



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

on

the common position adopted by the Council
on 24 September 1998 concerning the proposal for
a Council Regulation amending Regulation 2299/89
on a code of conduct for computerised reservation systems (CRSs)

I. BACKGROUND

On 9 July 1997, the Commission adopted a proposal for a Council Regulation amending Regulation 2299/89 on a code of conduct for computerised reservation systems (CRSs).

This proposal was transmitted to Parliament and Council on 17 July 1997.

The Economic and Social Committee delivered its opinion on 28 January 1998.

After receiving the opinion of Parliament on 15 May 1998, the Commission sent the Council a modified proposal on 16 June 1998.

The Council adopted a common position on 24 September 1998.

II. SUBJECT OF THE COMMISSION PROPOSAL

(a) Purpose of the proposal

Article 23 of the present code provides that the Council shall decide on a revision of the existing code by 31 December 1997 on the basis of a Commission proposal. The principle amendments contained in the Commission's proposal are as follows:

- Reinforcement of the rules applicable to subscribers (travel agents) in order to ensure that consumers get unbiased information. Currently, the code only requires that a limited number of obligations are included in the contracts between subscribers and CRSs. However, CRSs expressed their difficulty in ensuring that subscribers respect their obligations. The Commission is concerned that the strict rules placed on CRSs concerning the provision of accurate and comprehensive information can be rendered ineffective if subscribers do not pass the same unbiased information to their customers. By bringing subscribers directly within the scope, any complaint concerning a subscriber's behaviour can be investigated by the Commission in a more objective and transparent manner.

- Extension of the scope to include rail options: A prospective passenger needs to be able to compare the features of the different modes of transport available to him. This is becoming increasingly important given the growth of competition taking place between rail and air services. At the present time, rail and air services are distributed through separate channels, which renders the comparison of options by the potential traveller difficult. Considering the importance of distribution arrangements, this extension should encourage further the objective of interoperability.

- Inclusion of CRS services distributed via Internet within the scope of the code: When Internet systems, as well as other similar systems, only act as sophisticated communication links between information providers and their subscribers and do not contain any information on air transport per se, they do not appear to fall within the definition of a system vendor or a CRS. However, such systems or communication networks, should come under the responsibility of a system vendor to ensure that any third party providing services on its behalf respects the relevant code provisions. In these circumstances, for services distributed through such

systems as Internet, it is the information provider (i.e. carrier or CRSs) that must ensure compliance with the code provisions.

- Charging principles: A considerable debate has taken place over the past few years concerning the level of fees charged to carriers by CRSs. As a result of market forces there has been a trend towards the provision of CRS services to subscribers at little or no costs. In many cases subscribers receive, in fact, large incentive payments from CRSs to use their systems. These payments to subscribers are effectively subsidised by the carriers. After careful investigation the Commission concluded that the present code provisions on the cost relatedness of charges need to be clarified to prevent future disputes on this subject.

Other points concern the display of code-share flights, the scope of the audit, ticketing arrangements for flight carrying the same flight number operated by the same carrier, security package, right of a defendant to be heard, obligation of third parties, ranking of flights and billing information on magnetic data.

III. COMMISSION COMMENTS ON THE COMMON POSITION

A. General Comment

The Council's common position reflects the Commission's aim of making the necessary amendments to Regulation 2299/89 in order to reinforce the rules, include rail options, regulate the situation for services distributed via the internet and to clarify the principles for charging. It includes a large number of amendments proposed by the Parliament and accepted by the Commission either directly or in effect.

B. European Parliament amendments

(1) **Amendments accepted by the Commission and included directly or indirectly in the common position.**

Amendment 1 (Recital 14 formerly 15)

This amendment concerns the need for a consumer to be able to identify information sources which are provided directly by air carriers and therefore not necessarily neutral. The aim of the Parliament's amendment has been maintained but redrafted.

Amendment 2 (Article 1, paragraph 1)

This amendment opens up for the introduction of rail services. The common position accepts it fully.

Amendment 5 (Article 1, paragraph 3)

This amendment is intended to clarify the existing text. The common position accepts the amendment with a small linguistic change.

Amendment 6 (Article 1, paragraph 3.a)

This amendment is needed to clarify the existing text with respect to the inclusion of rail services. The common position accepts the amendment with a small linguistic change.

Amendment 7 (Article 1, paragraph 4.a)

This amendment reinforces the protection of personal data while giving the opportunity to subscribers or medium and small sized airlines to purchase information, which so far they could not afford. The common position accepts the amendment with a small linguistic change.

However, the Commission would like to point out that Article 6, paragraph 1.b.iv and v need to be revised in order to avoid that the term "group of airlines and/or subscribers" may lead to unintended effects. The proposed text was intended to make it possible for small groups to purchase the CRS data tapes. However, the present text would also apply to very large groups.

Amendment 8 (Article 1, paragraph 7)

The amendment is intended to ensure that billing information on magnetic data is not treated differently from other billing supports. Furthermore, by proposing that incentives awarded to subscribers are based on ticketed segments rather than on bookings, the amendment reduces the risks of passive and fictitious bookings. The common position accepts the main part of the amendment.

Amendment 9 (Article 1, paragraph 9)

The amendment strengthens the principle that if the consumer contacts the air carrier directly either at its offices or through Internet he should not be misled and the identity of the carrier(s) in question should be clearly identified at all time. The common position accepts the amendment with a small linguistic change.

Amendment 10 (Article 1, paragraph 11)

The amendment clarifies the context when a rail operator can be considered as a participating carrier. The common position accepts the amendment with a small linguistic change in a new Article 21b which sets out the specific rules for rail services.

Amendment 12 (Annex 2)

The amendment aims at avoiding unnecessary passive bookings. The common position accepts the amendment with a small linguistic change.

Amendment 14 (Annex 1, paragraph 10.2)

This amendment is intended to clarify the existing text. The common position accepts the amendment with a small linguistic change.

(2) Amendments not accepted by the Commission but included directly or indirectly in the common position

Amendment 11 (Annex 1, paragraph 1.1)

The Council decided to maintain the existing ranking of the display as proposed by the Parliament. The Commission can accept this approach in view of the way in which rail services have been included.

(3) Amendments accepted by the Commission and not included directly or indirectly in the common position

Amendment 3 (Article 1 paragraph 2.a)

The Council did not accept this amendment which was intended to finetune the definition of a subscriber. However, in view of the new definition of a financial arrangement and the modified definition of a consumer the Commission can accept the text of the common position.

Amendment 4 (Article 1, paragraph 2.c)

The Council decided to delete the definition of a rail transport operator and to depend on the existing definition in Directive 91/440/EEC on the development of the Community's railways. The Commission can accept this approach which ensures that the same definition is used but only if a reference is made to the definition in the Directive.

Amendment 13 (Annex 1, paragraph 9.2)

The Council did not accept the amendment in order to cater for the special situation in Spain and Portugal. The Commission can accept this since it is a continuation of the existing rules.

(4) New features of the common position

Article 2, paragraph a.l

The Council decided to provide a definition of a financial arrangement. The Commission can accept because it provides for greater legal clarity.

Article 2, paragraph a.t

The Council decided to introduce a definition of a ticket in order to cover new forms of tickets. The Commission can accept since it proposed a similar definition in its proposal to modify the Regulation on Denied Boarding Compensation.

Article 2, paragraph a.u

The term "duplicate reservation" is found in annex 1. During the discussions it became apparent that this term could be misunderstood. The Council therefore decided to introduce a direct definition. The Commission can accept.

Article 2, paragraph b

The Council modified the definition of “consumer” in order to give it more precision. The Commission can accept this text.

Article 6, paragraph 1.a

The Council decided to add a new indent to ensure that sensitive individual data are treated in conformity with Directive 95/46/EC. The Commission can accept this text in particular because this will mean the inclusion of these features in the procedures of the technical audit provided for in Article 21a.

Article 9a, paragraph 1.d

The Council decided to add a new sentence in order to ensure that information on how individual data are treated is provided to consumers in conformity with Directive 95/46/EC. The Commission can accept.

Article 9a, paragraph 1.f

The Council decided to add a new subparagraph in order to ensure that access to individual data is provided in conformity with Directive 95/46/EC. The Commission can accept.

Article 21b

The Council decided to introduce a new article which contains all the specific rules in relation to incorporating information on rail services in the principal display. Paragraph 5.a of this article contains the second half of amendment 11 in a redrafted form. The new article creates a very transparent situation. Therefore, the Commission can accept the new article.

Article 23

The Council agreed to modify the Commission’s proposal slightly in order to accelerate and give greater precision to the report on the application of this Regulation. The Commission can accept the new text.

Article 2

The Council decided to modify this article slightly for technical reasons and in order to introduce a transitional period for article 10, paragraph 1.b. The Commission can accept subject to a technical redrafting.

IV. CONCLUSION

The Commission supports the common position which very closely follows its proposal and the Parliament’s proposed amendments except for the problems pointed out in respect of amendments 7 and 4 and article 2.