

Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 (Text with EEA relevance)

REGULATION (EC) No 80/2009 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 January 2009

on a Code of Conduct for computerised reservation systems
and repealing Council Regulation (EEC) No 2299/89

(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 Committee⁽¹⁾,

After consulting the Committee of the Regions,

Having regard to the opinion of the European Data Protection Supervisor⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems⁽⁴⁾ has made a major contribution to ensuring fair and unbiased conditions for air carriers in a computerised reservation system (hereinafter CRS), thereby protecting the interests of consumers.
- (2) An important share of airline reservations is still made through CRSs.
- (3) Technological and market developments allow for a substantial simplification of the legislative framework by giving more flexibility to system vendors and air carriers to negotiate booking fees and fare content. This should 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 CRSs, in so far as they contain transport products, in order to prevent abuse of competition 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 CRSs.

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- (6) It is necessary to maintain effective competition between participating carriers and parent carriers and ensure respect for the principle of non-discrimination among air carriers irrespective of their participation in the CRS.
- (7) In order to ensure transparent and comparable terms of competition in the market, parent carriers should be subject to specific rules.
- (8) System vendors should clearly separate the CRSs from any airline's internal or any other kind of reservation system and should refrain from reserving distribution facilities to their parent carriers, in order to avoid that a parent carrier could have privileged access to the CRSs.
- (9) 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.
- (10) The use of an unbiased display increases the transparency of transport products and services offered by participating carriers and enhances consumer confidence.
- (11) 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 or the choice of the consumer.
- (12) Agreements between subscribers and the system vendor on the Marketing Information Data Tapes (MIDT) could include a compensation scheme in favour of subscribers.
- (13) The provision of information on rail and rail-air services on the CRS displays should be facilitated.
- (14) According to Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (recast)⁽⁶⁾, air carriers must publish their fares inclusive of all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable. CRS displays should provide information on fares inclusive of the same price categories to ensure that travel agents can communicate that information to their clients.
- (15) Information on bus services for air-transport products or rail-transport products incorporated alongside air transport products should, in the future, be featured in the principal display of CRSs.
- (16) CRSs should be encouraged to provide, in the future, easily understandable information about CO₂ emissions and the fuel consumption of the flight. This could be shown through average fuel consumption data per person in litre/100 km and average CO₂ emissions per person in g/km, and could be compared with data of the best alternative train/bus connection for journeys of less than five hours.
- (17) Air carriers from the Community and from third countries should be afforded equivalent treatment with regard to CRS services.
- (18) In order to ensure the correct application of this Regulation, the Commission should have appropriate enforcement powers, including the possibility to investigate

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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.

- (19) The Commission should regularly monitor the application of this Regulation and in particular its effectiveness in preventing anti-competitive and discriminatory practices in the market for distribution of travel services through CRSs, notably given the presence of carriers with close links to system vendors.
- (20) This Regulation is without prejudice to the application of Articles 81 and 82 of the Treaty. This Regulation is complementary to general rules on competition which remain fully applicable to abuse of competition such as antitrust violations or abuses of a dominant position.
- (21) The protection of individuals with regard to the processing of personal data is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁶⁾. The provisions of this Regulation particularise and complement Directive 95/46/EC with regard to the activities of a CRS.
- (22) Regulation (EEC) No 2299/89 should be repealed,

HAVE ADOPTED THIS REGULATION:

SECTION 1

INTRODUCTORY PROVISIONS

Article 1

Subject matter and scope

This Regulation shall apply to any computerised reservation system (CRS), in so far 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 when offered for use or used in the Community.

Article 2

Definitions

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

1. 'transport product' means the carriage of a passenger between two airports or rail stations;
2. 'scheduled air service' means a series of flights possessing all the following characteristics:

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- (a) 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);
 - (b) 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;
3. ‘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;
4. ‘computerised reservation system’ or ‘CRS’ means a computerised system containing information about, *inter alia*, schedules, availability and fares, of more than one air carrier, with or without facilities to make reservations or issue tickets, to the extent that some or all of these services are made available to subscribers;
5. ‘system vendor’ means any entity and its affiliates which is or are responsible for the operation or marketing of a CRS;
6. ‘distribution facilities’ means 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;
7. ‘parent carrier’ means any air carrier or rail-transport operator which directly or indirectly, alone or jointly with others, controls, or participates in the capital with rights or representation on the board of directors, supervisory board or any other governing body of, a system vendor, as well as any air carrier or rail-transport operator which it controls;
8. ‘participation in the capital with rights or representation on the board of directors, supervisory board or any other governing body of a system vendor’ means an investment to which are attached rights or representation on the board of directors, supervisory board or any other governing body of a system vendor, and conferring the possibility of exercising, alone or jointly with others, decisive influence on the running of the business of the system vendor;
9. ‘control’ means a relationship constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
 - (a) ownership or the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the organs of an undertaking;
10. ‘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;

SECTION 2

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11. ‘subscriber’ means a person 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-transport and related products on behalf of a client;
12. ‘principal display’ means a comprehensive neutral display of data concerning transport services between city-pairs, within a specified time period;
13. ‘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;
14. ‘bundled product’ means a prearranged combination of transport with other services not ancillary to transport and offered at an inclusive price;
15. ‘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***Relationship with transport providers**

- 1 A system vendor shall not:
 - a attach unfair and/or unjustified 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 and call centres.
- 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.
- 3 A system vendor shall publicly disclose, unless this is otherwise made public, the existence and extent of a direct or indirect capital holding of an air carrier or rail-transport operator in a system vendor, or of a system vendor in an air carrier or rail-transport operator.

*Article 4***Distribution facilities**

- 1 A system vendor shall not reserve any specific loading and/or processing procedure, any other distribution facility, or any changes to these, for one or more participating carriers, including its parent carrier(s). The system vendor shall provide information about changes to its distribution facilities and loading/processing procedures to all participating carriers.