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REPORT

of the Committee on Transport and Tourism

on the modified Commission proposal for a Council decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries (COM(92)0434 final - C3-0145/93)

Rapporteur: Miss Anne McINTOSH

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PE 203.394/fin.
Or. EN

* Consultation procedure requiring a single reading
** Cooperation procedure (first reading)

**|| Cooperation procedure (second reading) requiring the votes of a majority of the current Members of Parliament
*** Parliamentary assent requiring the votes of a majority of the current Members of Parliament

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By letter of 28 March 1990 the Council of the European Communities consulted the European Parliament on the proposal from the Commission on the basis of Article 113 of the EEC Treaty to the Council for a decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries (C3-0097/90).

On 14 May 1990 the President of the European Parliament referred this proposal to the Committee on Transport and Tourism, as the committee responsible, and the Committee on External Economic Relations, for its opinion.

At its meeting of 25 April 1990 the committee appointed Miss McIntosh rapporteur.

At its sitting of 14 September 1990 Parliament contested the legal basis used by the Commission for this proposal adopting a report by Miss McIntosh on the legal basis of that proposal (A3-0192/90).

On 12 March 1993 the first report of the Committee on Transport and Tourism (A3-0030/92) was referred back to the committee by Parliament pursuant to Rule 40(2) of the Rules of Procedure.

By letter of 25 March 1993 the Council forwarded to Parliament a Commission communication on air transport relations with third countries (COM(92) 434 final). In its covering letter the Council pointed out that this communication constituted an amended proposal for a Council decision on a consultation and approval procedure for agreements concerning commercial relations between Member States and third countries.

On 23 April 1993 the President of the European Parliament referred this amended proposal to the Committee on Transport and Tourism, as the committee responsible, and the Committee on External Economic Relations, for its opinion.

At its meeting of 25 November 1992 the committee appointed Miss McIntosh rapporteur.

At its meetings of 15 June 1992, 4 November 1992, 26 November 1992, 31 March 1993, 28 April 1993, 1 June 1993, 19 July 1993 and 13 October 1993 the committee considered a draft report. At the last meeting the committee adopted the draft legislative resolution by 12 votes to 2 with no abstention.

The following took part in the vote: van Dijk, chairperson; Amaral, vice-chairman; McIntosh, rapporteur; Coimbra Martins (for Denys), De Vitto, Dinguirard, Jarzembowski, Lüttge, Megahy (for Topmann), Porraccini, Schlechter, Schodruch (for Tauran), Simpson B., Stewart, Visser, van der Waal and Wijsenbeek.

The opinion of the Committee on External Economic Relations is attached.

The report was tabled on 15 October 1993.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

Commission proposal for a Council decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries

Commission text (1)

Amendments

(Amendment No. 1)

Title

on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries

on a consultation and authorization procedure for agreements concerning aviation relations between Member States and third countries

(Amendment No. 2)

first citation

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 84 and 228 thereof,

(Amendment No. 3)

second citation a and b (new)

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

(Amendment No. 4)

first recital

Whereas Council Decision 69/494/EEC of 16 December 1969 on the progressive standardization of agreements concerning commercial relations between Member States and third countries and on the negotiations of Community agreements¹ provides a consultation and authorization procedure for all commercial agreements with third countries;

Whereas Council Decision 69/494/EEC of 16 December 1969 on the progressive standardization of agreements concerning commercial relations between Member States and third countries and on the negotiation of Community agreements¹ providing a consultation and authorization procedure for all commercial agreements with third countries does not apply to civil aviation;

1) For full text see COM(92)0434 final - OJ No. C 216, 11.08.1993, p. 15

Commission text

Amendments

(Amendment No. 5)
First recital a (new)

Whereas, in the interests of consumers, airlines and airports, the ultimate aim of the Community's policy on relations with third countries should be to completely liberalize international aviation by eliminating restrictions on capacity, frequency, route rights etc, by eliminating discrimination and by guaranteeing fair competition;

(Amendment No. 6)
Second recital

Whereas it is necessary that commercial relations with third countries in the field of civil aviation are governed by special provisions replacing the provision of Decision 69/494/EEC;

Whereas it is necessary that relations with third countries in the field of civil aviation are governed by Community agreements once the single internal aviation market has actually been completed;

(Amendment No. 7)
third recital

Whereas commercial aviation relations are regulated by bilateral air services agreements, their annexes and amendments thereto, and other bilateral and multilateral arrangements containing provisions on market access, capacity, tariff arrangements or related provisions;

Whereas aviation relations are regulated by bilateral air services agreements, their annexes and amendments thereto, and other bilateral and multilateral arrangements containing provisions on market access, capacity, tariff arrangements or related provisions;

(Amendment No. 8)
recital three a (new)

Whereas the Commission can only be given powers over external policy if a coherent position is agreed by the Commission, Council and Parliament on the substance of the external policy to be pursued;

Commission text

Amendments

(Amendment No. 9)
recital four a (new)

Whereas the regulatory framework should create commercial freedom for international civil aviation with equal opportunities for all participants; more particularly, within the framework should be fulfilled

- the requirement of reciprocity,
- the obligation of non-discrimination,
- the creation of conditions of fair competition,
- the desire to achieve maximum safety and security and protection of the environment together with fair social conditions;

(Amendment No. 10)
recital four b (new)

Whereas this regulatory framework should specifically exclude any potential for national governments to show bias, preference or protectionism for their national carriers, but should extend equal access to all air carriers covered by aviation agreements with the Community. In particular, this includes, as between third countries and the EC:

- equal traffic rights (access to the market and capacity),
- standardized rules on fare structures,
- a compromise on the extraterritorial application of rules of competition to transport;

Commission text

Amendments

(Amendment No. 11)
seventh recital

Whereas it is necessary to provide for an authorization for the continuance in force of provisions in the air transport services agreements and additional arrangements concluded before 1.1.1993 between Member States and third countries, in order to avoid interrupting their commercial relations with the third countries concerned; whereas such authorization does not absolve the Member States from the obligation to take all appropriate steps to eliminate the incompatibilities between such treaties and agreements and the provisions of Community law;

Whereas it is necessary to provide for an authorization for the continuance in force of provisions in the air transport services agreements and additional arrangements concluded before 1.1.1993 between Member States and third countries, in order to avoid interrupting their relations with the third countries concerned; whereas such authorization does not absolve the Member States from the obligation to take all appropriate steps to eliminate the incompatibilities between such treaties and agreements and the provisions of Community law;

(Amendment No. 12)
recital ten a (new)

Whereas Community negotiations on traffic rights should seek to obtain for Community carriers cabotage rights in third countries which are equivalent to those exercised by carriers of these countries within the Community;

(Amendment No. 13)
recital ten b (new)

Whereas guidelines should be set on which matters, for a transitional period, mixed agreements should be negotiated and concluded, in order to give to third countries legal certainty about the authority duly representing the Community in air transport matters;

Commission text

Amendments

(Amendment No. 14)
recital ten c (new)

Whereas it appears appropriate to review the Chicago Convention also in the light of the European integration process and the achievement of a Community single air transport market;

(Amendment No. 15)
eleventh recital

Whereas Article 113 of the Treaty not only provides for the procedure for negotiations by the Community, but also for the establishment of a special committee appointed by the Council to assist the Commission in its task;

Whereas Article 84 of the Treaty not only provides for the procedure for negotiations by the Community, but also for the establishment of a special committee appointed by the Council to assist the Commission in its task;

(Amendment No. 16)
Article 1, first paragraph

Member States shall communicate to the Commission all bilateral air services agreements, their annexes and any amendments thereto, or any other commercial bilateral or multilateral arrangements with third countries concerning aviation relations within the meaning of Article 113 of the Treaty, at the latest one year after adoption of this Decision.

Member States shall communicate to the Commission all bilateral air services agreements, their annexes and any amendments thereto, or any other bilateral or multilateral arrangements with third countries concerning aviation relations within the meaning of Articles 84 and 228 of the Treaty, at the latest one year after adoption of this Decision.

Commission text

Amendments

(Amendment No. 17)

Article 2, third paragraph

The main purpose of the consultation shall be to establish whether a Community negotiation should be initiated or, if not, whether the agreements or arrangements to be extended expressly or tacitly contain provisions relating to the common commercial aviation policy. If such is the case, it shall be established whether such provisions could constitute an obstacle to that policy. The consultation shall also cover all instruments currently in force between the other Member States and the third country concerned.

The main purpose of the consultation shall be to establish whether a Community negotiation should be initiated or, if not, whether the agreements or arrangements to be extended expressly or tacitly contain provisions relating to the common aviation policy. If such is the case, it shall be established whether such provisions could constitute an obstacle to that policy. The consultation shall also cover all instruments currently in force between the other Member States and the third country concerned.

(Amendment No. 18)

Article 3, first paragraph

If the Commission establishes, either after consultation or on its own initiative, that even though certain provisions in the instruments to be extended expressly or tacitly come within the scope of the common commercial aviation policy those provisions would not, during the period of extension envisaged, constitute an obstacle to implementation of the common commercial aviation policy, it may authorize Member States to extend, expressly or tacitly, for a period to be specified, the provisions in question of the instruments which were the subject of the consultation. This period shall not exceed one year.

If the Commission establishes, either after consultation or on its own initiative, that even though certain provisions in the instruments to be extended expressly or tacitly come within the scope of the common aviation policy those provisions would not, during the period of extension envisaged, constitute an obstacle to implementation of the common commercial aviation policy, it may authorize Member States to extend, expressly or tacitly, for a period to be specified, the provisions in question of the instruments which were the subject of the consultation. This period shall not exceed one year.

Commission text

Amendments

(Amendment No. 19)
Article 3 a (new)
Section 1

The Commission shall open negotiations with the United States of America, the Central and Eastern European States, Japan, groups of States of the Far East and with Australia aiming, inter alia, at the conclusion of Community agreements pursuant to Article 84 of the EEC Treaty on the reciprocal

- (a) granting of overflying rights,
- (b) granting of cabotage rights,
- (c) granting of rights and extension of obligations under existing Community air transport legislation;

Community action vis-à-vis third countries shall be within the context of the overall efforts to liberalize Community aviation policy.

(Amendment No. 20)
Article 3 a (new)
Section 2

The Commission shall seek the direct participation of the European Community in the application of the Chicago Convention and related rules to take account of the creation of the internal market.

Commission text

Amendments

(Amendment No. 21)
Article 3 a (new)
Section 3

On a proposal to be presented by the Commission pursuant to Article 84 of the EEC Treaty the Council and Parliament may authorize the Commission to open on behalf of the European Economic Community negotiations with third countries on civil aviation matters which are covered by proposed or enforced Community legislation.

The Council shall grant the Commission a mandate for each round of negotiations.

(Amendment No. 22)
Article 3 a (new)
Section 4

At the end of negotiations the agreement shall be concluded pursuant to Article 228 of the EEC Treaty. The Member States shall take the necessary measures in order to ensure that agreements or arrangements between them and third countries will no longer be in force at the time when Community agreements covering the same matters enter into force.

Commission text

(Amendment No. 23)
Article 4

If the Commission establishes, either after consultation or on its own initiative, that provisions in the instrument to be extended expressly or tacitly could, during the period of extension envisaged, constitute an obstacle to the implementation of the common commercial aviation policy, in particular by reason of divergencies between the policies of Member States, it shall submit a detailed report to the Council. This report shall be accompanied by the necessary proposals and, where appropriate, by recommendations requesting that the Commission be authorized to open Community negotiations with the third countries in question.

Amendments

If the Commission establishes, either after consultation or on its own initiative, that provisions contained in agreements or arrangements on civil aviation matters between Member States and third countries could constitute an obstacle to the implementation of the common aviation policy, in particular by reason of divergencies between the policies of Member States, it shall submit a detailed report to the Council. This report shall be accompanied by the necessary proposals and, where appropriate, by recommendations requesting that the Commission be authorized to open Community negotiations with the third countries in question.

The Council shall grant the Commission the authorization requested after the Commission has shown that if the Commission conducts these negotiations, this is likely to have advantages in comparison with the conduct of negotiations by the Member State concerned.

(Amendment No. 24)
Article 5
Section 1

The provisions governing matters covered by the common external aviation policy within the meaning of Article 113 of the Treaty and contained in air transport services agreements and additional agreements concluded before 1.1.1993 between Member States and third countries may be maintained in force by the Commission until 31 December 1998 as regards those areas not covered by agreements between the Community and the third countries concerned and in so far as their provisions are not contrary to the Community policy.

The provisions governing matters covered by the common external aviation policy within the meaning of Articles 84 and 228 of the Treaty and contained in air transport services agreements and additional agreements concluded before 1.1.1993 between Member States and third countries may be maintained in force by the Commission until 31 December 1995 as regards those areas not covered by agreements between the Community and the third countries concerned and in so far as their provisions are not contrary to the Community policy.

Commission text

Amendments

(Amendment No. 25)

Title IA (new) and Article 5a (new) after Article 5

New Title IA

Substantive aspects

Article 5a

The object of the negotiations.
Community negotiations shall have the
aim of securing further
liberalization of international
aviation by eliminating restrictions
on capacity, frequencies and route
rights, eliminating discrimination
and ensuring fair competition.

(Amendment No. 26)

Article 5b (new)

Article 5b

Guidelines

In negotiating with third countries,
the Commission shall respect the
following principles:

1. Reciprocity

In so far as possible, the EC and
third countries shall grant each
other equal rights, such as landing
rights, overflying rights, cabotage
rights, agreements on slot allocation
principles, etc.

2. Non-discrimination

Both parties to the negotiations
shall aim essentially to afford each
other most-favoured-nation treatment
unless the parties jointly agree
otherwise.

3. Equality of benefits

Equality of benefits and, where this is impossible on account of major differences between the EC and the negotiating partner, equality of opportunities. In negotiations between the EC and one or more third countries, all of which form a single trading bloc, the aim should be for the EC and the trading bloc to grant each other the same rights, for example with regard to cabotage and fifth-freedom rights. In negotiations with the Least Developed Countries (LDCs), these principles may be disregarded for the benefit of those countries.

4. Accession to international aviation conventions

The EC shall demand that all third countries with which it negotiates accede to international conventions concerning airworthiness, safety, combating terrorism etc.

5. Fares

Third countries which acquire the right to carry out fifth- or sixth-freedom operations on a particular route within the EC shall not offer any fare on that route which undercuts the lowest fare offered by Community airlines.

6. Cooperation between airlines

The negotiating partners shall reach agreement on reducing to a minimum existing restrictions on arrangements for alliances between and ownership of EC airlines and airlines from the third country concerned. This shall particularly apply to restrictions on financial holdings, mergers, the right to appoint directors, voting rights, code sharing, etc.

7. The environment

The EC shall seek agreements with third countries to reduce to a minimum noise nuisance and other forms of environmental nuisance.

Commission text

Amendments

(Amendment No. 27)
Article 5c (new)

Article 5c

Allocation of additional landing rights

Where the Community has been granted a limited number of new landing rights in a third country and more EC airlines are interested in acquiring them than there are new rights to be allocated, and the airlines cannot reach agreement among themselves, the rights shall be divided equally between airlines which are interested. If after two years a balanced situation has still not been attained, Member States may ask the Commission to reopen negotiations with the third country concerned about rights to the route in question.

(Amendment No. 28)
Article 6
Paragraph 1

1. Until 31 December 1998, the Council acting by qualified majority on a proposal from the Commission may authorize Member States to conduct bilateral negotiations with third countries concerning the conclusion, modification and/or application of bilateral air services agreements, the Annexes thereto or any other commercial bilateral or multilateral arrangements with third countries in cases where Community negotiations prove to be not yet possible. Directives and conditions may be attached to the authorization.

1. Until 31 December 1995, the Council acting by qualified majority on a proposal from the Commission pursuant to Article 84 of the Treaty may authorize Member States to conduct bilateral negotiations with third countries concerning the conclusion, modification and/or application of bilateral air services agreements, the Annexes thereto or any other bilateral or multilateral arrangements with third countries in cases where Community negotiations prove to be not yet possible. Directives and conditions may be attached to the authorization.

Commission text

Amendments

(Amendment No. 29)

Article 6
Paragraph 2

2. The provisions of this Article shall apply where, for any special reason, a Member State considers that, in order to avoid any interruption in commercial relations based on agreements, negotiations must be undertaken with some third country.

2. The provisions of this Article shall apply where, for any special reason, a Member State considers that, in order to avoid any interruption in aviation relations based on agreements, negotiations must be undertaken with some third country.

(Amendment No. 30)

Article 6
Paragraph 3

3. By way of derogation from paragraph 1, the Commission may, until 31 December 1998, authorize Member States to enter into bilateral negotiations with third countries concerning the modification and/or application of the Annexes to existing agreements in respect of the exercise of traffic rights, the designation of airlines, the approval of air fares and scheduling.

3. By way of derogation from paragraph 1, the Commission may, until 31 December 1995, authorize Member States to enter into bilateral negotiations with third countries concerning the modification and/or application of the Annexes to existing agreements in respect of the exercise of traffic rights, the designation of airlines, the approval of air fares and scheduling.

(Amendment No. 31)

Article 7, sub-paragraph (i)

shall involve such coordination as will ensure the proper functioning and the strengthening of the internal market, as will take account of the legitimate interests of the Member States, as regards safeguarding and extending their commercial aviation relations with third countries and as will contribute towards the establishment of uniform principles of common commercial aviation policy in relation to the country in question;

shall involve such coordination as will ensure the proper functioning and the strengthening of the internal market, as will take account of the legitimate interests of the Member States, as regards safeguarding and extending their aviation relations with third countries and as will contribute towards the establishment of uniform principles of common aviation policy in relation to the country in question;

Commission text

Amendments

(Amendment No. 32)
Article 8 Section 4

In all other cases, the agreement may be concluded only after authorization by the Council, acting by a qualified majority on a proposal from the Commission.

In all other cases, the agreement may be concluded only after authorization by the Council, acting by a qualified majority on a proposal from the Commission pursuant to Article 84 of the Treaty.

(Amendment No. 33)
Article 10

The consultation and coordination provided for in this Decision shall take place in the framework of a special committee appointed by the Council and as provided for in Article 113 of the Treaty.

The consultation and coordination provided for in this Decision shall take place in the framework of a special committee appointed by the Council pursuant to Articles 84 and 228 of the Treaty.

(Amendment No. 34)
Article 11(1)

1. The Council having concluded an agreement between the Community and a third country or countries and established criteria inter alia for the allocation of traffic rights, the Commission shall take the necessary measures for its implementation.

1. The Council having concluded an agreement between the Community and a third country or countries, the Commission shall take the necessary measures for its implementation.

(Amendment No. 35)
Article 12

The following Article 15a is inserted in Decision 69/494/EEC:

'Article 15a

This Decision does not apply to agreements and arrangements concerning commercial aviation matters.'

The following Article 15a is inserted in Decision 69/494/EEC:

'Article 15a

This Decision does not apply to agreements and arrangements concerning aviation matters.'

Commission text

Amendments

(Amendment No. 36)

Article 13

The Council may extend, on the basis of a Commission proposal, the transitional periods of Articles 5 and 6 for one or more periods of one year. The Commission's proposal will be submitted at the latest 6 months before the expiry of the relevant transitional periods.

The Council may extend, on the basis of a Commission proposal pursuant to Article 84 of the Treaty, the transitional periods of Articles 5 and 6 for one or more periods of one year. The Commission's proposal will be submitted at the latest 6 months before the expiry of the relevant transitional periods.

(Amendment No. 37)

Article 13a (new)

Article 13a

Four years after the entry into force of this Decision, the Commission shall report in writing to the Council and the European Parliament, evaluating the negotiations which have been conducted with third countries on aviation agreements and indicating their consequences for Community aviation.

(Amendment No. 38)

Article 14

This Decision is addressed to the Member States.

This Decision is addressed to the Member States. It shall enter into force on a date on the same date as the Council decision fixing the guidelines for the Community policy in external aviation relations.

A.

DRAFT LEGISLATIVE RESOLUTION

on the amended proposal from the Commission to the Council for a decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries

The European Parliament,

- having regard to the proposal pursuant to Article 113 of the EEC Treaty from the Commission to the Council (COM(90)0017 final) and to the amended proposal (COM(92)0434)¹,
 - having been consulted by the Council (C3-0097/90 and C3-0145/93),
 - having regard to the conclusions of the Council of Transport Ministers held in Brussels on 15 March 1993,
 - having regard to Rule 36(3) of its Rules of Procedure,
 - having regard to its resolution of 14 September 1990 on the legal basis (A3-0192/90)²,
 - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on External Economic Relations (A3-0299/93),
1. Approves the amended Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. States that the conclusions of the Council of Transport Ministers of 15 March 1993 differ substantially from the Commission proposal and expects the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Instructs its President to forward this resolution to the Commission and, for information, to the Council.

¹ OJ No. C 216, 11.08.1993, p. 15

² OJ No. C 260, 15.10.1990, p. 224

B.

EXPLANATORY STATEMENT

A. Introduction

1. In March 1990 the Council of the European Communities had consulted the European Parliament on the proposal from the Commission concerning a decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries¹.
2. After having contested the legal basis of the proposal (see below point C3), the Transport Committee examined the contents of the Commission text and submitted a draft report which was debated and amended in plenary in March 1992².

On the grounds of Article 40 para 2 and Article 103 para 1, the draft report was referred back to committee.

3. This new draft report takes into account an amended Commission proposal which was published in the frame of a Commission communication about air transport relations with third countries³. The aim of the amended proposal is to provide for a regulatory framework for negotiations with third countries as well as for a transitional period, during which bilateral agreements should gradually be incorporated into Community negotiations.

Pursuant to Article 6 of the proposal, the Council, acting by a qualified majority, could authorize the Member States to conclude further bilateral agreements subject to certain conditions until 31 December 1998.

B. Amendments

1. The present draft is maintaining the positions as voted in plenary on 12 March 1992⁴ and examining the new elements of the proposal in the same line.
2. A number of amendments concerning the contents of the Community external policy (10, 12, 13, 14, 17, 27) have received a positive answer in the Commission Communication (92)0434, but have not formally been integrated into the new proposal. These amendments therefore are presented again in the new report (8, 12, 13, 14, 19, 20).

¹ Doc. C3-0097/90

² A3-0030/92

³ COM(92)0434 final - Doc. C3-0145/93

⁴ OJ No. C 94, 13.04.1992, p. 300

3. Amendments aiming at widening the scope of the proposal to the whole of Community external aviation policy and at safeguarding Parliament's rights have been retabled.
4. Amendments 9 and 23 of the Transport Committee have been covered by the new recital 9 and Article 6 of the modified proposal. Amendment 25 can be considered satisfied by the presentation of the Commission Communication (92)0434. These amendments are therefore not proposed again.
5. Since January 1992, when the Transport Committee's report has been adopted, the Community has adopted the major elements for completing the internal air transport market. This fact also in the logic of Article 84 of the Treaty would confer to the Community exclusive competence to deal with external air transport relations. Therefore amendments 5 and 26 are proposed in the new report (No. 5 and 38) in a modified version. For the same reason, there is no longer a need to amend the articles in which negotiations by Member States are considered as an exception to the general rule of Community negotiations.
6. One of the major new elements in the modified proposal is the creation of the "Aviation Committee" which is supposed to assist the Commission in its decision making. As the draft corresponds to a comitology scheme acceptable for Parliament, no amendments have been proposed at this stage. Amendment 30, however, is making reference to the need of a Council decision fixing policy guidelines for the Community's external aviation relations which would also be binding for the aviation committee.

C. Recent developments

1. In tabling this report, the European Parliament refers to the amended Commission proposal, which is the basis for consultation.

The European Parliament wishes to state clearly that it is in agreement with the general idea to confer gradually the competence for dealing with external air transport relations to the Community, as suggested by the Commission.

2. Results of the Council of Ministers meeting of 15 March 1993 show however, that the Member States are currently working on the basis of an entirely different approach:

They adopted 11 joint conclusions in which they agreed that "Member States, being informed about other Member States' interests at their initiative, shall remain fully responsible for their relations with third countries in the field of aviation unless and until action has been taken by the Council".

This concept is unacceptable to the European Parliament. It falls far short of the Commission's aim of complementing the internal market through the establishment of a common policy on relations with third countries to allow the air carriers 'to make full use of the new commercial opportunities' and

'to improve the competitive position of Community air carriers in relation to some of the very efficient air carriers of third countries'⁴.

3. In connection with the legal basis, the European Parliament had already stated in its 1990 report, that Article 113 was unacceptable, since the proposal is not of an exclusively commercial nature⁵.

The divergence between the Commission on the one side, favouring Article 113, and Council and European Parliament of the other side, favouring Article 84(2) of the Treaty, is persisting.

While the Council recalled on 15 March 1993, that 'Council legislation on relations with third countries in the field of aviation has constantly been based on Article 84(2) of the Treaty; which constitutes the proper basis for an operational development of an external aviation policy', the Commission has based its proposal on Article 113.

In view of the Treaty on European Union adopted in Maastricht, this demand increases in importance since the scope of the cooperation procedure is extended to cover transport policy including Article 84 of the EEC Treaty, thus strengthening the democratic legitimization of legislation.

⁴ COM(92)0434 final - Doc. C3-0145/93

⁵ OJ No. C 260, 15.10.90, p. 224, resulting from the report McIntosh (A3-0192/90)

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on External Economic Relations
for the Committee on Transport and Tourism
Draftsman: Mr VISSER

At its meeting of 16 February 1993 the Committee on External Economic Relations appointed Mr Visser draftsman.

At its meetings of 2 April and 5 May 1993 it considered the draft opinion.

At the latter meeting it adopted the draft opinion by 4 votes with 5 abstentions.

The following took part in the vote: De Clercq, chairman; Cano Pinto, vice-chairman; Visser, draftsman; Chabert, Elles (for Price pursuant to Rule 111(2)), Miranda de Lage, Moorhouse, Peijs and Sonneveld (for Lemmer).

1. Introduction

On 23 February 1990 the Commission presented a proposal for a Council decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries (COM(90) 0017 final). On the basis of an opinion from the Committee on Legal Affairs and Citizens' Rights dated 24 April 1990, the Committee on Transport and Tourism presented a report on the legal basis on 17 July 1990.

Instead of Article 113, which was the legal basis proposed by the Commission, it was suggested that the Commission proposal ought to be based on Articles 84(2) and 228(1) of the EEC Treaty. This report was adopted by Parliament on 15 October 1990 (PE 140.283 fin.). The Committee on External Economic Relations delivered its opinion on the substantive aspects of the Commission proposal to the Committee on Transport and Tourism on 20 June 1991 (PE 144.052/fin.) (draftsman: Mr Stevenson).

The conclusions of the Committee on External Economic Relations included the following:

- It was not acceptable to vest powers in the Commission with regard to external aviation policy without first clearly establishing what the substance of that policy was to be. The Commission was therefore asked to submit a memorandum on this subject to Parliament and the Council without delay.
- It was essential to wait until the GATT negotiations had reached a satisfactory conclusion before considering granting the Commission further powers in the field of civil aviation.

The first conclusion was adopted by the Committee on Transport and Tourism, but not the second. This is understandable, as virtually no one in the aviation sector believes that aviation should be regulated through GATT. Parliament considered the matter in plenary on 12 March 1992 (PE 150.066/fin.). As the Commission did not accept Parliament's amendments, the matter was referred back to the Committee on Transport and Tourism. DG VII published a non-paper on the substantive aspects of external aviation policy on 16 June 1991.

Finally, the communication from the Commission to the Council on air transport relations with third countries (COM(92) 0434 final) was published on 21 October 1992.

2. The main differences in comparison with the original Commission proposal

Annex 1 to COM(92) 0434 final contains a proposal to modify the earlier proposal (COM(90) 0017 final of 23 February 1990). The new proposal, like its predecessor, deals only with procedural aspects. While paragraphs 22 to 49 of the communication do also contain substantive information on the policy to be pursued, comments by the aviation industry and Member States indicate that this is inadequate, and they call for a more thorough analysis. In particular, it is not clear enough what criteria the Commission intends to use to allocate aviation rights. It seems that the Commission sees the solution as being mainly to set up two committees: an Aviation Committee, which would more or less take the place of the Council and which would be appointed by the Council and comprise one representative from each Member State, and a Management Committee for Air Transport, likewise consisting of representatives of the Member States, which would be chaired by the Commission and would assist the latter. The votes of the representatives in the latter committee would be weighted as laid down in Article 148(2) of the Treaty.

It should be noted that the Association of European Airlines (AEA) and many EC airlines and Member States are against assigning powers to the Commission to conduct negotiations with third countries. Many recent developments in air transport have resulted in the reciprocal opening up of aviation markets, or are expected to do so, and the advantages of the Commission's conducting negotiations instead of the Member States are therefore uncertain. These developments include the open skies agreement between the Netherlands and the USA, British Airways' action with regard to US Air in the USA and Qantas in Australia, the remarkable increase in Lufthansa's route rights in the USA and France's termination of its aviation agreement with the USA. People have long since ceased to believe that the Commission will be able to achieve better results in its negotiations than the Member States themselves. However, your draftsman has heard that Germany and France, in particular, are no longer opposed to the Commission's being assigned a one-off mandate to conduct negotiations with the USA and Japan.

Your draftsman is sympathetic to these criticisms, and therefore believes that the Commission should not conduct negotiations with third countries on behalf of the Member States and EC airlines unless there is a demonstrable advantage in this. If this cannot be shown to be the case in advance, it would be better for the Member States to continue to conduct their own negotiations (which would also accord with the subsidiarity principle). See Amendment No. 6.

3. The legal basis

In the new proposal as in the old one, the Commission opts for Article 113 as the legal basis. The objections to this remain overwhelming. Article 113 is widely regarded as inappropriate (a view shared by the Council), Articles 84(2) and 228(1) being the favoured alternative. For the sake of brevity, reference may be made to the aforementioned opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on External Economic Relations, the report of the Committee on Transport and Tourism and the relevant report of the European Parliament for the arguments in support of this view.

Your draftsman wishes to add the following point. He believes that responsibility for air transport relations with third countries should be shared between the EC and the Member States. The choice of legal basis is of course a question of application of the Treaty and not one for political decision. Article 113 and Council Decision 69/494 have never been applied to air transport relations with third countries, nor does the case law of the Court of Justice provide any evidence that they should be so applied.

This point of view is confirmed by two recent events:

- during the negotiations in Maastricht, the governments of the Member States rejected an amendment which would have rendered transport services subject to Article 113;
- the Council chose Article 84(2) as the legal basis for the recent aviation agreement with Norway and Sweden.

The Community certainly has the power to pursue a common external aviation policy, but there is no provision in the Treaty which places the Community under a legal obligation to do so. The fact that this is an area of shared responsibility likewise suggests that Article 84(2) should be the legal basis, which would mean that the subsidiarity principle would apply. Member States could continue to conduct independent negotiations unless negotiations by the EC could be shown to be more advantageous.

4. Salient features of the air transport policy to be pursued

As rapporteur on behalf of the Committee on Transport and Tourism for the 'third package' of aviation proposals, your draftsman included in the Explanatory Statement on his report (PE 155.348/fin.) [adopted by Parliament on 8 April 1992] a number of observations on the possible substance of a policy on air transport relations with third countries. These were based partly on the many consultations he had had with aviation authorities inside and outside the EC. He subsequently sent these observations to numerous organizations, inviting comments. The following were consulted, either verbally or in writing: the AEA, IATA, ACI-Europe (airports), the European Commission, American Airlines, Singapore Airlines, Malaysia Airlines, Cathay, Air India, Qantas, SAS, ICAO, KLM and the Netherlands Ministry of Transport and Public Works. Information was also obtained from reports by the Think Tank on Multilateral Aviation Liberalization and of the International Chamber of Commerce in Paris. It is a pity that some organizations did not take the trouble to reply. Particularly striking was the failure of the American aviation industry and Japan to do so.

The replies received show that the aviation industry, both in the Community and elsewhere, is divided, with some parties advocating rapid liberalization while others wish to see considerable restraint exercised in this field. In view of the decisions of the Committee on External Economic Relations, the Committee on Transport and Tourism and Parliament, to the effect that the substance of external air transport policy should first be clarified, and partly on the basis of the replies received and paragraphs 22 to 49 of the Communication from the Commission (COM(92) 0434 final), your draftsman has drafted a number of amendments intended to indicate what substantive aspects should be covered by EC policy on air transport relations with third countries, for which purpose a number of guidelines for the negotiations are formulated. These amendments are deliberately intended as compromise proposals. In the view of your draftsman, his proposals take account of the criticisms of the Commission proposals to a reasonable extent.

What are the main points covered in the amendments? Firstly it should be observed that your draftsman assumes that the Committee on Transport and Tourism will again give thorough consideration to procedural aspects of air transport relations with third countries, as it did in its first report (PE 150.066/fin.; rapporteur: Miss McIntosh). Your draftsman therefore disregards procedural aspects in this opinion and confines himself to the possible substance of a policy on air transport relations with third countries.

Your draftsman has already indicated that Articles 84(2) and 228(1) should be taken as the legal basis rather than Article 113. Amendment No. 1 seeks to implement this change. It has also been argued that the Council could grant a fresh mandate for each round of negotiations, provided that there are advantages, in the Commission's conducting the negotiations instead of the Member States. See Amendment No. 6.

As regards the substance of the policy to be pursued, your draftsman believes that, at the minimum, the following points are relevant:

- (a) It should be established that in negotiations with third countries as elsewhere, the ultimate aim is total liberalization of international air transport ('open skies'), although it is likely that this can be achieved only in stages.

- (b) In relations with the USA in particular, efforts should be made to obtain cabotage rights in a third country. First of course, the internal market in air transport (i.e. freedom of cabotage) will have to be fully realized within the Community itself. The relevant Council decision provides for this objective to be achieved only as of 1 April 1997, which means that such a provision should not take effect until that date.
- (c) The rights acquired through bilateral negotiations between a Member State and a third country must be respected and remain unaffected. It would of course be unacceptable for such rights to be affected by EC negotiations. Existing bilateral agreements must remain in force until their expiry date unless the countries which are parties to them decide jointly to terminate them prematurely. It is acceptable that bilateral agreements should subsequently be reviewed for compliance with EC interests.
- (d) The Commission should be guided by the following principles in conducting the negotiations:
- reciprocity;
 - non-discrimination;
 - equality of benefits or, if this is impossible, equality of opportunities;
 - no price leadership for an airline from a third country;
 - removal of obstacles to cooperation between airlines, e.g. financial holdings, mergers, voting rights, right of appointment of directors, code sharing etc;
 - environmental damage, e.g. air pollution and noise nuisance, must be reduced;
 - third countries should accede to international conventions, and the obligations arising from them, e.g. with regard to safety and combating terrorism, must be complied with;
 - where possible, the Community should be able to conduct negotiations with trading blocs such as NAFTA rather than individual third countries;
 - it should be possible to disregard the above principles in the case of the Least Developed Countries (LDCs).
- (e) One major problem which remains unresolved is the allocation of route rights acquired through negotiation, if fewer rights are obtained than requested. Many ideas have been put forward (past rights, market share, proportionality, a tendering system, or a Council decision), only to be rejected. Your draftsman proposes that whichever airlines are interested in a particular route should first try to reach agreement amongst themselves. If they are unable to do so, the new rights should be allocated to them equally and equilibrium must be achieved in practice, through competition between them. After a given period, such as two years, the Commission could be asked to initiate fresh negotiations with the third country concerned.
- (f) Your draftsman proposes that the new system should operate for a trial period of four years, after which the Commission should draw up a report evaluating it for the Council and Parliament.

5. Policy vis-à-vis certain important third countries

Broadly speaking, the third countries can be divided into the following regions:
- the USA (and the rest of North America);

- the Far East (notably Japan, ASEAN, China and Korea);
- Eastern Europe;
- the rest of the world.

The Community's importance - and therefore the nature of the negotiations to be conducted - varies from one region to another. If only because the Commission does not have the staff - or, probably, the specialist knowledge concerning each individual third country - the Commission initially wishes to assign priority to negotiations with the USA and Japan. Your draftsman would make the following observations:

(a) Relations with the USA or possibly with NAFTA

As the parties concerned are two equally powerful trading blocs, the aim of the negotiations should be to secure aviation packages of equivalent value, conferring equal benefits. The USA already has many fifth-freedom rights within the EC, whereas EC airlines do not enjoy freedom of cabotage in the USA. There are also problems with regard to the allocation of slots (e.g. in the UK) and with market access for computerized reservation systems (CRSs). The USA also presents many obstacles to cooperation between airlines based in the EC and the USA.

However, it would be a distortion of the facts to portray the USA as the villain and the EC Member States and airlines as innocent victims. Protection of our own markets and restriction of competition are not unknown in the EC. The negotiations with the USA and/or NAFTA should aim to achieve the ultimate mutual opening up of each other's air transport markets ('open skies').

(b) Relations with the Far East

The Far East consists of numerous separate national markets without regional cooperation, although cautious steps towards such cooperation are being taken in South-East Asia. Thus there is no joint regional negotiating partner for the EC and hence no possibility of negotiating on an equal footing. The position of Asian airlines is on the whole comparable with that of the individual EC airlines. The EC should therefore be careful not to abuse its power - an eventuality which the Asian airlines certainly fear (the establishment of a 'fortress Europe' in aviation). Obviously it would not be right for the EC to accuse the USA of failing to open up its airspace sufficiently and then promptly follow suit vis-à-vis airlines in the Far East. Negotiations should also be conducted with those countries on the basis of equality of opportunities with a view to mutual opening up of air transport markets. Airlines in the Far East - as in Europe - are divided. Some countries seek liberalization while others protect their markets. From the Community's point of view it would be desirable for the Asian countries to form one or more regional organizations, which would also enable them to offer more to the EC while strengthening their own negotiating position. The EC should negotiate with a few large countries in the Far East, such as China, Japan and Indonesia, on opening up the air transport markets in those countries.

(c) Relations with Eastern Europe

Following the constitutional changes in Eastern Europe, it is clear that any future air transport negotiations will have to be conducted bilaterally with the individual countries of Eastern Europe. Ultimately, the most desirable objective would be to establish a common European aviation policy and a single common

European market. By analogy with the EEA agreement with the EFTA countries, the air transport negotiations with Eastern European countries should be used to persuade those countries to accept the 'acquis communautaire', with or without transitional provisions.

(d) Relations with the rest of the world

The situation is so diverse that no common denominator exists. In the future as in the past, negotiations will generally have to be bilateral. It will not always be a matter of negotiating a reciprocal package of air transport rights: sometimes it will be necessary to agree financial compensation for landing rights granted to an EC airline, for example in the case of some African countries. It is difficult to see how the EC could negotiate successfully in these cases in the future.

6. Proposed amendments

In view of the above, your draftsman proposes the following amendments:

Commission text

Amendments

(Amendment No. 1)

First citation and Articles 1, 5 and 10

For 'Article 113' read 'Articles 84 and 228'.

(Amendment No. 2)

First recital a (new)

Whereas, in the interests of consumers, airlines and airports, the ultimate aim of the Community's policy on relations with third countries should be to completely liberalize international aviation (an open skies policy) by eliminating restrictions on capacity, frequency, route rights etc, by eliminating discrimination and by guaranteeing fair competition;

(Amendment No. 3)

Second recital

Whereas it is necessary that commercial relations with third countries in the field of civil aviation are governed by special provisions replacing the provision of Decision 69/494/EEC;

Whereas it is necessary that relations with third countries in the field of civil aviation are governed by Community agreements once the single internal aviation market has actually been completed;

(Amendment No. 4)
Seventh recital

Whereas it is necessary to provide for authorization for provisions in the air transport services agreements and additional arrangements concluded before 1 January 1993 between Member States and third countries to remain in force, in order to avoid interrupting their commercial relations with the third countries concerned; whereas such authorization does not absolve the Member States from the obligation to take all appropriate steps to eliminate any incompatibility between such agreements and the provisions of Community law;

Whereas rights and obligations arising from existing bilateral aviation agreements between Member States and third countries should be respected and remain unaffected in the interests of Community airlines and relations between Member States and third countries;

(Amendment No. 5)
Eighth recital

Whereas most of the matters covered by these agreements will in future be governed by Community agreements; whereas the provisions of the agreements which are to remain in force must not constitute an obstacle for the implementation of the common external aviation policy; whereas Member States may have to adapt, or, if necessary, terminate those agreements where their remaining in force hinders the implementation of the common external aviation policy;

Whereas most of the matters covered by these agreements will in future be governed by Community agreements;

(Amendment No. 6)

Article 4

If the Commission establishes, either after consultation or on its own initiative, that provisions in the instrument to be extended expressly or tacitly could, during the period of extension envisaged, constitute an obstacle to the implementation of the common commercial aviation policy, in particular by reason of divergencies between the policies of Member States, it shall submit a detailed report to the Council. This report shall be accompanied by the necessary proposals and, where appropriate, by recommendations requesting that the Commission be authorized to open Community negotiations with the third countries in question.

If the Commission establishes, either after consultation or on its own initiative, that provisions in the instrument to be extended expressly or tacitly could, during the period of extension envisaged, constitute an obstacle to the implementation of the common commercial aviation policy, in particular by reason of divergencies between the policies of Member States, it shall submit a detailed report to the Council. This report shall be accompanied by the necessary proposals and, where appropriate, by recommendations requesting that the Commission be authorized to open Community negotiations with the third countries in question.

The Council shall grant the Commission the authorization requested after the Commission has shown that if the Commission conducts these negotiations, this is likely to have advantages in comparison with the conduct of negotiations by the Member State concerned. The Council shall adopt a mandate for each round of negotiations by the Commission.

(Amendment No. 7)
Article 5

The provisions governing matters covered by the common external aviation policy within the meaning of Article 113 of the Treaty and contained in air transport services agreements and additional agreements concluded before 1 January 1993 between Member States and third countries may be maintained in force by the Commission until 31 December 1998 as regards those areas not covered by agreements between the Community and the third countries concerned and in so far as their provisions are not contrary to the Community policy.

To the extent that such agreements are not compatible with the Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other in accordance with the procedures provided for in this Decision.

None of the rights and obligations arising from aviation agreements, their annexes and amendments thereto and other bilateral or multilateral agreements or arrangements concerning aviation relations concluded with third countries before 1 April 1997 shall be affected before their date of expiry unless both parties to the agreements concerned jointly agree otherwise.

(Amendment No. 8)
Title IA (new) and Article 5a (new) after Article 5

New Title IA
Substantive aspects

Article 5a

The object of the negotiations. Community negotiations shall have the aim of securing further liberalization of international aviation by eliminating restrictions on capacity, frequencies and route rights, eliminating discrimination and ensuring fair competition (open skies).

(Amendment No. 9)
Article 5b (new)

Article 5b

Guidelines

In negotiating with third countries, the Commission shall respect the following principles:

1. Reciprocity

In so far as possible, the EC and third countries shall grant each other equal rights, such as landing rights, overflying rights, cabotage rights, agreements on slot allocation principles, etc.

2. Non-discrimination

Both parties to the negotiations shall aim essentially to afford each other most-favoured-nation treatment unless the parties jointly agree otherwise.

3. Equality of benefits

Equality of benefits and, where this is impossible on account of major differences between the EC and the negotiating partner, equality of opportunities. In negotiations between the EC and one or more third countries, all of which form a single trading bloc, the aim should be for the EC and the trading bloc to grant each other the same rights, for example with regard to cabotage and fifth-freedom rights. In negotiations with the Least Developed Countries (LDCs), these principles may be disregarded for the benefit of those countries.

4. Accession to international aviation conventions

The EC shall demand that all third countries with which it negotiates accede to international conventions concerning airworthiness, safety, combating terrorism etc.

5. Fares

Third countries which acquire the right to carry out fifth- or sixth-freedom operations on a particular route within the EC shall not offer any fare on that route which undercuts the lowest fare offered by Community airlines.

6. Cooperation between airlines

The negotiating partners shall reach agreement on reducing to a minimum existing restrictions on arrangements for alliances between and ownership of EC airlines and airlines from the third country concerned. This shall particularly apply to restrictions on financial holdings, mergers, the right to appoint directors, voting rights, code sharing, etc.

7. The environment

The EC shall seek agreements with third countries to reduce to a minimum noise nuisance and other forms of environmental nuisance.

(Amendment No. 10)
Article 5c (new)

Article 5c

Allocation of additional landing rights

Where the Community has been granted a limited number of new landing rights in a third country and more EC airlines are interested in acquiring them than there are new rights to be allocated, and the airlines cannot reach agreement among themselves, the rights shall be divided equally between airlines which are interested. If after two years a balanced situation has still not been attained, Member States may ask the Commission to reopen negotiations with the third country concerned about rights to the route in question.

(Amendment No. 11)

Article 6(1)

Until 31 December 1998, the Council acting by qualified majority on a proposal from the Commission, after the required prior consultation, may authorize Member States to conduct bilateral negotiations with third countries concerning the conclusion, modification and/or application of bilateral air services agreements, the annexes thereto or any other commercial bilateral or multilateral arrangements with third countries in cases where Community negotiations prove to be not yet possible. Directives and conditions may be attached to the authorization.

After 1 April 1997, the Council acting by qualified majority on a proposal from the Commission, after the required prior consultation, may authorize Member States to conduct bilateral negotiations with third countries concerning the conclusion, modification and/or application of bilateral air services agreements, the annexes thereto or any other commercial bilateral or multilateral arrangements with third countries in cases where Community negotiations prove to be not yet possible. Directives and conditions may be attached to the authorization.

(Amendment No. 12)

Article 6(3)

By way of derogation from paragraph 1, the Commission may, until 31 December 1998, authorize Member States to enter into bilateral negotiations with third countries concerning the modification and/or application of the annexes to existing agreements in respect of the exercise of traffic rights, the designation of airlines, the approval of air fares and scheduling.

By way of derogation from paragraph 1, the Commission may, after 1 April 1997, authorize Member States to enter into bilateral negotiations with third countries concerning the modification and/or application of the annexes to existing agreements in respect of the exercise of traffic rights, the designation of airlines, the approval of air fares and scheduling.

(Amendment No. 13)

Article 11(1)

1. The Council having concluded an agreement between the Community and a third country or countries and established criteria inter alia for the allocation of traffic rights, the Commission shall take the necessary measures for its implementation.

1. The Council having concluded an agreement between the Community and a third country or countries, the Commission shall take the necessary measures for its implementation.

(Amendment No. 14)
Article 13a (new)

Article 13a

Four years after the entry into force of this Decision, the Commission shall report in writing to the Council and the European Parliament, evaluating the negotiations which have been conducted with third countries on aviation agreements and indicating their consequences for Community aviation.

(Amendment No. 15)
Article 14

This Decision is addressed to the Member States.

This Decision is addressed to the Member States and shall enter into force after the EC's internal aviation market has actually been liberalized, and at all events not before 1 April 1997.

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