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**COUNCIL REGULATION (EEC) No 3975/87
of 14 December 1987**

**laying down the procedure for the application of the rules on competition to undertakings in the
air transport sector**

(OJ L 374, 31.12.1987, p. 1)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Council Regulation (EEC) No 1284/91 of 14 May 1991	L 122	2	17.5.1991
► <u>M2</u> Council Regulation (EEC) No 2410/92 of 23 July 1992	L 240	18	24.8.1992
► <u>M3</u> Council Regulation (EC) No 1/2003 of 16 December 2002	L 1	1	4.1.2003

Corrected by:

- **C1** Corrigendum, OJ L 30, 2.2.1988, p. 40 (3975/87)
- **C2** Corrigendum, OJ L 43, 15.2.1989, p. 56 (3975/87)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



COUNCIL REGULATION (EEC) No 3975/87
of 14 December 1987

**laying down the procedure for the application of the rules on
 competition to undertakings 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 opinion of the Economic and Social Committee ⁽³⁾,

Whereas the rules on competition form part of the Treaty's general provisions which also apply to air transport; whereas the rules for applying these provisions are either specified in the Chapter on competition or fall to be determined by the procedures laid down therein;

Whereas, according to Council Regulation No 141 ⁽⁴⁾, Council Regulation No 17 ⁽⁵⁾ does not apply to transport services; whereas Council Regulation (EEC) No 1017/68 ⁽⁶⁾ applies only to inland transport; whereas Council Regulation (EEC) No 4056/86 ⁽⁷⁾ applies only to maritime transport; whereas consequently the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 of the Treaty in air transport; whereas moreover the Commission lacks such powers of its own to take decisions or impose penalties as are necessary for it to bring to an end infringements established by it;

Whereas air transport is characterized by features which are specific to this sector; whereas, furthermore, international air transport is regulated by a network of bilateral agreements between States which define the conditions under which air carriers designated by the parties to the agreements may operate routes between their territories;

Whereas practices which affect competition relating to air transport between Member States may have a substantial effect on 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 international air transport between Community airports;

Whereas such a regulation should provide for appropriate procedures, decision-making powers and penalties to ensure compliance with the prohibitions laid down in Articles 85 (1) and 86 of the Treaty; whereas account should be taken in this respect of the procedural provisions of Regulation (EEC) No 1017/68 applicable to inland transport operations, which takes account of certain distinctive features of transport operations viewed as a whole;

Whereas undertakings concerned must be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision must be given the opportunity of submitting their comments beforehand and it must be ensured that wide publicity is given to decisions taken;

⁽¹⁾ OJ No C 182, 9. 7. 1984, p. 2.

⁽²⁾ OJ No C 182, 19. 7. 1982, p. 120 and
 OJ No C 345 21. 12. 1987.

⁽³⁾ OJ No C 77, 21. 3. 1983, p. 20.

⁽⁴⁾ OJ No 124, 28. 11. 1962, p. 2751/62.

⁽⁵⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽⁶⁾ OJ No L 175, 23. 7. 1968, p. 1.

⁽⁷⁾ OJ No L 378, 31. 12. 1986, p. 4.

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Whereas all decisions taken by the Commission under this Regulation are subject to review by the Court of Justice under the conditions specified in the Treaty; whereas it is moreover desirable, pursuant to Article 172 of the Treaty, to confer upon the Court of Justice unlimited jurisdiction in respect of decisions under which the Commission imposes fines or periodic penalty payments;

Whereas it is appropriate to except certain agreements, decisions and concerted practices from the prohibition laid down in Article 85 (1) of the Treaty, insofar as their sole object and effect is to achieve technical improvements or cooperation;

Whereas, given the specific features of air transport, it will in the first instance be for undertakings themselves to see that their agreements, decisions and concerted practices conform to the competition rules, and notification to the Commission need not be compulsory;

Whereas undertakings may wish to apply to the Commission in certain cases for confirmation that their agreements, decisions and concerted practices conform to the law, and a simplified procedure should be laid down for such cases;

Whereas this Regulation does not prejudice the application of Article 90 of the Treaty,

HAS ADOPTED THIS REGULATION:

*Article 1***Scope**

1. This Regulation lays down detailed rules for the application of Articles 85 and 86 of the Treaty to air transport services.
2. This Regulation shall apply only to ►**M2** ————— ◀ air transport between Community airports.

*Article 2***Exceptions for certain technical agreements**

1. The prohibition laid down in Article 85 (1) of the Treaty shall not apply to the agreements, decisions and concerted practices listed in the Annex, in so far as their sole object and effect is to achieve technical improvements or cooperation. This list is not exhaustive.
2. If necessary, the Commission shall submit proposals to the Council for the amendment of the list in the Annex.

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3. The Commission may revoke or amend its decision or prohibit specific acts by the parties:
 - (a) where there has been a change in any of the facts which were basic to the making of the decision; or
 - (b) where the parties commit a breach of any obligation attached to the decision; or
 - (c) where the decision is based on incorrect information or was induced by deceit; or
 - (d) where the parties abuse the exemption from the provisions of Article 85 (1) of the Treaty granted to them by the decision.

In cases falling under subparagraphs (b), (c) or (d), the decision may be revoked with retroactive effect.

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Article 20

Entry into force

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.

*ANNEX***List referred to in Article 2**

- (a) The introduction or uniform application of mandatory or recommended technical standards for aircraft, aircraft parts, equipment and aircraft supplies, where such standards are set by an organisation normally accorded international recognition, or by an aircraft or equipment manufacturer;
- (b) the introduction or uniform application of technical standards for fixed installations for aircraft, where such standards are set by an organisation normally accorded international recognition;
- (c) the exchange, leasing, pooling, or maintenance of aircraft, aircraft parts, equipment of fixed installations for the purpose of operating air services and the joint purchase of aircraft parts, provided that such arrangements are made on a non-discriminatory basis;
- (d) the introduction, operation and maintenance of technical communication networks, provided that such arrangements are made on a non-discriminatory basis;
- (e) the exchange, pooling or training of personnel for technical or operational purposes;
- (f) the organisation and execution of substitute transport operations for passengers, mail and baggage, in the event of breakdown/delay of aircraft, either under charter or by provision of substitute aircraft under contractual arrangements;
- (g) the organisation and execution of successive or supplementary air transport operations, and the fixing and application of inclusive rates and conditions for such operations;
- (h) the consolidation of individual consignments;
- (i) the establishment or application of uniform rules concerning the structure and the conditions governing the application of transport tariffs, provided that such rules do not directly or indirectly fix transport fares and conditions;
- (j) arrangements as to the sale, endorsement and acceptance of tickets between air carriers (interlining) as well as the refund, pro-rating and accounting schemes established for such purposes;
- (k) the clearing and settling of accounts between air carriers by means of a clearing house, including such services as may be necessary or incidental thereto; the clearing and settling of accounts between air carriers and their appointed agents by means of a centralised and automated settlement plan or system, including such services as may be necessary or incidental thereto.