

FIT FOR FUTURE Platform Opinion

Topic title	Computer reservation systems 2021 AWP Regulation (EC) No 80/2009 <i>Legal reference</i>
Date of adoption	10 December 2021
Opinion reference	2021/SBGR1/03
Policy cycle reference	<input checked="" type="checkbox"/> Contribution to (ongoing) legislative process Commission Work Programme 2021, Annex II , Revision of computer reservation systems <i>Commission work programme reference</i> <input type="checkbox"/> Contribution to the (ongoing) evaluation process Evaluation of the Regulation 80/2009 on a Code of Conduct for computerised reservation systems SWD(2020) 9 final <i>Title of the evaluation</i> Concerning efficiency, the evaluation made the following findings: In relation to the question referring to the extent of proportionality of regulatory costs compared to the benefits of the Computerised Reservation Systems (CRS) Code of Conduct, the support study to the evaluation found that the CRS Code of Conduct imposes on-going direct costs to CRS providers derived from the reporting requirements (audits) of Article 12. The 2007 impact assessment estimated the audit cost for each CRS provider to be in the range of € 70,000 to € 100,000 per year per CRS (around between € 82,000 and € 117,000 in current euros according to the support study). Given the lighter audit obligations in the revised Code and the lower frequency of the reporting, the yearly cost of the current audit obligations is expected to be significantly lower. Results from the surveys of national competition authorities show that none of the authorities that responded to the survey have incurred any one-off or ongoing costs related to the CRS Code of Conduct. Two travel agents indicated minor costs in ensuring their systems were compliant with the CRS Code of Conduct. As regards carriers, some costs were indicated but they

do not seem to be the result of the CRS Code of Conduct but more as a result of market dynamics. Regarding the potential reduction of regulatory costs for the CRSs, the audit requirements on ownership structure and governance do not contribute to the ability to monitor the influence of carriers on CRSs, as there are no significant carrier investments in any of the three CRSs operating in Europe. In any case, all the CRSs are publicly listed companies and as such, they have to publish the data anyway. Therefore, removing these requirements from the CRS Code of Conduct would save costs. Overall, costs related to the CRS Code of Conduct seem to be minimal and the benefits seem to outweigh the costs.

In relation to the impact of the CRS Code of Conduct on consumer welfare, several travel agents argued during the targeted stakeholder consultation that the neutral display requirement keeps ticket prices down as it increases transparency and encourages competition between carriers, thus restricting growth in prices. However, this comment did not take into account the fact that some carriers do not appear in such displays and that, in this regard, it is difficult to argue a causal link between the CRS Code of Conduct and downward pressure on ticket prices, which is more likely to be due to the general level of competition in the air passenger transport market. Overall, the opinion of travel agents was split, with half suggesting a negative or no impact, and the other half a positive impact. It is therefore hard to assess the balance between regulatory costs and benefits of the CRS Code of Conduct in respect of achieving higher consumer welfare.

(The results of the stakeholders consultation are synthesised in Annex 2 of the referenced Staff working document: SWD(2020) 9)

Included in Annex VI of the Task force for subsidiarity and proportionality

No

Other

No

Have your say: Simplify!

No relevant suggestions on this topic were received from the public.

Commission follow up

- REFIT Scoreboard: [Computerised reservation system \(CRS\)](#)
- Have your say portal: [Computerised reservation systems](#)
- Annual Burden Survey: [The EU's efforts to simplify legislation](#)

SUGGESTIONS SUMMARY

Suggestion 1:	Ensure that the CRS Regulation is forward looking, relevant and efficient in the light of new challenges and technological progress
Suggestion 2:	Update of the reporting requirements under the CRS Regulation to reflect new market realities
Suggestion 3:	Enforcement should be strengthened in the review of the Regulation to ensure relevance and effectiveness
Suggestion 4:	Ensure access to all (elements of) airfares so travellers can compare and choose the travel options that best meet their needs
Suggestion 5:	Use the CRS Regulation to promote multimodality in line with SDGs and the sustainable mobility strategy
Suggestion 6:	The sectoral personal data protection provisions of the CRS Regulation should be maintained but where appropriate reviewed and simplified

SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

Computerised reservation systems (CRSs) are used by travel agents (online and offline) and large corporations as one of the available points of access for booking airline tickets, rail tickets, hotel rooms, rental cars and other travel-related items. Regulation (EC) 80/2009 on a Code of Conduct for computerised reservation systems (CRS) (hereafter “the Regulation on the CRS Code of Conduct”) aims to prevent abuse of market power and promote competition, thereby protecting consumer interests, through *ex ante* regulatory measures governing the relationship between air carriers, CRS operators and travel agents.

The Regulation only applies to CRSs that include air transport products, when offered for use or used in the EU. An evaluation of the Regulation on the CRS Code of Conduct was published in Q1 2020. It found that in the current context, the Regulation is less relevant than before for preventing distortion of competition between CRSs by parent carriers and ensuring fair and effective competition between carriers. At the same time, the evaluation showed that new developments, such as the rise of new players and distribution channels for air tickets, notably web-based platforms, may require different action to improve market efficiency and encourage fair competition, in so far as these aspects are not already covered by existing horizontal legislation. The evaluation also found that there is insufficient evidence to confirm that the Regulation on the CRS Code of Conduct remains an appropriate instrument to promote rail transport and inter-modal transport. However, this specific objective remains relevant in general and the public consultation will explore which better alternatives exist. In view of the above, it is appropriate and timely to launch an Impact Assessment to address the issues raised in the evaluation. This initiative is in line with the new Commission’s priorities on digital innovation and an economy that works for all.

Further sources of information

[Inception Impact Assessment, for the revision](#)

[Public consultation](#) for the revision took place between February 23 – May 18, 2021.

[Roadmap and feedback for the evaluation](#)

PROBLEM DESCRIPTION

Existing evidence suggests the following issues:

The current Regulation on the CRS Code of Conduct aims to prevent abuse of market power through *ex ante* regulatory measures. However, due to market and technological changes – notably the almost complete divestment of airlines from CRSs, increased internet penetration across the EU and the growth of alternative distribution channels – the evaluation concluded that specific sectoral treatment of traditional CRS services does not appear to be justified. Furthermore, the evaluation did not find evidence that would suggest that it remains necessary to complement the general EU competition rules with the provisions of the CRS Code of Conduct in order to achieve a level playing field in the current market context.

Furthermore, the evaluation found that most of the objectives of the Regulation on the CRS Code of Conduct appear to be covered by existing horizontal legislation, i.e. EU competition rules and the General Data Protection Regulation (GDPR). Moreover, elements such as transparency in air ticket distribution for P2B relationships is covered by Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services. The corpus of relevant applicable horizontal legislation may expand even further under initiatives announced in the Digital (COM(2020) 67) and Data (COM(2020) 66) Strategies.

Due to changes in the way air tickets are distributed, the share (by volume) of total tickets distributed through traditional CRSs has declined since 2007. There are indications that this downward trend is continuing. Although CRSs remain important intermediaries, in particular for the distribution of tickets to corporate customers, the continuing evolution of the sector is likely to result in a greater share of tickets being distributed through channels that are currently outside the scope of the Regulation on the CRS Code of Conduct.

The evaluation found some evidence that some alternative distribution channels may include a number of the features of CRSs, yet they are not currently regulated in the same way.

In the stakeholder consultation, a number of carriers, CRSs and travel agents expressed the view that the scope of the Regulation on the CRS Code of Conduct no longer reflects developments in the market, including possible future developments i.e. the rise of new players. There are, however, divergent views among these stakeholder groups as to which market players should be included in the scope of the Regulation. Different stakeholders mentioned for example direct connect, content aggregators and meta search engines. If aspects of the CRS Code of Conduct of the Regulation on the CRS Code of Conduct are still necessary, the evaluation concluded that its scope would require further attention to ensure that it continues to be relevant in the light of market developments.

Finally, the evaluation also found indications that the Regulation of the CRS Code of Conduct has not been fully effective in ensuring a level playing field for all participating carriers as regards access to and use of CRS services, and has not led to a better balancing of the bargaining power of different-sized carriers vis-à-vis CRSs. Many stakeholders confirmed that the neutral display requirement was still important in this context to ensure effective competition between carriers

Based on the evaluation, the preliminary problems to be addressed by this initiative can be summed up as follows:

1. The specific sectoral treatment of traditional CRS services may no longer be justified due to market and technological developments and horizontal legislation.
2. There may be a risk of distortion of competition between B2B air ticket intermediation services as a result of new air ticket distribution channels that may include a number of features of CRSs but which are not covered by the existing regulatory obligations.
3. A level playing field for access to and use of CRS services is not fully ensured.

(Source: [Inception Impact Assessment, for the revision](#))

The Fit for Future Platform has acknowledged the issues raised by the legislation concerned as follows:

Regarding: modernisation and future proofing of existing laws, including via digitalisation, the efficient labelling, authorisation and reporting obligations, the simplification of EU legislation:

The opinion is concerned with a) a need to modernise and future proof the existing CRS Regulation due to changes in indirect air ticket distribution sector, b) ensuring effective regulation via a modern enforcement system, c) simplification of reporting duties, d) contributing to the fulfilment of the Sustainable Development Goals (SDGs).

SUGGESTIONS

Suggestion 1: Ensure that the CRS Regulation is forward looking, relevant and efficient in the light of new challenges and technological progress

Description: In the light of new challenges and technological progress in the field of ticket distribution and given that competition law on its own will not be sufficient to address these challenges, an update to the regulation is preferable to a complete repeal. The CRS Code of Conduct should be revised and simplified. Such review should reflect new and evolving market situations and consider developments in airline ticket distribution in recent years. The CRS Code of Conduct evaluation highlight that numerous aspects of the Regulation are still relevant

and stakeholders consider the legislative objectives of transparency and neutrality as central for both consumers and industry players.

Summary of the main arguments in favour of maintaining and updating the CRS Regulation as the suggested policy option:

- **Benefits of ex-ante regulation vs risks in case of repeal:** Should the CRS Regulation be repealed, existing horizontal legislation (e.g. competition law, GDPR, P2B Regulation¹) would apply in the absence of sector specific rules. However, as also indicated in the CRS evaluation this would not be sufficient to ensure a level playing field between rivals and operators to cover the relationship between airlines and tour operators/booking sites, and to safeguard the objectives of transparency and neutrality. The CRS Code of Conduct, as an *ex-ante* regulation, ensures that the rules are followed by all stakeholders, regardless of their market power, and that stakeholders are required to adapt their behaviour in order to ensure efficient market outcomes. The general provisions of competition law would potentially address anti-competitive agreements or practices but only *ex-post*, after they have already taken place and potentially caused (serious) economic damage to market actors while also requiring long and complex procedures for claimants. Thus, the costs of the absence of this Regulation in case of repeal could be significant.
- **Modernisation:** A key advantage of revising and updating the CRS Regulation is that new technological developments and new distribution channels can be covered by the respective rules to prevent abuses of market power, promote competition and protect consumers' interests. The relevance of the Code of Conduct could be ensured by updating its scope to include all players competing in the air ticket distribution sector. In the current market, many new players have emerged (airline-controlled interface, comparative platforms, aggregators, New Distribution Capability, B2C gatekeepers, internet booking engines, etc.) which allow consumers to search, compare and buy flight tickets. However, some actors fall outside the scope of the current CRS Regulation and are, therefore, not bound by the same rules, including those on neutrality and transparency. This negatively affects legal certainty and does not ensure a level playing field. Several provisions (e.g. article 2 on definitions such as parent carriers, article 5(1) on neutrality and article 9 on transparency, or section 6 on infringements and penalties) should also be updated to reflect new developments in the air transport industry. At the same time, an updated Regulation would play a crucial role in promoting competition and transparency to the benefit of business and consumers.
- **Promoting smaller companies:** A revised Code of Conduct would in particular benefit small and medium-sized airlines, ensuring the possibility for them to compete with the big airline groups on the merits of their offer and services. The absence of sector-specific rules would be detrimental, in particular to these smaller players and would reduce competition between providers of booking services and airlines, ultimately to the detriment of consumers in the form of, *inter alia*, less choice and higher prices.

¹ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services;

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- **Achieving SDGs:** in addition, the updated CRS Regulation could make a relevant contribution to protecting the environment via promotion of multimodal transport.
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Suggestion 2: Update of the reporting requirements under the CRS Regulation to reflect new market realities

Description: The current CRS Regulation requires CRS providers to submit every 4 years an audited report concerning their ownership structure and governance model to the Commission (Article 12). The rationale was to identify relationships and possible conflicts of interests between carriers and CRS providers. In recent years, there has been an almost complete divestment of airlines from CRSs, thereby removing the possible conflict of interest that existed; hence this reporting requirement may no longer be relevant. However, direct booking systems by airlines who are part of a group of airlines have functionalities which are essentially similar to traditional CRSs. Some consider that these direct systems should also be considered as CRSs and that the carriers that own them should be considered as parent carriers. If this is the case, a reporting obligation may/would still be justified.

Expected benefits: Reporting obligations are sub-optimal and burdensome.

Suggestion 3: Enforcement should be strengthened in the review of the Regulation to ensure relevance and effectiveness

Description: The CRS evaluation highlighted numerous problems with the enforcement of the Regulation, for which the European Commission, together with national enforcement authorities, is competent.

For example, it has been reported that CRS providers apply unfair clauses/parity clauses to airlines, and that airlines apply surcharges/additional fees on services/tickets sold to travellers via CRSs for every ticket issued outside their own booking channels. Such non-compliant practices are detrimental to competitors and consumers, further aggravated by issues such as a lack of clarity for the examination of complaints by the European Commission in case of potential infringements.

Expected benefits:

- The renewed focus on enforcement would deter and prevent abuses of market power by airlines and CRS providers (parity clauses, unfair contract terms, additional fees and costs, etc.);
 - The focus on enforcement would reinforce and ensure the supply of neutral and transparent information about transport offers (air/air-rail etc.) to consumers;
 - Stronger enforcement would ensure that rules are applied uniformly for all stakeholders which ensures legal certainty, predictability and a level playing field between market players.
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Suggestion 4: Ensure access to all (elements of) airfares travellers can compare and choose the travel options that best meet their needs

Description: Airlines participating in CRSs should share their full (or at least their basic) range of offers and should not restrict the most advantageous offers to their own direct distribution channel. The prices displayed should also contain basic fares and “all ancillary” services (e.g. luggage fees, additional leg room, etc.), as this would allow for better comparison of airfares. This would benefit consumers and all CRS users by lowering search costs and making it easier to compare and select their preferred option.

In comparison, Article 23 of Regulation 1008/2008 on common rules for the operation of air services in the Community applies to airlines to consumer faced transaction and stipulates that air fares available to the general public shall include the applicable conditions when offered or published in any form, including on the Internet and shall include the applicable air fare as well as all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. *While this obligation is present in Annex 1 of the CRS Regulation, CRS providers have to provide in the neutral display (only) the “data provided by participating carriers” according to Article 5(1) CRS. The data provision in the neutral display therefore depends on the information provided or not by CRS users.*

However, it is not clear from the current CRS Regulation that the data provided by participating carriers must be in line with the requirements of Article 23 of the Regulation 1008/2008. A revision of the CRS Regulation should thus also clarify how the two legislations interact.

Expected benefits:

- Ensuring that airlines making their offers available through CRSs provide the full (including basic fares) content of their offers - including their ancillary services - to CRS providers would increase price transparency and comparability of offers for consumers;
- Requiring/encouraging airlines to share their essential fare contents would allow for fairer competition between airlines (especially the small ones)/other carriers and would provide for the transparency needed by consumers to compare offers. It is notably argued that the neutral display and the transparency obligations of the CRS Regulation only make sense if there is access to essential content;
- Avoid display bias that could have a negative impact on consumers.

Suggestion 5: Use the CRS Regulation to promote multimodality in line with SDGs and the sustainable mobility strategy

Description: In order to make the Regulation future proof, the multimodal potential of CRS Regulation should be further explored and ensure it is fit for purpose. The current CRS Regulation only applies to air (and a combination of air-rail) travel. However, it does not apply to rail-only or to coach services, despite its recitals 13-15. The evaluation of the CRS Regulation (2020) showed that the 2009 revision of the CRS Regulation has enabled/encouraged several (albeit limited) rail operators to participate in CRSs. Their relevant data is therefore presented in the neutral CRS displays. Coupled with other indispensable legislative actions in the transport

sector, the updated CRS Regulation should be designed to promote multimodality as much as possible and take into account the initiative for multimodal digital mobility services (MDMS).

A possible solution could be to introduce new sorting options in Annex I of the CRS Regulation to promote, or to provide the option, to sort the results - in the neutral display - by promoting, for example, the most sustainable transport offers in multimodal mobility. Providing such options could reduce costs to consumers and promote more advanced personalized and accessibility services by providing better combined mobility options.

Expected benefits:

Given the objectives of the European Commission's Sustainable and Smart Mobility Strategy, a review of the CRS Code of Conduct would be an opportunity:

- to promote multimodality;
- to develop the sale of multimodal tickets by airlines (point 31), and;
- to encourage transport users to make more sustainable choices (point 46).

Suggestion 6: Increased coherence between the sectorial data protection provisions of the CRS Regulation and the GDPR

Description: The original objective of the CRS Regulation was to ensure the consistent application of the personal data protection rules specific to CRSs across the EU, at the time of Directive 95/46/EC. The Directive has since been replaced by the GDPR. The purpose of establishing sector-specific rules was to address issues specific to the processing of personal data by CRSs.

The Commission's evaluation considers that since the GDPR has now replaced Directive 95/46/EC and is applicable in all Member States since 2018, this already ensures consistent application of data protection rules, and that there would be no need for specific sectoral rules. However, some provisions contained in Article 11 of the CRS Regulation go beyond the protection of personal data. From the evaluation, it appears that the position of stakeholders on the deletion of Article 11 diverges. Two CRS providers saw benefits in keeping sectoral rules while a third CRS provider considered it to be unnecessary.

A repeal of Article 11 of the CRS Regulation would not be appropriate from a data protection perspective. The provisions of this article bring added value to the horizontal framework given by the GDPR by specifying certain data protection principles and requirements relevant to this specific sector (CRS). For example, Article 11(2) narrows down the legal basis for processing personal data in the CRS context to 'performance of a contract' and Article 11(3) requires 'explicit consent' for the processing of sensitive data. If these provisions were deleted, any legal basis under GDPR could be used, depending on the purposes of the processing. The rules on data retention are also clearly specified in Article 11(4). In the absence of this provision, different CRSs could have different data retention periods provided that they respected the general GDPR principles. This would be contrary to the objective of consistent application of the data protection/retention rules.

Maintaining and updating the rules also provides the opportunity to specify the obligations stemming from new principles introduced by the GDPR, such as data protection by design and

by default. Additionally, as mentioned in the Commission assessment, certain rules contained in the Regulation on CRSs also apply to the processing of information relating to legal persons, which is outside the scope of the GDPR. It would therefore be beneficial for companies to keep those provisions.

Lastly, those provisions that simply repeat elements from data protection legislation without any substantial additions or specifications, e.g. regarding the existence of certain rights, must be thoroughly reviewed to ensure their full consistency with the text of the GDPR, and should possibly be deleted. References to the relevant legislation could be added to ensure their full consistency with the text of the GDPR.

Expected benefits:

- Maintain data protection provisions, more specific and adapted to the CRS sector as Article 11 CRS is more specific than the GDPR (rules on data retention, application of the rules to legal persons etc.);
- Delete the provisions of Article 11 CRS that are identical to the horizontal rules contained in the GDPR. This would avoid overlaps between the two Regulations and improve clarity/legal certainty for all market actors involved;
- As regards the enforcement of data protection rules, and for reasons of consistency with the GDPR, a suggestion could be that the enforcement of Article 11 CRS is undertaken by the Data Protection Authorities (DPAs), in accordance with the procedures laid out in the GDPR.

ABSTENTIONS

- 1 Member State
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DISSENTING VIEWS

The Netherlands

The Netherlands wants to note the following regarding the balance of stakeholder interests. The purpose of the CRS Code of Conduct is twofold. First to prevent the abuse of market power from global distribution systems (GDSs) over airlines and second to promote consumer interests through transparency. Elements of this opinion favor transparency in such a way that it would enhance the market power of GDSs, exposing a trade-off between the two goals. This issue is most prominent in suggestion 4, which proposes that airlines should not restrict the most advantageous offers to their own direct distribution channels. Although it would indeed reduce search costs for consumers, it benefits GDSs. Indirect and direct distribution channels are competing systems. Benefitting indirect channels compared to the status quo gives GDSs market power which could lead to higher distribution fees and hence higher air fares. Furthermore, it is a principle question whether a regulatory framework should limit the freedom airlines have to choose the distribution channels through which they sell tickets.