

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

► **B**

**COUNCIL REGULATION (EEC) No 2299/89
of 24 July 1989
on a code of conduct for computerized reservation systems**

(OJ L 220, 29.7.1989, p. 1)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Council Regulation (EEC) No 3089/93 of 29 October 1993	L 278	1	11.11.1993
► <u>M2</u> Council Regulation (EC) No 323/1999 of 8 February 1999	L 40	1	13.2.1999

Corrected by:

► **C1** Corrigendum, OJ L 17, 25.1.1995, p. 18 (3089/93/EEC)

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).

▼B

COUNCIL REGULATION (EEC) No 2299/89
of 24 July 1989
on a code of conduct for computerized reservation systems

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas the bulk of airline reservations are made through computerized reservation systems;

Whereas such systems can, if properly used, provide an important and useful service to air carriers, travel agents and the travelling public by affording easy access to up-to-date and accurate information on flights, fares and seat availability, making reservations and, in some cases, issuing tickets and boarding passes;

Whereas abuses in the form of denial of access to the systems or discrimination in the provision, loading or display of data or unreasonable conditions imposed on participants or subscribers can seriously disadvantage air carriers, travel agents and ultimately consumers;

Whereas this Regulation is without prejudice to the application of Articles 85 and 86 of the Treaty;

Whereas Commission Regulation (EEC) No 2672/88⁽⁴⁾ exempts for the provisions of Article 85 (1) of the Treaty agreements for the common purchase, development and operation of computerized reservation systems;

Whereas a mandatory code of conduct applicable to all computerized reservation systems and/or distribution facilities offered for use and/or used in the Community could ensure that such systems are used in a non-discriminatory and transparent way, subject to certain safeguards, so avoiding their misuse while reinforcing undistorted competition between air carriers and between computerized reservation systems and thereby protecting the interests of consumers;

Whereas it would not be appropriate to impose obligations on a computerized reservation system vendor or on a parent or participating carrier in respect of an air carrier of a third country which, alone or jointly with others, owns and/or controls another such system which does not conform with this code or offer equivalent treatment;

Whereas a complaints investigation and enforcement procedure for non-compliance with such a code is desirable,

HAS ADOPTED THIS REGULATION:

▼M2

Article 1

This Regulation shall apply to any computerised reservation system, insofar as it contains air-transport products and insofar as rail-transport products are incorporated in its principal display, when offered for use or used in the territory of the Community, irrespective of:

— the status or nationality of the system vendor,

⁽¹⁾ OJ No C 294, 18. 11. 1988, p. 12.

⁽²⁾ OJ No C 158, 26. 6. 1989.

⁽³⁾ OJ No C 56, 6. 3. 1989, p. 32.

⁽⁴⁾ OJ No L 239, 30. 8. 1988, p. 13.

▼ **M2**

- the source of the information used or the location of the relevant central data processing unit,
- the geographical location of the airports between which air carriage takes place.

▼ **M1***Article 2*

For the purposes of this Regulation:

- (a) ‘unbundled air transport product’ means the carriage by air of a passenger between two airports, including any related ancillary services and additional benefits offered for sale and/or sold as an integral part of that product;
- (b) ‘bundled air transport product’ means a prearranged combination of an unbundled air transport product with other services not ancillary to air transport, offered for sale and/or sold at an inclusive price;
- (c) ‘air transport product’ means both unbundled and bundled air transport products;
- (d) ‘scheduled air service’ means a series of flights all possessing the following characteristics:
 - performed by aircraft for the transport of passengers or passengers and cargo and/or mail for remuneration, in such a manner that seats are available on each flight for individual purchase by consumers either directly from the air carrier or from its authorized agents),
 - operated so as to serve traffic between the same two or more points, either;
 1. according to a published timetable; or
 2. with flights so regular or frequent that they constitute a recognizably systematic series;
- (e) ‘fare’ means the price to be paid for unbundled air transport products and the conditions under which this price applies;
- (f) ‘computerized reservation system’ (CRS) means a computerized system containing information about, *inter alia*, air carriers’
 - schedules,
 - availability,
 - fares, and
 - related services,
 with or without facilities through which:
 - reservations may be made, or
 - tickets may be issued,
 to the extent that some or all of these services are made available to subscribers;
- (g) ‘distribution facilities’ means facilities provided by a system vendor for the provision of information about air carriers’ schedules, availability, fares and related services and for making reservations and/or issuing tickets, and for any other related services;
- (h) ‘system vendor’ means any entity and its affiliates which is or are responsible for the operation or marketing of a CRS;
- (i) ‘parent carrier’ means any air carrier which directly or indirectly, alone or jointly with others, owns or effectively controls a system vendor, as well as any air carrier which it owns or effectively controls;
- (j) ‘effective control’ means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
 - the right to use all or part of the assets of an undertaking,

▼ **M1**

— rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;

- (k) ‘participating carrier’ means an air carrier which has an agreement with a system vendor for the distribution of air transport products through a CRS. To the extent that a parent carrier uses the facilities of its own CRS which are covered by this Regulation, it shall be considered a participating carrier;

▼ **M2**

- (l) ‘subscriber’ shall mean a person, other than a consumer, or an undertaking, other than a participating carrier, using a CRS under contract or other financial arrangement with a system vendor. A financial arrangement shall be deemed to exist where a specific payment is made for the services of the system vendor or where an air-transport product is purchased;
- (m) ‘consumer’ shall mean any person seeking information about or intending to purchase an air-transport product for private use;

▼ **M1**

- (n) ‘principal display’ means a comprehensive neutral display of data concerning air services between city-pairs, within a specified time period;
- (o) ‘elapsed journey time’ means the time difference between scheduled departure and arrival time;
- (p) ‘service enhancement’ means any product or service offered by a system vendor on its own behalf to subscribers in conjunction with a CRS, other than distribution facilities;

▼ **M2**

- (q) ‘unbundled rail-transport product’ shall mean the carriage of a passenger between two stations by rail, including any related ancillary services and additional benefits offered for sale or sold as an integral part of that product;
- (r) ‘bundled rail-transport product’ shall mean a pre-arranged combination of an unbundled rail-transport product with other services not ancillary to rail transport, offered for sale or sold at an inclusive price;
- (s) ‘rail-transport product’ shall mean both unbundled and bundled rail-transport products;
- (t) ‘ticket’ shall mean a valid document giving entitlement to transport or an equivalent in paperless, including electronic, form issued or authorised by the carrier or its authorised agent;
- (u) ‘duplicate reservation’ shall mean a situation which arises when two or more reservations are made for the same passenger when it is evident that the passenger will not be able to use more than one.

▼ **M1**

Article 3

1. A system vendor shall have the capacity, in its own name as a separate entity from the parent carrier, to have rights and obligations of all kinds, to make contracts, *inter alia* with parent carriers, participating carriers and subscribers, or to accomplish other legal acts and to sue and be sued.

2. A system vendor shall allow any air carrier the opportunity to participate, on an equal and non-discriminatory basis, in its distribution facilities within the available capacity of the system concerned and subject to any technical constraints outside the control of the system vendor.

3. (a) A system vendor shall not:

— attach unreasonable conditions to any contract with a participating carrier,

▼ M1

— require the acceptance of supplementary conditions which, by their nature or according to commercial usage, have no connection with participation in its CRS and shall apply the same conditions for the same level of service.

- (b) A system vendor shall not 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.
- (c) A participating carrier may terminate its contract with a system vendor on giving notice which need not exceed six months, to expire not before the end of the first year.

In such a case a system ► C1 the vendor shall not be entitled to recover ◀ more than the costs directly related to the termination of the contract.

4. If a system vendor has decided to add any improvement to the distribution facilities provided or the equipment used in the provision of the facilities, it shall provide information on and offer these improvements to all participating carriers, including parent carriers, with equal timelines and on the same terms and conditions, subject to any technical constraints outside the control of the system vendor, and in such a way that there will be no difference in leadtime for the implementation of the new improvements between parent and participating carriers.

Article 3a

- 1. (a) A parent carrier may not discriminate against a competing CRS by refusing to provide the latter, on request and with equal timeliness, with the same information on schedules, fares and availability relating to its own air services as that which it provides to its own CRS or to distribute its air transport products through another CRS, or by refusing to accept or to confirm with equal timeliness a reservation made through a competing CRS for any of its air transport products which are distributed through its own CRS. The parent carrier shall be obliged to accept and to confirm only those bookings which are in conformity with its fares and conditions.

▼ M2

- (b) The parent carrier shall not be obliged to accept any costs in this connection except for reproduction of the information to be provided and for accepted bookings. The booking fee payable to a CRS for an accepted booking made in accordance with this Article shall not exceed the fee charged by the same CRS to participating carriers for an equivalent transaction.

▼ M1

- (c) The parent carrier shall be entitled to carry out controls to ensure that Article 5 (1) is respected by the competing CRS.

▼ M2

2. The obligation imposed by this Article shall not apply in favour of a competing CRS when, in accordance with the procedures of Article 11, it has been decided that that CRS is in breach of Article 4a or of Article 6 concerning parent carriers' unauthorised access to information.

▼ M1*Article 4*

1. Participating carriers and other providers of air transport products shall ensure that the data which they decide to submit to a CRS are accurate, non-misleading, transparent and no less comprehensive than for any other CRS. The data shall, *inter alia*, enable a system vendor to meet the requirements of the ranking criteria as set out in the Annex.

Data submitted via intermediaries shall not be manipulated by them in a manner which would lead to inaccurate, misleading or discriminatory information.

▼ M2

The principles stated in the first and second subparagraphs shall apply to rail services in respect of data provided for inclusion in the principal display.

▼ M1

2. A system vendor shall not manipulate the material referred to in paragraph 1 in a manner which would lead to the provision of inaccurate, misleading or discriminatory information.

3. 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 and to the standard formats used by the said vendor.

Article 4a

1. Loading and/or processing facilities provided by a system vendor shall be offered to all parent and participating carriers without discrimination. Where relevant and generally accepted air transport industry standards are available, system vendors shall offer facilities compatible with them.

2. A system vendor shall not reserve any specific loading and/or processing procedure or any other distribution facility for one or more of its parent carrier(s).

3. A system vendor shall ensure that its distribution facilities are separated, in a clear and verifiable manner, from any carrier's private inventory and management and marketing facilities. Separation may be established either logically by means of software or physically in such a way that any connection between the distribution facilities and the private facilities may be achieved by means of an application-to-application interface only. Irrespective of the method of separation adopted, any such interface shall be made available to all parent and participating carriers on a non-discriminatory basis and shall provide equality of treatment in respect of procedures, protocols, inputs and outputs. Where relevant and generally accepted air transport industry standards are available, system vendors shall offer interfaces compatible with them.

▼ M2

4. The system vendor shall ensure that any third parties providing CRS services in whole or in part on its behalf comply with the relevant provisions of this Regulation.

▼ M1*Article 5*

1. (a) Displays generated by a CRS shall be clear and non-discriminatory.

(b) A system vendor shall not intentionally or negligently display inaccurate or misleading information in its CRS.

2. (a) A system vendor shall provide a principal display or displays for each individual transaction through its CRS and shall include therein the data provided by participating carriers on flight schedules, fare types and seat availability in a clear and comprehensive manner and without discrimination or bias, in particular as regards the order in which information is presented.

(b) A consumer shall be entitled to have, on request, a principal display limited to scheduled or non-scheduled services only.

(c) No discrimination on the basis of airports serving the same city shall be exercised in constructing and selecting flights for a given city-pair for inclusion in a principal display.

(d) Ranking of flight options in a principal display shall be as set out in the Annex.

(e) Criteria to be used for ranking shall not be based on any factor directly or indirectly relating to carrier identity and shall be

▼ M1

applied on a non-discriminatory basis to all participating carriers.

3. Where a system vendor provides information on fares, the display shall be neutral and non-discriminatory and shall contain at least the fares provided for all flights of participating carriers shown in the principal display. The source of such information shall be acceptable to the participating carrier(s) and system vendor concerned.
4. Information on bundled products regarding, *inter alia*, who is organizing the tour, availability and prices, shall not be featured in the principal display.
5. A CRS shall not be considered in breach of this Regulation to the extent that it changes a display in order to meet the specific request(s) of a consumer.

Article 6

1. The following provisions shall govern the availability of information, statistical or otherwise, by a system vendor from its CRS:

▼ M2

- (a) information concerning identifiable individual bookings shall be provided on an equal basis and only to the air carrier or carriers participating in the service covered by and to the subscribers involved in the booking.

Information under the control of the system vendor concerning identifiable individual bookings shall be archived off-line within seventy-two hours of the completion of the last element in the individual booking and destroyed within three years. Access to such data shall be allowed only for billing-dispute reasons.

▼ M1

- (b) any marketing, booking and sales data made available shall be on the basis that:
 - (i) such data are offered with equal timeliness and on a non-discriminatory basis to all participating carriers, including parent carriers;

▼ M2

- (ii) such data may and, on request, shall cover all participating carriers and/or subscribers, but shall include no identification, either directly or indirectly, of, or personal information on a passenger or a corporate user;

▼ M1

- (iii) all requests for such data are treated with equal care and timelessness, subject to the transmission method selected by the individual carrier;

▼ M2

- (iv) information is made available on request to participating carriers and subscribers both globally and selectively with regard to the market in which they operate;
- (v) a group of airlines and/or subscribers is entitled to purchase data for common processing.

▼ M1

2. A system vendor shall not make personal information concerning a passenger available to others not involved in the transaction without the consent of the passenger.
3. A system vendor shall ensure that the provisions in paragraphs 1 and 2 above are complied with, by technical means and/or appropriate safeguards regarding at least software, in such a way that information provided by or created for air carriers can in no way be accessed by one or more of the parent carriers except as permitted by this Article.

▼ M2▼ B*Article 7*▼ M1

1. The obligations of a system vendor under Articles 3 and 4 to 6 shall not apply in respect of a parent carrier of a third country to the extent that its CRS outside the territory of the Community does not offer Community air carriers equivalent treatment to that provided under this Regulation and under Commission Regulation (EEC) No 83/91⁽¹⁾.

2. The obligations of parent or participating carriers under Articles 3a, 4 and 8 shall not apply in respect of a CRS controlled by (an) air carrier(s) of one or more third country (countries) to the extent that outside the territory of the Community the parent or participating carrier(s) is (are) not accorded equivalent treatment to that provided under this Regulation and under Commission Regulation (EEC) No 83/91.

▼ B

3. A system vendor or an air carrier proposing to avail itself of the provisions of paragraphs 1 or 2 must notify the Commission of its intentions and the reasons therefor at least 14 days in advance of such action. In exceptional circumstances, the Commission may, at the request of the vendor or the air carrier concerned, grant a waiver from the 14-day rule.

4. Upon receipt of a notification, the Commission shall without delay determine whether discrimination within the meaning of paragraphs 1 and 2 exists. If this is found to be the case, the Commission shall so inform all system vendors or the air carriers concerned in the Community as well as Member States. If discrimination within the meaning of paragraph 1 or 2 does not exist, the Commission shall so inform the system vendor or air carriers concerned.

▼ M1

5. (a) In cases where serious discrimination within the meaning of paragraph 1 or 2 is found to exist, the Commission may by decision instruct CRSs to modify their operations ► C1 appropriately in order ◀ to terminate such discrimination. The Commission shall immediately inform Member States of such a decision.

(b) Unless the Council, at the request of a Member State, takes another decision within two months of the date of the Commission's decision, the latter shall enter into force.

Article 8

1. A parent carrier shall neither directly nor indirectly link the use of any specific CRS by a subscriber with the receipt of any commission or other incentive or disincentive for the sale of air transport products available on its flights.

2. A parent carrier shall neither directly nor indirectly require use of any specific CRS by a subscriber for sale or issue of tickets for any air transport products provided either directly or indirectly by itself.

3. Any condition which an air carrier may require of a travel agent when authorizing it to sell and issue tickets for its air transport products shall be without prejudice to paragraphs 1 and 2.

▼ B*Article 9*

1. A system vendor shall make any of the distribution facilities of a CRS available to any subscriber on a non-discriminatory basis.

⁽¹⁾ OJ No L 10, 15. 1. 1991, p. 9.

▼B

2. A system vendor shall not require a subscriber to sign an exclusive contract, nor directly or indirectly prevent a subscriber from subscribing to, or using, any other system or systems.
3. A service enhancement offered to any other subscriber shall be offered by the system vendor to all subscribers on a non-discriminatory basis.

▼M1

4. (a) A system vendor shall not attach unreasonable conditions to any subscriber contract allowing for the use of its CRS and, in particular, a subscriber may terminate its contract with a system vendor by giving notice which need not exceed three months, to expire not before the end of the first year.

In such a case, a system vendor shall not be entitled to recover more than the costs directly related to the termination of the contract.
- (b) Subject to paragraph 2, the supply of technical equipment is not subject to the conditions set out in (a).
5. A system vendor shall provide in each subscriber contract for:
 - (a) the principal display, conforming to Article 5, to be accessed for each individual transaction, except where a consumer requests information for only one air carrier or where the consumer requests information for bundled air transport products alone;
 - (b) the subscriber not to manipulate material supplied by CRSs in a manner which would lead to inaccurate, misleading or discriminatory presentation of information to consumers.
6. A system vendor shall not impose an obligation on a subscriber to accept an offer of technical equipment or software, but may require that equipment and software used be compatible with its own system.

▼M2*Article 9a*

1. (a) In the case of information provided by a CRS, a subscriber shall use a neutral display in accordance with Article 5(2)(a) and (b) unless another display is required to meet a preference indicated by a consumer.
- (b) No subscriber shall manipulate information provided by a CRS in a manner that leads to inaccurate, misleading or discriminatory presentation of that information to any consumer.
- (c) A subscriber shall make reservations and issue tickets in accordance with the information contained in the CRS used, or as authorised by the carrier concerned.
- (d) A subscriber shall inform each consumer of any en route changes of equipment, the number of scheduled en route stops, the identity of the air carrier actually operating the flight, and of any changes of airport required in any itinerary provided, to the extent that that information is present in the CRS. The subscriber shall inform the consumer of the name and address of the system vendor, the purposes of the processing, the duration of the retention of individual data and the means available to the data subject of exercising his access rights.
- (e) A consumer shall be entitled at any time to have a print-out of the CRS display or to be given access to a parallel CRS display reflecting the image that is being displayed to the subscriber.
- (f) A person shall be entitled to have effective access free of charge to his own data regardless of whether the data is stored by the CRS or by the subscriber.
2. A subscriber shall use the distribution facilities of a CRS in accordance with Annex II.

▼B*Article 10***▼M2**

1. (a) Any fee charged to a participating carrier by a system vendor shall be non-discriminatory, reasonably structured and reasonably related to the cost of the service provided and used and shall, in particular, be the same for the same level of service.

The billing for the services of a CRS shall be sufficiently detailed to allow the participating carriers to see exactly which services have been used and the fees therefor; as a minimum, booking fee bills shall include the following information for each segment:

- type of CRS booking,
- passenger name,
- country,
- IATA/ARC agency identification code,
- city-code,
- city pair of segment,
- booking date (transaction date),
- flight date,
- flight number,
- status code (booking status),
- service type (class of service),
- passenger name record (PNR) locator, and
- booking/cancellation indicator.

The billing information shall be offered on magnetic media. The fee to be charged for the billing information provided in the form chosen by the carrier shall not exceed the cost of the medium itself together with its transportation costs.

A participating air carrier shall be offered the facility of being informed when any booking or transaction is made for which a booking fee will be charged. Where a carrier elects to be so informed, it shall be offered the option of disallowing any such booking or transaction, unless the latter has already been accepted. In the event of such a disallowance, the air carrier shall not be charged for that booking or transaction.

2. A system vendor shall, on request, provide interested parties, including consumers, with details of current procedures, fees and system facilities, including interfaces, editing and display criteria used. For consumers that information shall be free of charge and cover the processing of individual data. This provision shall not, however, require a system vendor to disclose proprietary information such as software.

▼B

3. Any changes to fee levels, conditions or facilities offered and the basis therefor shall be communicated to all participating carriers and subscribers on a non-discriminatory basis.

Article 11

1. Acting on receipt of a complaint or on its own initiative, the Commission shall initiate procedures to terminate infringement of the provisions of this Regulation.

2. Complaints may be submitted by:

- (a) Member States;
- (b) natural or legal persons who claim a legitimate interest.

3. The Commission shall immediately forward to the Member States copies of the complaints and applications and of all relevant documents sent to it or which it sends out in the course of such procedures.

▼B*Article 12*

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the Member States and from undertakings and associations of undertakings.
2. The Commission may fix a time limit of not less than one month for the communication of the information requested.
3. When sending a request for information to an undertaking or association of undertakings, the Commission shall forward a copy of the request at the same time to the Member State in whose territory the head office of the undertaking or association of undertakings is situated.
4. In its request, the Commission shall state the legal basis and purpose of the request and also the penalties for supplying incorrect information provided for in Article 16 (1).
5. The owners of the undertakings or their representatives and, in the case of legal persons or of companies, firms or associations not having legal personality, the person authorized to represent them by law or by their rules shall be bound to supply the information requested.

Article 13

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end, officials authorized by the Commission shall be empowered:
 - (a) to examine the books and other business records;
 - (b) to take copies of, or extracts from, the books and business records;
 - (c) to ask for oral explanations on the spot;
 - (d) to enter any premises, land and vehicles used by undertakings or associations of undertakings.
2. The authorized officials of the Commission shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 16 (1) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the Member State, in whose territory the same is to be made, of the investigation and the identity of the authorized officials.
3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 16 (1) and the right to have the decision reviewed in the Court of Justice.
4. The Commission shall take the decisions mentioned in paragraph 3 after consultation with the Member State in the territory of which the investigation is to be made.
5. Officials of the Member State in the territory of which investigation is to be made may assist the Commission officials in carrying out their duties, at the request of the Member State or of the Commission.
6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorized by the Commission to enable them to make their investigation.

▼B*Article 14*

1. Information acquired as a result of the application of Articles 12 and 13 shall be used only for the purposes of the relevant request or investigation.
2. Without prejudice to Articles 11 and 20, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information of a kind covered by the obligation of professional secrecy which has been acquired by them as a result of the application of this Regulation.
3. Paragraphs 1 and 2 shall not prevent publication of general information or of surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 15

1. When an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 16 (1) as well as the right to have the decision reviewed by the Court of Justice.
2. At the same time the Commission shall send a copy of its decision to the competent authority of the Member State in the territory of which the head office of the undertaking or association of undertakings is situated.

Article 16

1. The Commission may, by decision, impose fines on undertakings or associations of undertakings from ECU 1 000 to 50 000 where, intentionally or negligently:
 - (a) they supply incorrect information in response to a request made pursuant to Article 12 or do not supply information within the time limit fixed;
 - (b) they produce the required books or other business records in incomplete form during investigations or refuse to submit to an investigation pursuant to Article 13 (1).
2. The Commission may, by decision, impose fines on system vendors, parent carriers, participating carriers and/or subscribers for infringements of this Regulation up to a maximum of 10 % of the annual turnover for the relevant activity of the undertaking concerned.

In fixing the amount of the fine, regard shall be had both to the seriousness and to the duration of the infringement.
3. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a penal nature.

Article 17

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has imposed a fine; it may cancel, reduce or increase the fine.

Article 18

For the purposes of applying Article 16, the ecu shall be that adopted in drawing up the general budget of the European Communities in accordance with Articles 207 and 209 of the Treaty.

▼B*Article 19***▼M2**

1. Before taking decisions pursuant to Article 11 or 16, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission takes or has taken objection.

▼B

2. Should the Commission or the competent authorities of the Member States consider it necessary, they may also hear other natural or legal persons. Applications by such persons to be heard shall be granted when they show a sufficient interest.

Article 20

1. The Commission shall publish the decisions which it adopts pursuant to Article 16.

2. Such publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

▼M2*Article 21*

1. Neither Article 5, Article 9(5) nor the Annexes shall apply to a CRS used by an air carrier or a group of air carriers:

- (a) in its or their own office or offices and sales counters clearly identified as such;
- or
- (b) to provide information and/or distribution facilities accessible through a public telecommunications network, clearly and continuously identifying the information provider or providers as such.

2. Where booking is performed directly by an air carrier, that air carrier shall be subject to Article 9a(d) and (f).

▼M1*Article 21a***▼M2**

1. The system vendor shall ensure that the technical compliance of its CRS with Articles 4a and 6 is monitored by an independent auditor on a calendar year basis. For that purpose, the auditor shall be granted access at all times to any programmes, procedures, operations and safeguards used on the computers or computer systems through which the system vendor provides its distribution facilities. Each system vendor shall submit its auditor's report on his inspection and findings to the Commission within four months of the end of the calendar year under review. The Commission shall examine those reports with a view to taking any action necessary in accordance with Article 11(1).

▼M1

2. The system vendor shall inform participating carriers and the Commission of the identity of the auditor at least three months before confirmation of an appointment and at least three months before each annual reappointment. If, within one month of notification, any of the participating carriers objects to the capability of the auditor to carry out the tasks as required under this Article, the Commission shall, within a further two months and after consultation with the auditor, the system vendor and any other party claiming a legitimate interest, decide whether or not the auditor is to be replaced.

▼M2*Article 21b*

1. Subject to this Article, this Regulation shall apply to the inclusion of rail-transport products.

▼ M2

2. A system vendor may decide to include rail services in the principal display of its CRS.
3. Where a system vendor decides to include rail products in the principal display of its CRS, it shall choose to include certain well-defined categories of rail services, while respecting the principles stated in Article 3(2).
4. A rail-transport operator shall be deemed to be a participating or parent carrier, as appropriate, for the purposes of the code, insofar as it has an agreement with a system vendor for the distribution of its products through the principal display of a CRS or its own reservation system is a CRS as defined in Article 2(f). Subject to paragraph 5, those products shall be treated as air-transport products and shall be incorporated in the principal display in accordance with the criteria set out in Annex I.
5. (a) When applying the rules laid down in paragraphs 1 and 2 of Annex I to rail services the system vendor shall adjust the ranking principles for the principal display in order to take due account of the needs of consumers to be adequately informed of rail services that represent a competitive alternative to the air services. In particular, system vendors may rank rail services with a limited number of short stops with non-stop direct air services.
(b) System vendors shall define clear criteria for the application of this Article to rail services. Such criteria shall cover elapsed journey time and reflect the need to avoid excessive screen padding. At least two months before their application those criteria shall be submitted to the Commission for information.
6. For the purposes of this Article, all references to ‘flights’ in this Regulation shall be deemed to include references to ‘rail services’ and references to ‘air-transport products’ shall be deemed to include references to ‘rail products’.
7. Particular attention shall be given to an assessment of the application of this Article in the Commission's report under Article 23(1).

▼ M1*Article 22***▼ M2**

1. This Regulation shall be without prejudice to national legislation on security, public-order and data-protection measures taken in implementation of Directive 95/46/EC⁽¹⁾.

▼ M1

2. The beneficiaries of rights arising under Article 3 (4), Articles 4a, 6 ► **C1** and 21a cannot renounce ◀ these rights by contractual or any other means.

▼ M2*Article 23*

Within two years of the entry into force of this Regulation, the Commission shall draw up a report on the application of this Regulation which shall, *inter alia*, take account of economic developments in the relevant market. That report may be accompanied by proposals for the revision of this Regulation.

▼ B

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

⁽¹⁾ OJ L 281, 23. 11. 1995, p. 31.

▼ **M2**

ANNEX I

Principal display ranking criteria for flights⁽¹⁾ offering unbundled air transport products

1. Ranking of flight options in a principal display, for the day or days requested, must be in the following order unless requested in a different way by a consumer for an individual transaction:
 - (i) all non-stop direct flights between the city-pairs concerned;
 - (ii) all other direct flights, not involving a change of aircraft or train, between the city pairs concerned;
 - (iii) connecting flights.
2. A consumer must at least be afforded the possibility of having, on request, a principal display ranked by departure or arrival time and/or elapsed journey time. Unless otherwise requested by a consumer, a principal display must be ranked by departure time for group (i) and elapsed journey time for groups (ii) and (iii).
3. Where a system vendor chooses to display information for any city-pair in relation to the schedules or fares of non-participating carriers, but not necessarily all such carriers, such information must be displayed in an accurate, non-misleading and non-discriminatory manner between carriers displayed.
4. If, to the system vendor's knowledge, information on the number of direct scheduled air services and the identity of the air carriers concerned is not comprehensive, that must be clearly stated on the relevant display.
5. Flights other than scheduled air services must be clearly identified.
6. Flights involving stops en route must be clearly identified.
7. Where flights are operated by an air carrier which is not the air carrier identified by the carrier designator code, the actual operator of the flight must be clearly identified. That requirement will apply in all cases, except for short-term *ad hoc* arrangements.
8. A system vendor must not use the screen space in a principal display in a manner which gives excessive exposure to one particular travel option or which displays unrealistic travel options.
9. Except as provided in paragraph 10, the following will apply:
 - (a) for direct services, no flight may be featured more than once in any principal display;
 - (b) for multi-sector services involving a change of aircraft, no combination of flights may be featured more than once in any principal display;
 - (c) flights involving a change of aircraft must be treated and displayed as connecting flights, with one line per aircraft segment.

Nevertheless, where the flights are operated by the same carrier with the same flight number and where a carrier requires only one flight coupon and one reservation, a CRS should issue only one coupon and should charge for only one reservation.

10. 1. Where participating carriers have joint-venture or other contractual arrangements requiring two or more of them to assume separate responsibility for the offer and sale of air-transport products on a flight or combination of flights, the terms 'flight' (for direct services) and 'combination of flights' (for multi-sector services) used in paragraph 9 must be interpreted as allowing each of the carriers concerned — not more than two — to have a separate display using its individual carrier-designator code.
2. Where more than two carriers are involved, designation of the two carriers entitled to avail themselves of the exception provided for in subparagraph 1 must be a matter for the carrier actually operating the flight. In the absence of information from the operating carrier sufficient to identify the two carriers to be designated, a system vendor must designate the carriers on a non-discriminatory basis.
11. A principal display must, wherever practicable, include connecting flights on scheduled services which are operated by participating carriers and are constructed by using a minimum number of nine connecting points. A sys-

⁽¹⁾ All references to flights in this Annex are in accordance with Article 21b(6).

▼ M2

tem vendor must accept a request by a participating carrier to include an indirect service, unless the routing is in excess of 130 % of the great circle distance between the two airports or unless that would lead to the exclusion of services with a shorter elapsed journey time. Connecting points with routings in excess of 130 % of that great circle distance need not be used.

▼ M2*ANNEX II***Use of distribution facilities by subscribers**

1. A subscriber must keep accurate records covering all CRS reservation transactions. Those records must include flight numbers, reservations booking designators, date of travel, departure and arrival times, status of segments, names and initials of passengers with their contact addresses and/or telephone numbers and ticketing status. When booking or cancelling space, the subscriber must ensure that the reservation designator being used corresponds to the fare paid by the passenger.
2. A subscriber should not deliberately make duplicate reservations for the same passenger. Where confirmed space is not available on the customer's choice, the passenger may be wait-listed on that flight (if wait-list is available) and confirmed on an alternative flight.
3. When a passenger cancels a reservation, the subscriber must immediately release that space.
4. When a passenger changes an itinerary, the subscriber must ensure that all space and supplementary services are cancelled when the new reservations are made.
5. A subscriber must, where practicable, request or process all reservations for a specific itinerary and all subsequent changes through the same CRS.
6. No subscriber may request or sell airline space unless requested to do so by a consumer.
7. A subscriber must ensure that a ticket is issued in accordance with the reservation status of each segment and in accordance with the applicable time limit. A subscriber must not issue a ticket indicating a definite reservation and a particular flight unless confirmation of that reservation has been received.