninterrupted service with at least two daily frequencies, the Member States concerned may include in the public service obligation the requirement that any Community air carrier intending to operate the route gives a guarantee that it will operate the route for a certain period, to be specified, in accordance with the other terms of the public service obligation.

3. The necessity and the adequacy of an envisaged public service obligation shall be assessed by the Member State(s) having regard to:

- (a) the proportionality between the envisaged obligation and the economic development needs of the region concerned;
- (b) the possibility of having recourse to other modes of transport and the ability of such modes to meet the transport needs under consideration, in particular when existing rail services serve the envisaged route with a travel time of less than three hours and with sufficient frequencies, connections and suitable timings;
- (c) the air fares and conditions which can be quoted to users;
- (d) the combined effect of all air carriers operating or intending to operate on the route.

4. When a Member State wishes to impose a public service obligation, it shall communicate the text of the envisaged imposition of the public service obligation to the Commission, to the other Member States concerned, to the airports concerned and to the air carriers operating the route in question.

The Commission shall publish an information notice in the Official Journal of the European Union:

- (a) identifying the two airports connected by the route concerned and possible intermediate stop-over point(s);
- (b) mentioning the date of entry into force of the public service obligation; and

(c) indicating the complete address where the text and any relevant information and/or documentation related to the public service obligation shall be made available without delay and free of charge by the Member State concerned.

5. Notwithstanding the provisions of paragraph 4, with respect to routes where the number of passengers expected to use the air service is less than 10000 per annum, the information notice on a public service obligation shall be published either in the Official Journal of the European Union or in the national official journal of the Member State concerned.

6. The date of entry into force of a public service obligation shall not be earlier than the date of publication of the information notice referred to in the second subparagraph of paragraph 4.

7. When a public service obligation has been imposed in accordance with paragraphs 1 and 2 the Community air carrier shall be able to offer seat-only sales provided that the air service in question meets all the requirements of the public service obligation. Consequently that air service shall be considered as a scheduled air service.

8. When a public service obligation has been imposed in accordance with paragraphs 1 and 2, any other Community air carrier shall at any time be allowed to commence scheduled air services meeting all the requirements of the public service obligation, including the period of operation that may be required in accordance with paragraph 2.

9. Notwithstanding paragraph 8, if no Community air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in accordance with the public service obligation which has been imposed on that route, the Member State concerned may limit access to the scheduled air services on that route to only one Community air carrier for a period of up to four years, after which the situation shall be reviewed.

This period may be up to five years if the public service obligation is imposed on a route to an airport serving an outermost region, referred to in Article 299(2) of the Treaty.

10. The right to operate the services referred to in paragraph 9 shall be offered by public tender in accordance with Article 17, either singly or, in cases where justified for reasons of operational efficiency, for a group of such routes to any Community air carrier entitled to operate such air services. For reasons of administrative efficiency, a Member State may issue a single invitation to tender covering different routes.

11. A public service obligation shall be deemed to have expired if no scheduled air service has been operated during a period of 12 months on the route subject to such obligation.

12. In case of sudden interruption of service by the Community air carrier selected in accordance with Article 17, the Member State concerned may, in case of emergency, select by mutual agreement a different Community air carrier to operate the public service obligation for a period up to seven months, not renewable, under the following conditions:

- (a) any compensation paid by the Member State shall be made in compliance with Article 17(8);
- (b) the selection shall be made among Community air carriers in compliance with the principles of transparency and non-discrimination;
- (c) a new call for tender shall be launched.

The Commission and the Member State(s) concerned shall be informed without delay of the emergency procedure and of its reasons. At the request of a Member State, or on its own initiative, the Commission may, in accordance with the procedure referred to in Article 25(2)

suspend the procedure if it considers after its assessment that it does not meet the requirements of this paragraph or is otherwise contrary to Community law.

Article 17

Public tender procedure for public service obligation

1. The public tender required in Article 16(10) shall be conducted according to the procedure set out in paragraphs 2 to 10 of this Article.
2. The Member State concerned shall communicate the entire text of the invitation to tender to the Commission except where, in accordance with Article 16(5), it has made the public service obligation known through the publication of a notice in its national official journal. In such case the tender shall also be published in the national official journal.
3. The invitation to tender and the subsequent contract shall cover, inter alia, the following points:
 - (a) the standards required by the public service obligation;
 - (b) rules concerning amendment and termination of the contract, in particular to take account of unforeseeable changes;
 - (c) the period of validity of the contract;
 - (d) penalties in the event of failure to comply with the contract;
 - (e) objective and transparent parameters on the basis of which compensation, if any, for the discharging of the public service obligations shall be calculated.
4. The Commission shall make the invitation to tender known through an information notice published in the Official Journal of the European Union. The deadline for submission of tenders shall not be earlier than two months after the day of publication of such an information notice. In case the tender concerns a route to which the access had already been limited to one carrier in accordance with Article 16(9), the invitation to tender will be published at least six months before the start of the new concession in order to assess the continued necessity of the restricted access.
5. The information notice shall provide the following information:
 - (a) Member State(s) concerned;
 - (b) air route concerned;
 - (c) period of validity of the contract;
 - (d) complete address where the text of the invitation to tender and any relevant information and/or documentation related to the public tender and the public service obligation shall be made available by the Member State concerned;
 - (e) deadline for submission of tenders.
6. The Member State(s) concerned shall communicate without delay and free of charge any relevant information and documents requested by a party interested in the public tender.
7. The selection among the submissions shall be made as soon as possible taking into consideration the adequacy of the service, including the prices and conditions which can be quoted to users, and the cost of the compensation required from the Member State(s) concerned, if any.

8. The Member State concerned may compensate an air carrier, which has been selected under paragraph 7, for adhering to the standards required by a public service obligation imposed under Article 16. Such compensation may not exceed the amount required to cover the net costs incurred in discharging each public service obligation, taking account of revenue relating thereto kept by the air carrier and a reasonable profit.

9. The Commission shall be informed in writing and without delay of the results of the public tender and of the selection by the Member State including the following information:

- (a) numbers, names and corporate information of tenderers;
- (b) operational elements contained in the offers;
- (c) compensation requested in the offers;
- (d) name of the selected tenderer.

10. At a request of a Member State or on its own initiative, the Commission may request Member States to communicate, within one month, all relevant documents relating to the selection of an air carrier for the operation of a public service obligation. In case the requested documents are not communicated within the deadline, the Commission may decide to suspend the invitation to tender in accordance with the procedure referred to in Article 25(2).

Article 18

Examination of public service obligations

1. Member States shall take all necessary measures to ensure that any decision taken under Articles 16 and 17 can be reviewed effectively and, in particular, as soon as possible on the grounds that such decisions have infringed Community law or national rules implementing Community law.

In particular, at a request of a Member State or on its own initiative, the Commission may request Member States to communicate, within two months:

- (a) a document justifying the need for the public service obligation and its compliance with the criteria mentioned in Article 16;
- (b) an analysis of the economy of the region;
- (c) an analysis of the proportionality between the envisaged obligations and the economic development objectives;
- (d) an analysis of the existing air services, if any, and of the other modes of transport available which could be considered a substitute for the envisaged imposition.

2. At the request of a Member State which considers that the development of a route is being unduly restricted by the terms of Articles 16 and 17, or on its own initiative, the Commission shall carry out an investigation and, within six months of receipt of the request and in accordance with the procedure referred to in Article 25(2), shall take a decision on the basis of all relevant factors on whether Articles 16 and 17 shall continue to apply in respect of the route concerned.

Article 19

Traffic distribution between airports and exercise of traffic rights

1. The exercise of traffic rights shall be subject to published Community, national, regional and local operational rules relating to safety, security, the protection of the environment and the allocation of slots.
2. A Member State, after consultation with interested parties including the air carriers and airports concerned, may regulate, without discrimination among destinations inside the Community or on grounds of nationality or identity of air carriers, the distribution of air traffic between airports satisfying the following conditions:
 - (a) the airports serve the same city or conurbation;
 - (b) the airports are served by adequate transport infrastructure providing, to the extent possible, a direct connection making it possible to arrive at the airport within 90 minutes including, where necessary, on a cross-border basis;
 - (c) the airports are linked to one another and to the city or conurbation they serve by frequent, reliable and efficient public transport services; and
 - (d) the airports offer necessary services to air carriers, and do not unduly prejudice their commercial opportunities.

Any decision to regulate the distribution of air traffic between the airports concerned shall respect the principles of proportionality and transparency, and shall be based on objective criteria.

3. A Member State concerned shall inform the Commission of its intention to regulate the distribution of air traffic or to change an existing traffic distribution rule.

The Commission shall examine the application of paragraphs 1 and 2 of this Article and, within six months of receipt of the information from the Member State, and in accordance with the procedure referred to in Article 25(2), shall decide whether the Member State may apply the measures.

The Commission shall publish its decision in the Official Journal of the European Union and the measures shall not be applied before the publication of the Commission's approval.

4. With respect to traffic distribution rules existing at the time of the entry into force of this Regulation, the Commission shall at the request of a Member State and may on its own initiative examine the application of paragraphs 1 and 2 and, in accordance with the procedure referred to in Article 25(2), shall decide whether the Member State may continue to apply the measure.

5. The Commission shall publish its decisions made under this Article in the Official Journal of the European Union.

Article 20

Environmental measures

1. When serious environmental problems exist, the Member State responsible may limit or refuse the exercise of traffic rights, in particular when other modes of transport provide appropriate levels of service. The measure shall be non-discriminatory, shall not distort

competition between air carriers, shall not be more restrictive than necessary to relieve the problems, and shall have a limited period of validity, not exceeding three years, after which it shall be reviewed.

2. When a Member State considers that action under paragraph 1 is necessary it shall, at least three months before the entry into force of the action, inform the other Member States and the Commission, providing adequate justification for the action. The action may be implemented unless within one month of receipt of the information a Member State concerned contests the action or the Commission, in accordance with paragraph 3, takes it up for further examination.

3. At the request of another Member State or on its own initiative, the Commission may, in accordance with the procedure referred to in Article 25(2), suspend the measures if they do not meet the requirements of paragraph 1 or are otherwise contrary to Community law.

Article 21

Emergency measures

1. A Member State may refuse, limit or impose conditions on the exercise of traffic rights to deal with sudden problems of short duration resulting from unforeseeable and unavoidable circumstances. Such action shall respect the principles of proportionality and transparency and shall be based on objective and non-discriminatory criteria.

The Commission and the other Member States shall be informed without delay of such action with its adequate justification. If the problems necessitating such action continue to exist for more than 14 days, the Member State shall inform the Commission and the other Member States accordingly and may, with the agreement of the Commission, prolong the action for further periods of up to 14 days.

2. At the request of the Member State(s) involved or on its own initiative, the Commission may suspend this action if it does not meet the requirements of paragraph 1 or is otherwise contrary to Community law.

CHAPTER IV
PROVISIONS ON PRICING

Article 22

Pricing freedom

1. Without prejudice to Article 16(1), Community air carriers and, on the basis of reciprocity, air carriers of third countries shall freely set air fares and air rates for intra-Community air services.
2. Notwithstanding the provisions of bilateral agreements between Member States, Member States may not discriminate on grounds of nationality or identity of air carriers in allowing Community air carriers to set fares and rates for air services between their territory and a third country. Any remaining restrictions on pricing, including with respect to routes to third countries, arising from bilateral agreements between Member States are hereby superseded.

Article 23

Information and non-discrimination

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.
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.

Article 24

Penalties

Member States shall ensure compliance with the rules set out in this Chapter and shall lay down penalties for infringements thereof. Those penalties shall be effective, proportionate and dissuasive.

CHAPTER V

FINAL PROVISIONS

Article 25

Committee

1. The Commission shall be assisted by a 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.

Article 26

Cooperation and right to obtain information

1. Member States and the Commission shall cooperate in applying and in monitoring the application of this Regulation.
2. In order to carry out its duties under this Regulation the Commission may obtain all necessary information from Member States, which shall also facilitate the provision of information by air carriers licensed by their competent licensing authorities.
3. Member States shall, according to their national legislation, take the necessary measures to ensure appropriate confidentiality of the information received by them pursuant to this Regulation.

Article 27

Repeal

Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92 shall be repealed. References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 28

Entry into force

This Regulation shall enter into force on the day following 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, 24 September 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J.-P. JOUYET

The Annexes to Regulation 1008/2008 can be found in the official version

ANNEX 6

Procedures in connection with traffic programmes for scheduled air services subject to public service obligations.

MINISTRY OF TRANSPORT AND COMMUNICATIONS

CIRCULAR N-3/2005

Date 26.04.2005

Ref. 02/2542

This circular replaces the Ministry of Transport and Communications' circular N-8/97.

The circular concerns scheduled air services on routes that are subject to public service obligations (PSO), where the air carriers operate with exclusive rights under a tender contract with the State, cf. Council Regulation (EEC) 2408/92 on access for Community air carriers to intra-Community air routes.

1. Consultations regarding the traffic programme

- a) The air carriers are responsible for organising consultations on the traffic programme for scheduled services for which they have been granted exclusive rights and are obliged to operate scheduled services in accordance with their tenders.
- b) The consultations shall be carried out:
 - 1) After the exclusive right has been awarded for a scheduled air service, before commencement of scheduled flights
 - 2) During the course of the second tender year
 - 3) In the event of changes to an approved traffic programme.
- c) On routes subject to PSO, the consultative bodies may submit comments to the carrier on the following, in order of priority:
 - 1) The carrier's compliance with PSO requirements set out in the invitation to tender.
 - 2) The carrier's coordination of routes/timetables with other means of public transport.
 - 3) Services over and above PSO requirements and/or tender which the carrier can provide on a commercial basis.
- d) Consultation pursuant to b) nos. 1) and 2):

The proposed traffic programme shall be sent for consultation to affected parties (cf. section 3), with a copy to the Ministry of Transport and Communications.

The consultative bodies shall be given at least six weeks within which to reply from receipt of the proposal, and all replies shall be sent directly to the carrier.

The carrier shall send an application to the Ministry of Transport and Communications for approval of the traffic programme. A copy of all submissions shall be enclosed with the application, stating whether or not the submissions have been taken into account, and stating the grounds for their decisions.

If changes have been made to the traffic programme in relation to the proposal sent for

consultation which, for example, have negative consequences for passengers, are not in accordance with the PSO requirements or affect the published opening hours of the airports, the carrier must coordinate such changes with the consultative bodies before the application for approval of the traffic programme is sent to the Ministry of Transport and Communications.

The Ministry of Transport and Communications can be expected to require six weeks to process applications.

- e) The approved traffic programme shall apply to both seasonal periods (both summer and winter seasons).

A mid-summer programme, cf. any adjustments to PSO in the invitation to tender, shall be incorporated into the traffic programme.

- f) Consultation pursuant to letter b no. 3):
Changes of a certain magnitude to an approved traffic programme that may affect the service offered to passengers must be sent to affected consultative bodies for comment with a copy to the Ministry of Transport and Communications.

Minor changes to an approved traffic programme that have no direct consequences for services to passengers need not be sent for consultation.

Consultative bodies shall be given at least three weeks within which to reply after receipt of the consultation proposal, and all submissions shall be sent directly to the carrier.

The carrier shall send an application to the Ministry of Transport and Communications for approval of changes in the traffic programme. A copy of all submissions shall be enclosed with the application, stating whether or not the submissions have been taken into account, and stating the grounds for their decisions.

After receiving the application for approval of changes to the traffic programme, the Ministry of Transport and Communications shall process the application as soon as possible.

- g) Thirty days before commencing each seasonal period (summer and winter seasons) at the latest, the carriers shall send an identical letter to the consultative bodies containing information about the approved traffic programme (the summer and winter traffic programme, respectively).

In the event of changes to the approved traffic programme, cf. f), the carrier is obliged to immediately send an identical letter to the consultative bodies containing information about the changes to the approved traffic programme.

2. Route changes in connection with public holidays

- a) For tender routes, certain adjustments in the traffic programme are permitted in connection with public holidays, cf. the PSO requirements. Carriers shall send proposed route changes in connection with public holidays to affected airports six weeks at the latest before the proposed change is to take effect.

The affected airports shall submit their replies to the carrier three weeks at the latest after receiving the change proposal.

- b) If the affected airports accept the changes, they can be effected without further formal processing.
- c) If the changes are not accepted, the carrier shall send its route proposal, with the airports' replies enclosed, to the Ministry of Transport and Communications for consideration.
- d) The carriers shall take immediate steps to ensure that approved route changes in connection with public holidays are made known to the other consultative bodies.

3. Consultative bodies for traffic programmes

- a) The following bodies shall be consulted concerning traffic programmes on tender routes:
 - Civil Aviation Authority, Norway
 - Avinor AS
 - Affected airports
- b) In addition, affected county municipalities and municipalities shall be given an opportunity to comment within the deadlines set out in this circular. In such case, relevant material shall be sent directly to the Chief Communications Officers in all the affected county municipalities.

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