



COMMISSION OF THE EUROPEAN COMMUNITIES

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MEMORANDUM FROM THE COMMISSION

Application of the competition rules to air transport

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Proposal for a  
COUNCIL REGULATION (EC)  
amending Regulation (EEC) No 3975/87 laying down the procedure for the application of  
the rules on competition to undertakings in the air transport sector

Proposal for a  
COUNCIL REGULATION (EC)  
on the application of Article 85(3) of the Treaty to certain categories of agreements  
and concerted practices in the sector of air transport between the Community  
and third countries

(presented by the Commission)

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**Application of the competition rules to air transport**

A. AMENDMENT OF COUNCIL REGULATION (EEC) No 3975/87 LAYING DOWN THE PROCEDURE FOR THE APPLICATION OF THE COMPETITION RULES

Background

1. In 1981 the Commission made a proposal to the Council for a Regulation laying down the procedure for the application of the competition rules to air transport, and included within the scope of the Regulation international air transport with third countries<sup>1</sup>. In the course of the discussion of the Commission's proposal in the Council it became clear that, in order to reach agreement on the proposal, its scope would have to be restricted to international air transport within the Community, a change which was made at the time of Memorandum No 2<sup>2</sup> and was incorporated in Article 1(2) of Regulation (EEC) No 3975/87<sup>3</sup>.
2. The Commission's powers to enforce the competition rules in the air transport sector by means of fact-finding, taking decisions, imposing penalties and granting individual exemptions were initially limited by Regulation (EEC) No 3975/87 to international transport between Member States. The Commission's powers did not extend either to domestic transport or to transport between a Member State and a third country.
3. In its judgment of 11 April 1989 in the *Ahmed Saeed* case<sup>4</sup> the Court of Justice confirmed its judgment in *Nouvelles Frontières*<sup>5</sup> as regards the application of Article 85 of the Treaty and ruled that Article 86 of the Treaty is directly applicable by national courts, even in the absence of an implementing regulation under Article 87 of the Treaty or of action by a Member State cartel authority or by the Commission (under Article 88 or Article 89 of the Treaty respectively). The Court's judgment means that, where a dominant airline succeeds, other than by normal competitive means, in eliminating all price competition, even on a domestic or on a Community third country route, this behaviour is to be deemed an abuse contrary to Article 86. Since there is no block exemption for airlines to discuss, let alone agree, fares on Community third country routes, such discussions or agreements are prohibited by Article 85 and hence are automatically void where either the authorities in the Member State in which the head office of one of the airlines concerned is situated or the Commission, acting under Articles 88 and 89 respectively, find that they are incompatible with Article 85. The Court also ruled that a Member State is in breach of its Treaty obligations if it approves fares which

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<sup>1</sup> OJ No C 291, 12.11.1981.

<sup>2</sup> COM(84) 72 final of 15 March 1984.

<sup>3</sup> OJ No L 374, 31.12.1987, p. 1.

<sup>4</sup> Case 66/86 [1989] ECR 803.

<sup>5</sup> Joined Cases 209-213/84 [1986] ECR 1425.

infringe Article 85 or Article 86. Such would be the case, for instance, where a uniform, agreed price structure has resulted from consultations which have not been exempted pursuant to Article 85(3).

4. Since, in respect of both domestic and EC third country air transport, the Commission had at that time no power to grant exemptions under Article 85(3) or to use normal procedures to rule on abuses of dominant positions under Article 86, there was and still is a climate of serious uncertainty in which air carriers cannot know what practices and arrangements they may legitimately engage in on such routes. If, even inadvertently, they act unlawfully, they run the risk of actions in national courts leading to the payment of damages. Moreover, prior to the third package of measures liberalizing air transport, which introduced via Regulation (EEC) No 2409/92<sup>6</sup> the freedom in principle to set fares and rates, Member States faced comparable uncertainties when approving the fares filed by carriers on such routes. In order to establish a framework of certainty, the Commission asked the Council to give it the necessary powers to clarify how Articles 85 and 86 apply to domestic and extra-Community air transport.
5. The Commission accordingly proposed again in 1989<sup>7</sup> that the Council adopt regulations extending the scope of its powers to enforce the competition rules so as to include domestic and EC third country air transport.

#### Air transport within a Member State

6. The Council having committed itself, within the framework of the third package of air transport liberalization measures, to lay down rules on cabotage, it was necessary to adopt at the same time measures enabling the Commission to apply the competition rules to transport within a Member State.
7. This induced the Commission to withdraw its 1989 proposal<sup>8</sup> in so far as it concerned domestic transport and to present, on 25 July 1991, a new proposal for a Regulation<sup>9</sup> whereby Regulation (EEC) No 3975/87 would also apply henceforth to transport entirely within a Member State. The latter proposal was adopted by the Council on 23 July 1992 as Regulation (EEC) No 2410/92<sup>10</sup>.

#### Air transport on Community third country routes

8. The Council has, however, yet to act on the Commission's proposals concerning air transport on Community third country routes.
9. As regards air transport on such routes, the Commission considers that a number of new factors have arisen since its 1989 proposals were last examined by the Council. In its view, these new factors make it more necessary than ever to endow the Commission as of now with the same powers of action vis-à-vis transport on such routes as those which are currently conferred on it by

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<sup>6</sup> OJ No L 240, 24.8.1992, p. 15.

<sup>7</sup> COM(89) 417 final of 8 September 1989.

<sup>8</sup> OJ No C 248, 29.9.1989, p. 9.

<sup>9</sup> OJ No C 225, 30.8.1991, p. 9.

<sup>10</sup> OJ No L 240, 24.8.1992, p. 18.

Regulation (EEC) No 3975/87 with a view to ensuring compliance with the competition rules in the case of air transport between Community airports.

10. Apart from the reasons which gave rise to a lack of legal certainty back in 1989 and which still apply today (see points 3 and 4 above), these new factors are as follows:

- 10.1 Liberalization of the internal market

The regulatory context has changed substantially since the introduction of the third package of air transport liberalization measures with effect from 1 January 1993, with the resulting greater liberalization of the internal aviation market, which is to be rounded off by the unrestricted introduction of cabotage scheduled for April 1997.

As one by one the existing regulatory restrictions on the commercial conduct of air carriers are removed, competition issues become increasingly pressing. When an airline operates in a more competitive environment, experience gained by the Commission in other sectors shows the need for more extensive and more effective means of coping with this new liberalized regulatory context so as to ensure fair competition between operators and to safeguard the interests of consumers.

It is clear that for some major, mainly non-Community, air carriers, or for certain alliances, flights in the Community market are in some cases no more than an initial stage in, or a prolongation of, a flight bound for a third country. In such a case, intra-Community flights may be organized using the practice of code sharing with a partner and are viewed as only one stage in the journey.

Equipping the Commission with such means of action is essential if the beneficial effects of the liberalization process that is under way are not to be partially offset by restrictive or abusive conduct on the part of European or non-European commercial operators. It would also make it possible to protect more effectively and more rapidly, for example by granting interim measures, small and medium-sized airlines, which are more often than not Community in origin and which might be harmed by such conduct.

- 10.2 Weakness of the external aspect

The liberalization of the Community aviation market, an objective decided on and gradually implemented by the Council through the adoption of the three liberalization packages, remains fragile, however, inasmuch as the market is still incomplete externally. It remains subject to bilateral agreements between Community Member States and third countries. These agreements do not normally include any mechanism providing for a system of effective application of the Community competition rules, whereas some third countries apply their antitrust law to routes between themselves and the Community. The existence of these agreements is partly responsible for the lack of competitive pressure on the

Community market, as referred to in the Commission report of 22 October 1996 on the impact of the third package of air transport liberalization measures<sup>11</sup>.

It was to safeguard the internal aviation market and to be able to control the impact bilateral agreements might have on the Community market that the Commission proposed negotiations with the third countries concerned. This factor was instrumental in inducing the Council to issue a brief to conduct Community negotiations, first in March 1995 with Switzerland and in June 1996 with the United States, and secondly with the associated countries of central Europe, in the course of which competition issues were also raised.

What is more, the Council has already agreed in the past to confer on the Commission the power to apply the competition rules on certain Community third country routes. The Agreement concluded in 1992 and amended in 1993<sup>12</sup> between the Community on the one hand and Norway and Sweden on the other included a section on competition. The Agreement establishing the European Economic Area, which entered into force on 1 January 1994, replaced the above Agreement and likewise includes such a section.

### 10.3 Need to create a more structured legal framework in order to make good the deficiencies of the present system

The recent rapid development of a new generation of alliances between air carriers covering EC third country (in particular EC-USA) routes having a major impact on competition<sup>13</sup>, notably within the Community market, induced the Commission in July 1996 to initiate the procedure provided for in Article 89 of the Treaty in respect of some of them with a view to carrying out a thorough examination both of their compatibility and of the compatibility of certain restrictive practices which they entail with the Community competition rules.

At the same time as the Commission was initiating the Article 89 procedure, two Member States considered it necessary also to initiate a procedure under Article 88 of the Treaty in order to rule on the admissibility of two of these alliances under the same competition rules.

A dual examination of one and the same agreement by two authorities, that of a Member State under Article 88 of the Treaty, and the European Commission under Article 89, is not only costly for the airlines party to the agreement in terms of both money and time, but is also a source of great legal insecurity for those airlines.

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<sup>11</sup> COM(96) 514 final of 22 October 1996.

<sup>12</sup> Council Decision of 22 June 1992 concerning the conclusion of an Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation, OJ No L 200, 18.7.1992, and Council Decision of 22 July 1993 amending that Agreement, OJ No L 212, 23.8.1993, p. 17.

<sup>13</sup> Such alliances are liable, at least where they involve major operators in a strong market position, to make it difficult for operators who are not able to face up to such a dominant position to gain access to the market.

The extension of the scope of Regulation (EEC) No 3975/87 to include international air links with third countries would therefore afford airlines the clear benefit of a single set of controls as to the legality of their agreement under the Community competition rules according to a much less ponderous and more direct procedure than that of Article 89 of the Treaty, without their being any risk of conflicting decisions.

Cooperation agreements between European and US airlines are closely scrutinized by the US authorities, who apply their antitrust law to routes between the US and the Community, imposing where appropriate conditions on European airlines, whereas the Commission has as yet no power to impose any conditions on US airlines on the strength of Article 85(3) of the Treaty with a view, if necessary, to exempting such agreements.

At the level of the continent of Europe, the same phenomenon of alliances is likely to arise as on EC/US routes. There has also been a sharp increase in the number of flights between Member States and other third countries such as Switzerland, for example. Any cooperation agreements between air carriers concerning routes between Switzerland and the Community or some of its Member States are for the time being<sup>14</sup> not amenable to Commission control under Regulation (EEC) No 3975/87. The Commission can examine them only under Article 89 of the Treaty. On 27 November 1996 it decided to initiate a procedure under the latter provision in respect of a cooperation agreement concerning such routes with a view to examining its compatibility with the competition rules.

The expected changes in the conditions under which air transport operates in eastern Europe following the political and economic transformation that is taking place there will probably lead to the conclusion of numerous cooperation agreements with European airlines which are liable to have an impact in the Community.

11. The Commission accordingly proposes once more that the Council adopt two Regulations which would enable the Commission to apply the Community competition rules to air transport on Community third country routes. It presents to that end two new proposals which, as is explained in point 21 of this memorandum, replace those which it presented in 1989.
12. The first Regulation would modify Regulation (EEC) No 3975/87 in two ways:
  - (i) Deletion of Article 1(2), which limits the scope to air transport between Community airports.

It should be noted that Community competition law would apply only if there is an effect on trade between Member States. Such an effect would have to be determined on a case-by-case basis.

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<sup>14</sup> The present proposals are without prejudice to the agreement on transport, including air transport, envisaged between the Community and Switzerland.

- (ii) Addition of an Article providing for consultations and, where necessary, negotiations under Council directives in the event of a conflict between Community competition law and the laws, regulations or administrative provisions of third countries<sup>15</sup> or the provisions of air service agreements between Member States and third countries.

**B. AUTHORIZATION OF THE COMMISSION WITH RESPECT TO THE POWER TO GRANT CERTAIN BLOCK EXEMPTIONS**

13. In the context of the various sets of measures liberalizing the internal aviation market and the concomitant application of the competition rules applicable to airlines, the Council conferred at the same time on the Commission the power to adopt block exemption regulations so as to enable air carriers to adapt gradually to a more competitive environment.
14. The Commission's general experience with these block exemptions is that they satisfy a genuine need for legal certainty on the part of air carriers and other market operators, while providing an incentive to abandon previous, more restrictive agreements. Such a need also exists in the case of air transport on Community third country routes.
15. On this basis, were Regulation (EEC) No 3975/87 also to cover air transport between the Community and third countries, the Commission considers that it should also have the power to grant block exemptions for such links as it may in the case of air transport between Community airports pursuant to Council Regulation (EEC) No 3976/87, as amended by Regulation (EEC) No 2411/92<sup>16</sup>.
16. The second Regulation that is proposed to the Council would accordingly empower the Commission to grant block exemptions to airline agreements, decisions and concerted practices in respect of international air transport between the Community and third countries and concerned with joint planning, the coordination of capacity and schedules, revenue sharing, the holding of consultations on tariffs for passengers with their accompanying baggage in so far as they are essential to interlining, the joint operation of a service on a new or less busy route, and slot allocation at airports.
17. This second Regulation is broadly similar to Regulation (EEC) No 3976/87, as amended by Regulation (EEC) No 2411/92. However, the list of agreements in respect of which the Commission seeks authorization to grant block exemptions differs in that, to take account of the situation on certain Community third country routes, it includes the sharing of revenue and the coordination of capacity. The Regulation also contains an additional provision (Article 7(4)) designed to deal with the special situation where breaches of conditions or obligations, or effects incompatible with Article 85(3), are due to the laws, regulations or administrative provisions of third countries or the provisions of air service agreements between

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<sup>15</sup> There is a provision of this type in Council Regulation (EEC) No 4056/86, which lays down detailed rules for the application of Articles 85 and 86 to maritime transport, namely Article 9 on conflicts of international law.

<sup>16</sup> OJ No L 374, 31.12.1987, p. 9, and OJ No L 240, 24.8.1992, p. 19.

Member States and third countries. In the case of extra-Community routes, the Community is bound to take account of such conflicts of rules and of the need to pay due regard to Community law when dealing with them.

18. The Commission recognizes that restrictions of competition on routes between the Community and third countries are likely in certain cases to have direct distortive effects within the Community in the same way as restrictions on routes within the Community.
19. It therefore intends to adopt, on the basis of powers to be granted to it by the proposed Council Regulation, an implementing regulation granting a block exemption subject to compliance with certain conditions and obligations while taking account of the situation obtaining as regards the block exemptions currently applicable in the sector of air transport between Community airports. Such a block exemption would in principle take account of the existing general regulatory framework applicable to links with third countries. The said exemption should be granted for a limited period and be periodically reviewed as to its scope in view of the foreseeable development of a more competitive environment.
20. It goes without saying that airlines would still be free to conclude other forms of cooperation agreement and to notify them to the Commission with a view to obtaining the benefit of an individual exemption.

C. WITHDRAWAL OF THE PREVIOUS 1989 PROPOSALS AIMED AT APPLYING THE COMPETITION RULES AND AT ENABLING THE COMMISSION TO ADOPT BLOCK EXEMPTIONS FOR AIR TRANSPORT OPERATIONS BETWEEN THE COMMUNITY AND THIRD COUNTRIES

21. The two proposals for Regulations presented by the Commission with this memorandum fall within a field covered by the European Economic Area and are accordingly of relevance to it. They replace those submitted in 1989, as set out in document COM(89) 417 final (in Annexes I and III) and presented to the Council on 8 September of that year.
22. The two Commission proposals dating from 1989<sup>17</sup> are accordingly withdrawn.

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<sup>17</sup> OJ No C 248, 29.9.1989, pp. 7 and 10 respectively.



Proposal for a  
COUNCIL REGULATION (EC) 97/0137 (CNS)  
amending Regulation (EEC) No 3975/87 laying down the procedure for the application of  
the rules on competition to undertakings in the air transport sector

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>18</sup>,

Having regard to the opinion of the European Parliament<sup>19</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>20</sup>,

Whereas Regulation (EEC) No 3975/87<sup>21</sup>, as last amended by Regulation (EEC) No 2410/92<sup>22</sup>, formed part of a package of interrelated measures adopted by the Council as a first step towards completing the internal market in transport; whereas its scope was accordingly limited initially to international air transport between Community airports; whereas, following the Council's decision to regulate cabotage as part of the third package of air transport liberalization measures and to make air transport operations taking place entirely within a Member State also subject to Community liberalization measures, measures had to be adopted to enable the Commission to apply the competition rules to air transport within a Member State; whereas to that end the Council amended the scope of Regulation (EEC) No 3975/87 by Regulation (EEC) No 2410/92 by including in it air transport entirely within a Member State;

Whereas, therefore, the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 of the Treaty in respect of air transport between a Community airport and an airport in a third country and lacks such powers to take decisions or impose penalties as are necessary for it to bring to an end infringements established by it;

Whereas practices which affect competition in the area of air transport between the Community and third countries may affect trade between Member States; whereas it is therefore desirable that rules should be laid down under which the Commission, acting in close and constant liaison with the competent authorities of the Member States, may take the requisite measures for the application of Articles 85 and 86 of the Treaty to this area of air transport;

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<sup>18</sup> OJ No C

<sup>19</sup> OJ No C

<sup>20</sup> OJ No C

<sup>21</sup> OJ No L 374, 31.12.1987, p. 1.

<sup>22</sup> OJ No L 240, 24.8.1992, p. 18.

Whereas Regulation (EEC) No 3975/87 has established a clear and satisfactory legal framework for applying the competition rules to air transport between Community airports; whereas the scope of that Regulation should therefore be extended to include air transport between the Community and third countries;

Whereas, in view of the characteristics of international air transport between the Community and third countries, account should be taken of the fact that the application to such transport of the provisions of Regulation (EEC) No 3975/87 may in some cases result in conflicts with the laws and rules of third countries or with the provisions of international agreements between Member States and third countries applicable to air services on the route or routes concerned; whereas it is necessary in such cases to take, paying due regard to Community law, appropriate action in accordance with Community interests and with Community obligations under international law,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3975/87 is hereby amended as follows:

1. Paragraph 2 of Article 1 shall be deleted.
2. The following new Article shall be inserted:

“Article 18a

Conflicts of rules

Where the application of this Regulation in a particular case is liable to lead to a conflict with provisions laid down by law, regulation or administrative action of a third country or with the provisions of air service agreements between a Member State and a third country, the Commission shall, at the earliest opportunity, hold consultations with the competent authorities of the country concerned.”

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels,

For the Council  
The President

Proposal for a  
COUNCIL REGULATION (EC) 97/0138 (CNS)  
on the application of Article 85(3) of the Treaty to certain categories of agreements  
and concerted practices in the sector of air transport between the Community  
and third countries

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>23</sup>,

Having regard to the opinion of the European Parliament<sup>24</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>25</sup>,

Whereas Council Regulation (EEC) No 3975/87,<sup>26</sup> as last amended by Regulation (EC) No .....<sup>27</sup>, lays down the procedure for the application of the rules on competition to undertakings in the air transport sector;

Whereas international air transport between the Community and third countries is at present governed by a network of international and bilateral agreements between Member States and third countries; whereas many of these agreements encourage or allow air carriers to cooperate in matters of commercial importance; whereas in observing these agreements air carriers should not infringe the Treaty's competition rules, which apply fully to all air transport activities within the scope of Community law; whereas the application of the competition rules must nevertheless take account of the desirability of dealing with any conflicts of rules, paying due regard to Community law; whereas air carriers should be enabled to conduct their business within a framework affording a reasonable degree of legal certainty in relation to the competition rules;

Whereas the Commission should therefore be enabled 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 is desirable, in particular, that block exemptions be granted for certain categories of agreements, decisions and concerted practices; whereas the Commission, in close liaison with the Member States, should be able to define precisely the scope of these exemptions and the conditions attached to them;

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<sup>23</sup> OJ No C

<sup>24</sup> OJ No C

<sup>25</sup> OJ No C

<sup>26</sup> OJ No L 374, 31.12.1987, p. 1.

<sup>27</sup> See page .. of this Official Journal.

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

Whereas this Regulation is without prejudice to the application of Articles 86 and 90 of the Treaty,

HAS ADOPTED THIS REGULATION:

#### Article 1

This Regulation shall apply to international air transport between the Community and third countries.

#### 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 by associations of undertakings and concerted practices on international air routes between the Community and one or more third countries.
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:
  - (a) joint planning of, and coordination of capacity and timetables on, a scheduled air service;
  - (b) sharing of revenue from a scheduled air service;
  - (c) holding of consultations on tariffs for the carriage of passengers with their accompanying baggage;
  - (d) joint operation of a scheduled air service on a new or less busy route;
  - (e) slot allocation at airports and airport scheduling; the Commission shall take care to ensure the consistency of these rules with the Code of Conduct adopted by the Council.
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:
  - (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;
- (c) the routes to which they apply.

### Article 3

A 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 factor which was fundamental to its adoption; in such a case, a period shall be fixed for modification of the agreements and concerted practices to which the earlier Regulation applies.

### Article 4

Regulations adopted pursuant to Article 2 may include a provision that they apply with retroactive effect to agreements, decisions and concerted practices which were in existence on the date of the entry into force of such Regulations.

### 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 any such draft Regulation and before adopting any such Regulation.

### Article 7

1. Subject to paragraph 4, where the natural or legal 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:
  - (a) address recommendations to the persons concerned, and
  - (b) 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(3) of Regulation (EEC) No 3975/87 or withdraws the benefit of the block exemption which they enjoyed.
2. Subject to paragraph 4, 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.
4. To the extent that the situation referred to in paragraph 1 or in paragraph 2 results from provisions laid down by law, regulation or administrative action of a third country or from the provisions of an air service agreement between a Member State and a third country, the Commission shall, before withdrawing the benefit of the block exemption, apply Article 18a of Regulation (EEC) No 3975/87.

#### Article 8

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels,

For the Council  
The President

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