



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From : Council General Secretariat
To : Delegations
No. Cion prop. : 14526/07 AVIATION 204 CODEC 1163
No. prev. doc. : 5097/08 AVIATION 4 CODEC 9
Subject : Proposal for a Regulation of the European Parliament and of the Council
on a Code of Conduct for computerised reservation systems

Following the discussion at the Aviation Working Party on 21 January 2008, delegations will find attached a further revised version of the above proposal. The changes with regard to the previous version are indicated in **bold** and ~~striketrough~~.

It should be noted that all delegations still have a general scrutiny reservation on the text.

DK, FR, MT, SI and UK also have a Parliamentary reservation.

ANNEX

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on a Code of Conduct for computerised reservation systems
(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 Articles 71 and 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,

Having regard to the opinion of the European Data Protection Supervisor,

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

Whereas:

¹ OJ C
² OJ C
³ OJ C

- (1) Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems¹ has made a major contribution to ensuring fair and unbiased conditions for air carriers in computerised reservation systems (hereinafter "CRS"), thereby protecting the interests of consumers.
- (2) An important part of airline reservations are still made through computerised reservation systems.
- (3) Technological and market developments allow for a substantial simplification of the legislative framework by giving more flexibility to CRS vendors and air carriers to negotiate booking fees and fare content. This will allow them to adapt in a flexible way to the needs and requests of travel agents and consumers and to distribute more efficiently their transport products.
- (4) In the present market context it remains necessary nonetheless to maintain certain provisions on CRS systems, insofar as they contain transport products, in order to prevent competitive abuses and to ensure the supply of neutral information to consumers.
- (5) The refusal by parent carriers to provide the same information on schedules, fares and availability to systems other than their own and to accept bookings made by those systems can seriously distort competition between computerised reservation systems.
- (6) System vendors should clearly separate the CRS systems from any airline's internal reservation system and should refrain from reserving distribution facilities to their parent carriers, in order to avoid that a parent carrier could have a privileged access to the CRS system.

¹ OJ L 220, 29.7.1989, p.1 Regulation as last amended by Regulation (EEC) No 3089/93 (OJ L 278 11.11.1993, p.1) and Regulation (EC) No 323/1999 (OJ L 40, 13.2.1999, p.1)

- (7) In order to protect consumers' interests, it is necessary to present an unbiased initial display to users of a CRS and to ensure that information on all participating carriers is equally accessible in order not to favour one participating carrier over another.
- (8) System vendors should ensure that CRS marketing data is available to all participating carriers without discrimination, and transport providers should not be able to use such data in order to unduly influence the choice of the travel agent.
- (9) The provision of information on rail and rail-air services on the CRS displays should be facilitated.
- (10) Air carriers from the Community and from third countries should be given equivalent treatment with regard to CRS services.
- (11) In order to ensure the correct application of this Regulation, the Commission should have appropriate enforcement powers, including the possibility to investigate infringements, whether on its own initiative or on the basis of a complaint, to order the undertakings concerned to bring such infringements to an end and to impose fines.
- (12) This Regulation is without prejudice to the application of Articles 81 and 82 of the Treaty.
- (13) The protection of individuals with regard to the processing of personal data is governed by Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹. The provisions of this Regulation particularise and complement Directive 95/46/EC with regard to the activities of a CRS.
- (14) Regulation (EEC) No 2299/89 should be repealed,

HAVE ADOPTED THIS REGULATION:

¹ OJ L 281, 23.11.1995, p.31

Section 1

Introductory provisions

Article 1

Subject matter and scope

This Regulation shall apply to any computerised reservation system (hereinafter 'CRS'), insofar as it contains air-transport products, when offered for use or used in the Community. This Regulation shall also apply to rail-transport products, which are incorporated alongside air-transport products into the principal display of a CRS **for use or used in the Community**.

Article 2

Definitions

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

- (a) 'transport product' means the carriage of a passenger between two airports or rail stations;
- (b) '*scheduled air service*' means a series of flights possessing all the following characteristics:
 - (i) 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);

- (ii) 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.
- (c) 'fares' means the prices to be paid by passengers to air carriers, rail-transport operators, their agents or other ticket sellers for the carriage of those passengers on transport services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;
- (d) 'computerised reservation system' means a computerised system containing information about, *inter alia*, schedules, availability, fares, and related services, of more than one air carrier, with or without facilities through which reservations may be made, or tickets may be issued, to the extent that some or all of these services are made available to subscribers;
- (e) 'distribution facilities' mean facilities provided by a system vendor for the provision of information about air carriers' and rail-transport operators' schedules, availability, fares and related services and for making reservations and/or issuing tickets, and for any other related services;
- (f) 'system vendor' means any entity and its affiliates which is or are responsible for the operation or marketing of a CRS;
- (g) 'parent carrier' means any air carrier or rail-transport operator which directly or indirectly, alone or jointly with others, owns or effectively controls a system vendor, as well as any air carrier or rail-transport operator which it owns or effectively controls;

- (h) '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:
- (i) the right to use all or part of the assets of an undertaking;
 - (ii) rights or contracts which confer a decisive influence on the composition, voting or decisions of the organs of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;
- (i) 'participating carrier' means an air carrier or rail-transport operator which has an agreement with a system vendor for the distribution of transport products through a CRS.
- (j) 'subscriber' means a person, ~~other than a consumer~~, or an undertaking, ~~other than a participating carrier~~, using a CRS under contract with a system vendor with the purpose of making reservations of air services on behalf of a consumer;
- (k) 'principal display' means a comprehensive neutral display of data concerning transport services between city-pairs, within a specified time period;
- (l) 'ticket' means a valid document giving entitlement to transport, or an equivalent in paperless form, issued or authorised by the air carrier, rail-transport operator or an authorised agent;
- (m) 'bundled product' means a prearranged combination of transport with other services not ancillary to transport and offered at an inclusive price;**
- (n) 'booking fee' means the price to be paid by air carriers to system vendors for the services provided by the CRS.**

Section 2

Rules of conduct for system vendors

Article 3

Relations with transport providers

1. A system vendor shall not:
 - (a) attach unreasonable conditions to any contract with a participating carrier or require the acceptance of supplementary conditions which, by their nature or according to commercial usage, have no connection with participation in its CRS;
 - (b) make it a condition of participation in its CRS that a participating carrier may not at the same time be a participant in another system or that a participating carrier may not freely use alternative reservation systems such as its own Internet booking system.
2. A system vendor shall load and process data provided by participating carriers with equal care and timeliness, subject only to the constraints of the loading method selected by individual participating carriers.

Article 4

Distribution facilities

1. A system vendor shall not reserve any specific loading and/or processing procedure, any other distribution facility, or any improvements to these, for one or more of its parent carrier(s).
2. A system vendor shall ensure that its distribution facilities are separated, at least by means of software and in a clear and verifiable manner, from any carrier's private inventory and management and marketing facilities.

Article 5

Displays

1. A system vendor shall provide a principal display or displays for each individual transaction through its CRS and shall include therein the data provided by participating carriers in a neutral and comprehensive manner and without discrimination or bias. Criteria to be used for ranking shall not be based on any factor directly or indirectly relating to carrier identity and shall be applied on a non-discriminatory basis to all participating carriers. The principal display(s) shall respect the rules set out in Annex 1.
2. In the case of information provided by a CRS, a subscriber shall use a neutral display in accordance with paragraph 1 unless another display is required to meet a preference indicated by a consumer.
3. This Article shall not apply to a CRS used by an air carrier, or rail-transport operator, or a group of air carriers, or of rail-transport operators, in its or their own office or offices and sales counters clearly identified as such.

Article 6

Relations with subscribers

1. A system vendor shall not attach unreasonable conditions to a contract with a subscriber, such as preventing a subscriber from subscribing to or using any other system or systems, requiring the acceptance of supplementary conditions which have no connection with subscription in its CRS, or imposing an obligation to accept an offer of technical equipment or software.
2. Where a subscriber is an autonomous enterprise that employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million, it may terminate its contract with a system vendor by giving notice, which need not exceed three months, to expire not before the end of the first year. In such a case, a system vendor shall not be entitled to recover more than the costs directly related to the termination of the contract.

Article 7
Marketing Information Data Tapes (MIDT)

Any marketing, booking and sales data may be made available by system vendors provided that:

- (a) such data are offered with equal timeliness and on a non-discriminatory basis to all participating carriers, including parent carriers. Data may and, on request, shall cover all participating carriers and/or subscribers;
- (b) when such data result from the use of the distribution facilities of a CRS by a subscriber established in the Community, it shall include no identification either directly nor indirectly of that subscriber.¹

Article 8
Equivalent treatment in third countries

- 1. ~~Without prejudice to international agreements to which the Community or the Member States are parties, where~~ **At the request of a Member State or on its own initiative, the Commission shall examine whether** the treatment given to Community air carriers by a system vendor operating in a third country is ~~not~~ equivalent to the treatment given to the third country participating carriers with regard to any matter contained in this Regulation.
- 2. **Where this is found not to be the case, the Commission, after consultation of the Member States and interested parties and without prejudice to international agreements to which the Community or the Member States are parties,** may require all system vendors operating in the Community to treat air carriers of that third country in a manner that is equivalent to the treatment given to Community air carriers in that third country.

¹ FR and RO have a scrutiny reservation on this paragraph (b).

Section 3

Rules of conduct for transport providers

Article 9

data provided by participating carriers

Participating carriers, and intermediaries handling the data, shall ensure that the data which they submit to a CRS are accurate and that they allow the system vendor to respect the provisions of Annex I.

Article 10¹

Specific rules for parent carriers

1. A parent carrier may not discriminate against a competing CRS by refusing to provide the latter, on request and with equal timeliness, with the same data on schedules, fares and availability relating to its own transport products as that which it provides to its own CRS or to distribute its transport products through another CRS, or by refusing to accept or to confirm with equal timeliness a reservation made through a competing CRS for any of its transport products which are distributed through its own CRS. The parent carrier shall be obliged to accept and to confirm only those bookings which are in conformity with its fares and conditions.
2. The parent carrier shall not be obliged to accept any costs in this connection except for reproduction of the data to be provided and for accepted bookings. The booking fee payable to a CRS for an accepted booking made in accordance with paragraph 1 shall ~~not exceed the fee charged by the same CRS or by its own CRS~~ **be in line with the fee charged by the same CRS** to other participating carriers for an equivalent transaction.

¹ FR questioned the need for this Article 10. However, DK, PL, SE and UK supported Article 10.

3. A parent carrier shall neither directly nor indirectly link the use of any specific CRS by a subscriber with the receipt of any commission or other incentive or disincentive for the sale of its transport products.
4. A parent carrier shall neither directly nor indirectly require use of any specific CRS by a subscriber for sale or issue of tickets for any transport products provided either directly or indirectly by itself.

Section 4

Protection of personal data¹

Article 11²

1. Personal data shall be processed in the course of the activities of a CRS exclusively for the purpose of making reservations or issuing tickets for transport products. With regard to the processing of such data, a ~~CRS~~ **system vendor** shall be considered as a data controller in accordance with Article 2(d) of Directive 95/46/EC.
2. Personal data shall only be processed insofar as processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
3. Where special categories of data referred to under Article 8 of Directive 95/46/EC are involved, such data shall only be processed where the data subject has given his explicit consent to the processing of those data.
4. Information under the control of the system vendor concerning identifiable individual bookings shall be stored off-line within seventy-two hours of the completion of the last element in the individual booking and destroyed within three years. Access to such data shall be allowed only for billing-dispute reasons.

¹ DK has a scrutiny reservation on the absence of a provision on audits.

² FR has a reservation on this Article 11.

5. Marketing, booking and sales data made available by a CRS shall include no identification, either directly or indirectly, of natural persons or, where applicable, of the organisations or companies on whose behalf they are acting.
6. Upon request, a subscriber shall inform the consumer of the name and address of the system vendor, the purposes of the processing, the duration of the retention of personal data and the means available to the data subject of exercising his access rights.
7. A data subject shall be entitled to have access free of charge to data relating to him regardless of whether the data is stored by the CRS or by the subscriber.
8. The rights recognized in this article are complementary to and shall exist in addition to the data subject rights laid down by Directive 95/46/EC and by the national provisions adopted pursuant thereto.
9. The provisions of this Regulation particularise and complement Directive 95/46/EC for the purposes mentioned in Article 1. Save as otherwise provided the definitions in that Directive shall apply. ~~Where the specific provisions with regard to the processing of personal data in the context of the activities of a CRS laid down in this Article do not apply, this Regulation shall be without prejudice to the provisions of the said Directive and the national provisions adopted by the Member States pursuant thereto.~~

Section 5

Infringements and penalties

Article 12

Infringements

Where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of this Regulation it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

Article 13

Powers of investigation

In order to carry out the duties assigned to it by this Regulation the Commission may, by simple request or decision, require undertakings or associations of undertakings to provide all necessary information.

Article 14

Fines

1. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 10 per cent of the total turnover in the preceding business year where, intentionally or negligently, they infringe this Regulation.
2. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently, they supply incorrect or incomplete information or do not supply information within the required time limit in response to a request made by a decision adopted pursuant to Article 13.

3. In fixing the amount of the fines regard shall be had both to the gravity and to the duration of the infringement.
4. Fines shall not be of criminal nature.
5. The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has imposed a fine. It may cancel, reduce or increase the fine.

Article 15

Procedures

1. Before taking decisions pursuant to Articles 12 and 14, the Commission shall issue to the undertakings or associations of undertakings concerned a statement of objections and give them an opportunity to submit their views in writing and, if they so request, at an oral hearing.
2. The Commission shall not disclose information of the kind covered by the obligation of professional secrecy which it has obtained pursuant to this Regulation.
Any person who submits information to the Commission under this Regulation shall clearly identify any material which it considers to be confidential, giving reasons, and provide a separate non-confidential version by the date set by the Commission.
3. Where the Commission considers that on the basis of the information in its possession there are insufficient grounds for acting on a complaint, it shall inform the complainants of its reasons and set a time limit within which the complainant may make known its views in writing.

If the complainant makes known its views within the time-limit set by the Commission and the written submissions made by the complainant do not lead to a different assessment of the complaint, the Commission shall reject the complaint by decision. If the complainant fails to make known its views within the time-limit set by the Commission, the complaint shall be deemed to have been withdrawn.

Where the Commission issues a statement of objections, it shall provide the complainant with a copy of the non-confidential version and set a time limit within which the complainant may make known its views in writing.

4. If so requested, the Commission shall grant access to the file to the parties to whom it has addressed a statement of objection and to the complainant. Access shall be granted after the notification of the statement of objections. The right of access to the file shall not extend to business secrets, other confidential information and internal documents of the Commission.
5. If the Commission considers it necessary it may hear other natural or legal persons.

Section 6

Final provisions

Article 16

Repeal

1. Regulation (EEC) No 2299/89 is repealed.
2. 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.

Article 17

Review

Within five years of the entry into force of this Regulation, the Commission shall draw up a report on the application of this Regulation which shall assess the need to maintain, amend or abolish the present Regulation.

Article 18

Entry into force

This Regulation shall enter into force on the [...] ¹ 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 European Parliament
The President

For the Council
The President

¹ FR suggested to refer to the aeronautical season.

ANNEX I TO ANNEX
Rules applicable to principal displays¹

1. Where fares are shown in the principal display, and/or where a ranking based on fares is chosen, fares shall be inclusive of all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable.
2. No discrimination on the basis of airports or rail stations serving the same city shall be exercised in constructing and selecting transport products for a given city-pair for inclusion in a principal display.
3. Flights other than scheduled air services must be clearly identified. A consumer shall be entitled to have, on request, a principal display limited to scheduled or non-scheduled services only.
4. Flights involving stops en route must be clearly identified.
5. Where flights are operated by an air carrier which is not the air carrier identified by the carrier designator code, the actual operator of the flight must be clearly identified as known at the time of booking.
6. Information on bundled products ~~—i.e. prearranged combinations of transport with other services not ancillary to transport and offered at an inclusive price—~~ shall not be featured in the principal display.
7. **A system vendor must not use the screen space in a principal display in a manner which gives excessive exposure to one particular travel option or which displays unrealistic travel options.**
8. A system vendor must not use the screen space in a principal display in a manner which gives excessive exposure to one particular travel option, such as a same flight marketed under several airline codes, or which displays unrealistic travel options.

¹ FR suggested the inclusion in this Annex 1 of additional provisions on combined transport.

ANNEX II

CORRELATION TABLE

Regulation 2299/89	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3(1) and (2)	-
Article 3(3)	Article 3(1)
Article 3(4)	Article 4(1)
Article 3a	Article 10(1) and (2)
Article 4(1)	Article 9
Article 4(2)	-
Article 4(3)	Article 3(2)
Article 4a (1) and (2)	Article 4(1)
Article 4a(3)	Article 4(2)
Article 4a(4)	-
Article 5	Article 5
Article 6	Articles 7 and 11
Article 7	Article 8
Article 8	Article 10(3) and (4)
Article 9	Article 6
Article 9a	Articles 5(2) and 11
Article 10	-
Article 11	Article 12
Article 12	Article 13
Article 13	Article 13
Article 14	Article 15(2)
Article 15	Article 13
Article 16	Article 14
Article 17	-
Article 18	-

Article 19	Article 15(1) and (5)
Article 20	-
Article 21	-
Article 21a	-
Article 21b	-
Article 22	Article 11
Article 23	Article 17
Annex I	Annex I