COMMISSION OPINION

of 4 November 1993

concerning the application of Article 4 (2) of Council Directive 91/670/EEC on mutual acceptance of personnel licences for the exercise of functions in civil aviation

Equivalence of a Dutch CPL (B3) and a German ATPL (A2) licence

(Only the Dutch text is authentic)

(93/565/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive No 91/670/EEC of 16 December 1991 on mutual acceptance of personnel licences for the exercise of functions in civil aviation [1], and in particular Article 4 (2) thereof,

Having regard to the request of the Dutch Government,

Having requested the Member States involved to submit their pilot training schemes and programmes,

Whereas

(1) By letter of 15 April 1993, No 630086, registered by the Commission on 20 April 1993, the Dutch Government requested the Commission, on the basis of Article 4 (2) of Directive 91/670/EEC to opine on the mutual acceptability of a Dutch CPL (B3) licence and a German ATPL (A2) licence issued by the respective Civil Aviation Authorities.

(2) Directive 91/670/EEC requires a Member State to accept, without undue delay or additional tests, any license issued by another Member State together with privileges and certificates pertaining thereto. Licences issued by another Member State of the Community can be accepted on the basis of either equivalence (Article 4 (1)-(4)) or experience (Article 4 (5)). Article 4 (1) provides that the requirement of acceptance shall apply where alicense issued by another Member State is based on requirements which are equivalent to those of the host Member State. According to Article 4 (2) (a) of the Directive, any Member State may ask the Commission for an opinion on the equivalence of a license, presented to it for acceptance, within three weeks of receiving the request.

(3) Pursuant to the Dutch request the Commission wrote to the German and Dutch Governments on 13 and 17 May 1993, respectively, requesting full details of the requirements for the issue of commercial pilot licences and air transport pilot licences in their respective countries. The German Government's transmission of the information was registered by the Commission on 24 June 1993 and the Dutch Government's response was communicated by letter of 26 July 1993 registered by the Commission on 30 July 1993. In view of the delays encountered to gather the relevant information the Commission informed the Dutch Government, by letter of 28 June 1993, No 72321, that the two months deadline foreseen in the Directive would only start to run once the Commission had received all the necessary information to undertake the examination. The Commission, by letter of 23 September 1993 to the Dutch authorities, sought a one month extension of the consultation procedure till 29 October 1993.

(4) As regards pilots, the fundamental principles of free movement of persons and freedom of establishment and to provide services, enshrined in Articles 48, 52 and 59 of the Treaty, have been implemented by virtue of Article 3 (1) of the Directive [2]. That Article provides for mutual acceptance of pilot licenses.

Nevertheless, Article 4 of the Directive makes the mutual acceptance of those licences subject to a possible procedure of verification of equivalence between the requirements of the host Member State and the issuing Member State when reasonable doubts as to the equivalence of the licenses concerned are raised. Article 4 thereby aims at ensuring the safety of air transport services, to which explicit reference is made in the sixth recital of the Directive. However, use of the procedure must not go beyond what is strictly necessary for achieving the overall objective of safety of air operations and must, therefore, not prejudice the effective exercise of the abovementioned fundamental freedoms of the Treaty.

[1] OJ No 373, 31. 12. 1991, p. 12.

[2] See also Judgments of the Court of Justice in the cases of Heylens of 15 October 1987, Case 222/86 — Vlassopoulou of 7 May 1991, case C-340/89 — Kraus of 31 March 1993, Case C-19/92.

(5) The Commission has examined the requirements for the respective licences and notes:

— an ATPL (Air Transport Pilot Licence) authorizes a holder to exercise the function of pilot in command on any airplane whilst the Commercial Pilot Licence (CPL + IR) authorizes a holder to exercise the function of co-pilot on all airplanes and pilot in command on airplanes certificated for single-pilot operation,

— Germany issues two types of Air Transport Pilot Licence. The ATPL (A2) type is limited to airplanes with a maximum weight of 5 700 kg or 20 tonnes,

— Germany and the Netherlands link the Instrument Rating to the type of aircraft on which instrument flight skills are demonstrated,

— a German ATPL (A2) is more comprehensive than a Dutch CPL (B3) and as such, in practice, can be considered as equivalent. The reverse comparison cannot be considered as valid.

(6) On the basis of the available information, having regard to the principles and analysis outlined above and the internationally accepted standards of ICAO regarding air safety,

HAS ADOPTED THE FOLLOWING OPINIONS:

Article 1

The necessary skills and technical knowledge required for the issue of a Dutch CPL (B3) are more than fulfilled by the German requirements for the issue of an ATPL (A2). Therefore the German ATPL (A2) should be considered as acceptable.

Article 2

The present opinion is addressed to the Kingdom of the Netherlands.

Done at Brussels, 4 November 1993.

For the Commission

Abel MATUTES

Member of the Commission