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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 sector

(OJ L 374, 31.12.1987, p. 9)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EEC) No 2344/90 of 24 July 1990	L 217	15	11.8.1990
►**M2**	Council Regulation (EEC) No 2411/92 of 23 July 1992	L 240	19	24.8.1992

Amended by:

►**A1**	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995

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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 sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 87 thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinions of the European Parliament ([2]),

Having regard to the opinions of the Economic and Social Committee ([3]),

Whereas Council Regulation (EEC) No 3975/87 ([4]) lays down the procedure for the application of the rules on competition to undertakings in the air transport sector; whereas Regulation No 17 of the Council ([5]) lays down the procedure for the application of these rules to agreements, decisions and concerted practices other than those directly relating to the provision of air transport services;

Whereas Article 85 (1) of the Treaty may be declared inapplicable to certain categories of agreements, decisions and concerted practices which fulfil the conditions contained in Article 85 (3);

Whereas common provisions for the application of Article 85 (3) should be adopted by way of Regulation pursuant to Article 87; whereas, according to Article 87 (2) (b), such a Regulation must lay down detailed rules for the application of Article 85 (3), taking into account the need to ensure effective supervision, on the one hand, and to simplify administration to the greatest possible extent, on the other; whereas, according to Article 87 (2) (d), such a Regulation is required to define the respective functions of the Comission and of the Court of Justice;

Whereas the air transport sector has to date been governed by a network of international agreements, bilateral agreement between States and bilateral and multilateral agreements between air carriers; whereas the changes required to this international regulatory system to ensure increased competition should be effected gradually so as to provide time for the air-transport sector to adapt;

Whereas the Commission should be enabled for this reason to declare by way of Regulation that the provisions of Article 85 (1) do not apply to certain categories of agreements between undertakings, decisions by associations of undertakings and concerted practices;

Whereas 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;

Whereas it is desirable, in particular, that block exemptions be granted for certain categories of agreements, decisions and concerted practices; whereas these exemptions should be granted for a limited period during which air carriers can adapt to a more competitive environment; whereas the Commission, in close liaison with the Member States,

([1]) OJ No C 182, 9. 7. 1984, p. 3.
([2]) OJ No C 262, 14. 10. 1985, p. 44;
OJ No C 190, 20. 7. 1987, p. 182 and OJ No C 345, 21. 12. 1987.
([3]) OJ No C 303, 25. 11. 1985, p. 31 and
OJ No C 333, 29. 12. 1986, p. 27.
([4]) See page 1 of this Official Journal.
([5]) OJ No 13, 21. 2. 1962, p. 204/62.

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should be able to define precisely the scope of these exemptions and the conditions attached to them;

Whereas there can be no exemption if the conditions set out in Article 85 (3) are not satisfied; whereas the Commission should therefore have power to take the appropriate measures where an agreement proves to have effects incompatible with Article 85 (3); whereas the Commission should consequently be able first to address recommendations to the parties and then to take decisions;

Whereas this Regulation does not prejudge the application of Article 90 of the Treaty;

Whereas the Heads of State and Government, at their meeting in June 1986, agreed that the internal market in air transport should be completed by 1992 in pursuance of Community actions leading to the strengthening of its economic and social cohesion; whereas the provisions of this Regulation, together with those of Council Directive 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States [1] and those of Council Decision 87/602/EEC of 14 December 1987on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air service routes between Member States [2], are a first step in this direction and the Council will therefore, in order to meet the objective set by the Heads of State and Government, adopt further measures of liberalization at the end of a three year initial period,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to ►M2 ——————— ◄ air transport between Community airports.

Article 2

1. Without prejudice to the application of Regulation (EEC) No 3975/87 and in accordance with Article 85(3) of the Treaty, the Commission may by regulation declare that Article 85 (1) shall not apply to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices.

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2. 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:

— joint planning and coordination of airline schedules,

— consultations on tariffs for the carriage of passengers and baggage and of freight on scheduled air services,

— joint operations on new less busy scheduled air services,

— slot allocation at airports and airport scheduling; the Commision shall take care to ensure consistency with the Code of Conduct adopted by the Council,

— 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 the Code of Conduct adopted by the Council.

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3. Without prejudice to paragraph 2, such Commission regulations shall define the categories of agreements, decisions or concerted practices to which they apply and shall specify in particular:

[1] See p. 12 of this Official Journal.
[2] See p. 19 of this Official Journal..

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(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.

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Article 3

Any Regulation adopted pursuant to Article 2 shall be 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.

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Article 4

Regulations adopted pursuant to Article 2 shall include a provision 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.

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Article 4a.

A Regulation pursuant to Article 2 may stipulate that the prohibition contained in Article 85(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 85(1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article 85(3). 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.

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Article 5

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

Article 6

The Commission shall consult the Advisory Committee on Agreements and Dominant Positions in Air Transport established by Article 8 (3) of Regulation (EEC) No 3975/87 before publishing a draft Regulation and before adopting a Regulation.

Article 7

1. Where the persons concerned are in breach of a condition or obligation which attaches to an exemption granted by a Regulation adopted pursuant to Article 2, the Commission may, in order to put an end to such a breach:

— address recommendations to the persons concerned,

and

— in the event of failure by such persons to observe those recommendations, and depending on the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out, or requires them to perform, specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption in accordance with Article 4 (2) of Regulation

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(EEC) No 3975/87 or withdraws the benefit of the block exemption which they enjoyed.

2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case an agreement, decision or concerted practice to which a block exemption granted by a regulation adopted pursuant to Article 2 (2) applies, nevertheless has effects which are incompatible with Article 85 (3) or are prohibited by Article 86, it may withdraw the benefit of the block exemption from those agreements, decisions or concerted practices and take, pursuant to Article 13 of Regulation (EEC) No 3975/87, all appropriate measures for the purpose of bringing these infringements to an end.

3. Before taking a decision under paragraph 2, the Commission may address recommendations for termination of the infringement to the persons concerned.

Article 8

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Article 9

This Regulation shall enter into force on 1 January 1988.

This Regulation shall be binding in its entirety and directly applicable in all Member States.