Basic information

2002/0067(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Air transport: protection against unfair pricing practices from countries not members of the Community Repealed by 2017/0116(COD) **Subject** 2.60 Competition 3.20.01 Air transport and air freight	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
RETT Regional Policy, Transport and Tourism	CLEGG Nicholas (ELDR)	18/04/2002

Former committee responsible	Former rapporteur	Appointed
RETT Regional Policy, Transport and Tourism	CLEGG Nicholas (ELDR)	18/04/2002

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	RIDRUEJO Mónica (PPE-DE)	21/05/2002
ITRE Industry, External Trade, Research, Energy	ATKINS Sir Robert (PPE-DE)	19/06/2002

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2574	2004-03-30
Transport, Telecommunications and Energy	2515	2003-06-05
Transport, Telecommunications and Energy	2499	2003-03-27
Transport, Telecommunications and Energy	2531	2003-10-09
Transport, Telecommunications and Energy	2438	2002-06-17
Agriculture and Fisheries	2555	2003-12-18

Commission DG	Commissioner

European Commission	Energy and Transport	

Key events

Date	Event	Reference	Summary
12/03/2002	Legislative proposal published	COM(2002)0110	Summary
08/04/2002	Committee referral announced in Parliament, 1st reading		
17/06/2002	Debate in Council		
03/12/2002	Vote in committee, 1st reading		Summary
03/12/2002	Committee report tabled for plenary, 1st reading	A5-0439/2002	
14/01/2003	Decision by Parliament, 1st reading	T5-0002/2003	Summary
27/03/2003	Debate in Council		
07/05/2003	Modified legislative proposal published	COM(2003)0228	Summary
05/06/2003	Debate in Council		
18/12/2003	Council position published	14141/1/2003	Summary
15/01/2004	Committee referral announced in Parliament, 2nd reading		
17/02/2004	Vote in committee, 2nd reading		Summary
17/02/2004	Committee recommendation tabled for plenary, 2nd reading	A5-0064/2004	
10/03/2004	Debate in Parliament		
11/03/2004	Decision by Parliament, 2nd reading	T5-0170/2004	Summary
30/03/2004	Act approved by Council, 2nd reading		
21/04/2004	Final act signed		
21/04/2004	End of procedure in Parliament		
30/04/2004	Final act published in Official Journal		

Technical information

Procedure reference	2002/0067(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2017/0116(COD)
Legal basis	EC Treaty (after Amsterdam) EC 080-p2 Rules of Procedure EP 050
Stage reached in procedure	Procedure completed
Committee dossier	RETT/5/19209

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0439/2002	03/12/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0002/2003 OJ C 038 12.02.2004, p. 0015-0075 E	14/01/2003	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0064/2004	17/02/2004	
Text adopted by Parliament, 2nd reading		T5-0170/2004 OJ C 102 28.04.2004, p. 0648-0756 E	11/03/2004	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	15748/2003	04/12/2003	
Council position	14141/1/2003 OJ C 066 16.03.2004, p. 0014-0021 E	18/12/2003	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2002)0110 OJ C 151 25.06.2002, p. 0285 E	12/03/2002	Summary
Modified legislative proposal	COM(2003)0228	07/05/2003	Summary
Commission communication on Council's position	COM(2004)0007	09/01/2004	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2004)0235	07/04/2004	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1011/2002 OJ C 061 14.03.2003, p. 0029	18/09/2002	

Additional information

Source	Document	Date

European Commission	EUR-Lex	

Final act

Regulation 2004/0868
OJ L 162 30.04.2004, p. 0001-0007 Summary

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 18/12/2003 - Council position

The Council has unanimously adopted the common position. The Council made a number of general changes to the Commission's proposal which are acceptable because they would ensure its aims were met. The Commission accepted wholly, in part or in principle forty-six out of the sixty amendments proposed by the European Parliament at its first reading. Of these, the Council has included 29, either literally, partly or in principle, in its common position the most significant changes incorporated into the common position are the following: - the relationship between this Regulation and Member States' bilateral air service agreements has been clarified . The principle of giving priority to Member State agreements has been accepted; - the scope of Article 5 regarding unfair pricing practices has been extended to cover all non-Community carriers and not only those that are state-controlled as proposed by the Commission. The Council considers that the limitation to state-controlled carriers was discriminatory and ignored the reality that privately-controlled operators could engage in unfair practices. As a counter-balance to ensure that such a provision would be used only in a limited way; - the Council, sharing the Parliament's unease with the notion of "normal fare rates" in Article 5, and also concerned by the methodology proposed by the Commission to arrive at such rates, followed the Parliament in preferring the term "normal competitive pricing" and in inserting a list of criteria to be used when comparing airfares. In addition, the common position deletes the methodology in the proposal and instead requires the Commission, assisted by a Regulatory Committee, to develop a more detailed methodology for determining the existence of unfair pricing; - the common position takes up the Parliament's suggestion that redressive measures should preferably take the form of duties; - for the imposition of definitive measures and the review of such measures, the Council amended the applicable comitology procedure from advisory to regulatory. In addition, the amendments rejected by the Council are as follows: - referring to the World Trade Organisation as an appropriate forum to discuss and regulate international civil aviation; - providing that provisional measures cannot under normal circumstances be imposed more than six months after the initiation of proceedings; - providing for drafting suggestions and/or certain changes of substance in relation to Article 5. These amendments are not compatible with the newly drafted provisions of Article 5 and its enhanced scope; - imposing on Member States that have sufficient evidence regarding the granting of subsidies and the injuries resulting therefrom to the Community industry to forward such evidence to the Commission; - stipulating that a complaint must be rejected if injury has not been sufficiently demonstrated in the complaint. However, a similar idea is set out in recital 13 of the text agreed in the common position; - calling on the Commission to submit an evaluation report to theEuropean Parliament and to the Council; - providing for drafting suggestions to enhance the scope and/or clarity of the draft regulation. - make a link between the proposed regulation and the broader powers of the Community in the external relations in the aviation transport sector; - require countervailable subsidies to be specific, discriminatory, trade-distorting and to cause significant material injury to one or more Community carriers; - set out procedures providing for the reimbursement of third-country carriers where excessive redressive duties would have been imposed; - excluding marketing carriers under code share agreements from the scope of the Regulation; - exclude from the definition of the Community industry Community carriers which are related, for example by means of an alliance agreement, to an allegedly subsidised third-country carrier; - requires the Commission to submit a report to the Council together with a proposal for closure of the investigation; - reverse the presumption whereby the imposition of redressive measures is deemed to be in the interest of the Community where actual injurious subsidisation has been established in the course of the investigation.

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 07/05/2003 - Modified legislative proposal

The Commission has accepted, subject to redrafting, about half the amendments adopted by the European Parliament as they strengthen or clarify the Commission's text. The amendments accepted include the following: - provisional measures may be imposed normally no later than six months after the initiation of proceedings; - preference may be given to duties when it comes to the imposition of redressive measures. Where this is not appropriate, other redressive measures may be considered; - the criteria for determining whether pricing practices could be deemed unfair include the actual price at which the tickets are proposed for sale, the number of seats proposed etc; - redressive measures will only be imposed if the totality of factors considered leads to the conclusion that, unless redressive measures are taken, injury will immediately occur; - the Commission will submit within two years an evaluation of the implementation and the impact of this Regulation; In addition: - the Commission proposes nine months for the conclusion of investigations under normal circumstances The amendments rejected by the Commission include: - the proposed timeframe for entry into force. This is not realistic since the date of 01/04/03 is passed; - "significant material" cannot be placed before "injury" since the notion of injury is already defined, and the terms have a precise meaning in Community trade defence instruments; - the provisions on reimbursement measures.

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 21/04/2004 - Final act

PURPOSE : to protect Community airline services from unfair pricing practices and subsidisation from non-EU countries. LEGISLATIVE ACT : Regulation 868/2004/EC of the European Parliament and of the Council concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community. CONTENT : this Regulation lays down the procedure to be followed to provide protection against subsidisation and unfair pricing practices in the supply of air services from countries not members of the European Community in so far as injury is thereby caused to the Community industry. This Regulation shall not preclude the prior application of any special provisions in air services agreements between Member States and countries not members of the European Community. In addition, this Regulation shall not preclude the application of any special provisions in agreements between the Community and countries not members of the European Community. This Regulation is based on definitions and standards currently in use at multilateral level and by the Community in order to overcome distortions caused by certain subsidies in the trade in goods. Furthermore, this Regulation is without prejudice to the consultation and conflict-resolution mechanisms provided for under the bilateral agreements among Member States; recourse should be had to the Community's anti-Subsidy Regulation only in cases where a satisfactory solution cannot be arrived at through the bilateral agreements. More specifically, the Regulation : - defines the redressive measures to be taken against such unfair practices; - determines when a subsidy shall be deemed to exist and according to which principles it should be countervailable, in particular whether the subsidy has been targeted at certain enterprises or sectors or is contingent upon air service supply to third countries; - lays down clear and detailed guidance as to the factors which may be relevant for the determination of whether the subsidised or unfairly priced air services provided by non-Community air carriers have caused injury or are threatening to cause injury; in order to demonstrate that the pricing practices related to the supply of such air services cause injury to the Community industry, attention should be given to the effect of other factors, and consideration should be given to all relevant and known factors and economic indicators which have a bearing on the state of the industry, and in particular prevailing market conditions in the Community; - specifies who may lodge a complaint and the information that such a complaint should contain; a complaint should be rejected where there is insufficient evidence of injury to proceed; - lays down the procedure to be followed in the investigation of unfair practices by non-Community carriers; this procedure should be limited in time; - lays down the manner in which interested parties should be given notice of the information which the authorities require; interested parties should have ample opportunity to present all relevant evidence and to defend their interests; - sets out the rules and procedures to be followed during theinvestigation, in particular the rules whereby interested parties are to make themselves known; - lays down the conditions under which provisional measures may be imposed; - provides that the level of measures should not exceed the value of subsidies or the non-commercial advantages granted as the case may be or the sum corresponding to the injury caused, where this is lower; - provides that measures should remain in force only for as long as it is necessary to counteract the subsidies or unfair pricing practices causing injury. Preference should be given to duties when it comes to the imposition of measures; where duties prove not to be appropriate, other measures may be considered; - specifies procedures for the acceptance of undertakings eliminating or offsetting the countervailable subsidies or unfair pricing practices and the injury caused in lieu of the imposition of provisional or definitive measures; - provides for review of the measures imposed in cases where sufficient evidence is submitted of changed circumstances. ENTRY INTO FORCE : 20/05/2004.

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 12/03/2002 - Legislative proposal

PURPOSE: to protect Community airline services from unfair pricing practices and subsidisation from non-EU countries. CONTENT: Community provision for the redress of unfair pricing practices in the maritime sector already exists. The same, however, can not be said for the European airline industry. Yet, strict EU rules governing state aid combined with the upheavals in the airline industry post-September 11 indicate that airline services in the EU are being undermined and taken advantage of by unfair pricing practices dictated by non-EU governments. The proposed Regulation has been designed to address the problem of EU airline carriers being subject to unfair pricing practices and state subsidies from countries not subject to EU legislation. It will allow Community action against unfair competition from non-Community carriers on routes to and from the Community due to trade-distorting third country subsidies. Additionally, it will provide for a remedy against unfair pricing practices by state-controlled air carriers. The definition of a "subsidy" will be based on that specified in the WTO Agreement on "Subsidies and Countervailing Measures". Trade distorting subsidies granted by foreign governments i.e. subsidies targeted at certain enterprises or sectors and export subsidies will also be covered. Under the terms of the Regulation, the following procedures will apply: - A complaint can be bought in motion either from the air transport industry or on the initiative of the European Commission. - An opinion will be published in the Official Journal and an official enquiry begin. An out-of-court settlement could be agreed at any moment. - The inquiry will conclude with one of three options. 1. Adoption of provisional measures of a maximum duration of six months. 2. No action being taken. 3. Adoption of definitive measures. - Decisions will be adopted by the Commission with the assistance of an Advisory Committee. The proposed Regulation allows for the imposition of duties on those air carriers from third countries benefiting from subsidies. The duties will be calculated on the basis of the amount of aid granted to those airlines but will not be higher than necessary to remedy the damage caused to Community carriers.

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 07/04/2004 - Commission opinion on Parliament's position at 2nd reading

The European Parliament adopted one draft amendment during its plenary session. The amendment revises recital 5 of the draft Regulation in order to ensure consistency between the latter and Article 1 (2) and 7(2) concerning the rules for the application of national and Community instruments over time. The Commission accepts this amendments in its entirety and has amended the proposed Regulation accordingly.

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 14/01/2003 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Nicholas CLEGG (ELDR, United Kingdom) on unfair practices in the supply of airline services. (Please refer to the summary dated 03/12/02.) In addition, the following amendments were made: - provisional measures should be imposed by the Commission normally no later than six months after the initiation of proceedings; - a threat of significant material injury will only be determined and redressive measures posed if the totality of the factors considered leads to the conclusion that, unless redressive measures are taken, significant material injury will occur immediately; - the Commission will carry out an investigation after the initiation of proceedings. This investigation must be concluded within three months except in certain prescribed circumstances; - the Commission must submit an evaluation of the implementation of the directive within two years.

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 09/01/2004 - Commission communication on Council's position

Although noting some inconsistency between the provisions of recital 3a and those of Articles 1(2) (Objective) and 7(2) (Initiation of proceedings), the Commission considers that the common position unanimously adopted on 17 December 2003 does not alter the aims and approach of its proposal and can therefore support it. The Commission notes that the provisions of Articles 1(2) and 7(2) lay down rules for the application of national and Community instruments over time. It observes that the text of recital 5 is not consistent with those provisions.

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 11/03/2004 - Text adopted by Parliament, 2nd reading

The European Parliament adopted the resolution drafted by Nicholas CLEGG (ELDR, UK) and made one drafting amendment to the common position.