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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.6.2008
COM(2008) 367 final

2008/0124 (CNS)

Proposal for a

COUNCIL REGULATION

**on the application of Article 81(3) of the Treaty to certain categories of agreements and
concerted practices in the air transport sector**

(Codified version)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex I to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation (EEC) No 3976/87 and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Regulation.

Proposal for a

COUNCIL REGULATION

on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 83 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Whereas:



- (1) Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Regulation should be codified.

↓ 3976/87 Recitals 3 and 5
(adapted)

- (2) Common provisions for the application of Article 81(3) of the Treaty should be adopted by way of regulation ☒ or directive ☒ pursuant to Article 83 of the Treaty. The Commission should be enabled to declare by way of regulation that the provisions

¹ ☒ OJ C [...], [...], p. [...] ☒.

² ☒ OJ C [...], [...], p. [...] ☒.

³ OJ L 374, 31.12.1987, p. 9. Regulation as last amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

⁴ See Annex I.

of Article 81(1) of the Treaty do not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices.

↓ 411/2004 Recital 7 (adapted)

- (3) The Commission should be empowered to grant block exemptions in the air transport sector in respect of traffic within the Community as well as in respect of traffic between the Community and third countries

↓ 3976/87 Recital 6

- (4) It should be laid down under what specific conditions and in what circumstances the Commission may exercise such powers in close and constant liaison with the competent authorities of the Member States.

↓ 3976/87 Recital 7

- (5) It is desirable, in particular, that block exemptions be granted for certain categories of agreements, decisions and concerted practices. These exemptions should be granted for a limited period during which air carriers can adapt to a more competitive environment. The Commission, in close liaison with the Member States, should be able to define precisely the scope of these exemptions and the conditions attached to them.

↓ 3976/87 Recital 9 (adapted)

- (6) This Regulation $\boxtimes$ is without prejudice to $\boxtimes$ the application of Article 86 of the Treaty,

↓ 3976/87

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to air transport.

↓ 3976/87 (adapted)

Article 2

1. In accordance with Article 81(3) of the Treaty, the Commission may by Regulation declare that Article 81(1) of the Treaty shall not apply to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices.

↓ 2411/92 Art. 1 pt. 2 (adapted)

The Commission may, in particular, adopt such Regulations in respect of agreements, decisions or concerted practices which have as their object any of the following:

- (a) joint planning and coordination of airline schedules;
- (b) consultations on tariffs for the carriage of passengers and baggage and of freight on scheduled air services;
- (c) joint operations on new less busy scheduled air services;
- (d) slot allocation at airports and airport scheduling; the Commission shall take care to ensure consistency with ☒ Council Regulation (EEC) No 95/93⁵ ☒.
- (e) common purchase, development and operation of computer reservation systems relating to timetabling, reservations and ticketing by air transport undertakings; the Commission shall take care to ensure consistency with ☒ Council Regulation (EEC) No 2299/89⁶ ☒.

↓ 3976/87 (adapted)

2. Without prejudice to ☒ the second subparagraph of ☒ paragraph 1, ☒ the ☒ Commission Regulations ☒ referred to therein ☒ shall define the categories of agreements, decisions or concerted practices to which they apply and shall specify in particular:

- (a) the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices;
- (b) the clauses which must be contained in the agreements, decisions and concerted practices, or any other conditions which must be satisfied.

⁵ OJ L 14, 22.1.1993, p. 1.

⁶ OJ L 220, 29.7.1989, p. 1.

↓ 2411/92 Art. 1 pt. 3 (adapted)

Article 3

Any Regulation adopted pursuant to Article 2 shall ☒ apply ☒ for a specified period.

It may be repealed or amended where circumstances have changed with respect to any of the factors which prompted its adoption; in such a case, a period shall be fixed for amendment of the agreements and concerted practices to which the earlier Regulation applied before repeal or amendment.

↓ 3976/87 (adapted)

Article 4

Regulations adopted pursuant to Article 2 shall include a provision ☒ stating ☒ that they apply with retroactive effect to agreements, decisions and concerted practices which were in existence at the date of the entry into force of such Regulations.

↓ 1994 Act of Accession, Art. 29 and Annex I, p. 56 (adapted)

Article 5

A Regulation ☒ adopted ☒ pursuant to Article 2 may stipulate that the prohibition contained in Article 81(1) of the Treaty shall not apply, for such a period as fixed by that Regulation, to agreements, decisions and concerted practices already in existence at the date of accession to which Article 81(1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article 81(3) of the Treaty.

However, this Article shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement.

↓ 3976/87 (adapted)

Article 6

Before adopting a Regulation ☒ pursuant to Article 2 ☒, the Commission shall publish a draft thereof and invite all persons and organisations concerned to submit their comments within such reasonable time limit, being not less than one month, as the Commission shall fix.

↓ 1/2003 Art. 41 pt. 1 (adapted)

Article 7

The Commission shall consult the Advisory Committee ☒ on Restrictive Practices and Dominant Positions ☒ referred to in Article 14 of Council Regulation (EC) No 1/2003⁷ before publishing a draft Regulation and before adopting a Regulation ☒ pursuant to Article 2 ☒.

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Article 8

Regulation (EEC) No 3976/87 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

↓ 3976/87 (adapted)

Article 9

This Regulation shall enter into force on ☒ the twentieth day following that of 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 Brussels,

For the Council
The President

⁷ OJ L 1, 4.1.2003, p. 1.



ANNEX I

Repealed Regulation with list of its successive amendments

Council Regulation (EEC) No 3976/87
(OJ L 374, 31.12.1987, p. 9)

Council Regulation (EEC) No 2344/90
(OJ L 217, 11.8.1990, p. 15)

Council Regulation (EEC) No 2411/92
(OJ L 240, 24.8.1992, p. 19)

Point III.A.3 of Annex I to the 1994 Act of
Accession
(JO C 241, 29.8.1994, p. 56)

Council Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1)	Article 41 only
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Council Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1)	Article 2 only
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ANNEX II

CORRELATION TABLE

Regulation (EEC) No 3976/87	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1), first subparagraph
Article 2(2), introductory wording	Article 2(1), second subparagraph, introductory wording
Article 2(2) first indent	Article 2(1), second subparagraph, point (a)
Article 2(2) second indent	Article 2(1), second subparagraph, point (b)
Article 2(2) third indent	Article 2(1), second subparagraph, point (c)
Article 2(2) fourth indent	Article 2(1), second subparagraph, point (d)
Article 2(2) fifth indent	Article 2(1), second subparagraph, point (e)
Article 2(3)	Article 2(2)
Articles 3 and 4	Articles 3 and 4
Article 4a first sentence	Article 5 first paragraph
Article 4a second sentence	Article 5 second paragraph
Article 5	Article 6
Article 6	Article 7
_____	Article 8
Article 9	Article 9
_____	Annex I
_____	Annex II