Council Regulation (EC) No 487/2009 of 25 May 2009 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) (Text with EEA relevance)

COUNCIL REGULATION (EC) No 487/2009

of 25 May 2009

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)

(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 Parliament[(1)],

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 sector[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality the said Regulation should be codified.

(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 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.

(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.

(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.

(5) It is desirable, in particular, that block exemptions be granted for certain categories of agreements, decisions and concerted practices. Those 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 those exemptions and the conditions attached to them.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 487/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to air transport.

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.

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 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports[(4)];

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 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems[(5)].

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.

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.

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.

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

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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.

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 a reasonable time-limit, being not less than one month, as the Commission shall fix.

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 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[6] before publishing a draft Regulation and before adopting a Regulation pursuant to Article 2.

Article 8

Regulation (EEC) No 3976/87 is repealed.

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

Article 9

This Regulation shall enter into force on the 20th 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 Brussels, 25 May 2009.

For the Council

The President

J. ŠEBESTA