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*****I**

REPORT

on the proposal for a European Parliament and Council regulation on the negotiation and implementation of air service agreements between Member States and third countries
(COM(2003) 94 – C5-0065/2003 – 2003/0044(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Ingo Schmitt

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 26 February 2003 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 80(2) of the EC Treaty, the proposal for a European Parliament and Council regulation on the negotiation and implementation of air service agreements between Member States and third countries (COM(2003) 94 – 2003/0044(COD)).

At the sitting of 10 March 2003 the President of Parliament announced that he had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Legal Affairs and the Internal Market and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs for their opinions (C5-0065/2003).

The Committee on Regional Policy, Transport and Tourism appointed Ingo Schmitt rapporteur at its meeting of 19 March 2003.

The committee considered the Commission proposal and draft report at its meetings of 21 May 2003, 12 June 2003 and 8 July 2003.

At the last meeting it adopted the draft legislative resolution by 46 votes to 2, with 5 abstentions.

The following were present for the vote: Rijk van Dam (vice-chairman and acting chairman), Gilles Savary (vice-chairman), Ingo Schmitt (rapporteur), Sylviane H. Ainardi, Rolf Berend, Philip Charles Bradbourn, Felipe Camisón Asensio, Chantal Cauquil (for Emmanouil Bakopoulos), Luigi Cesaro (for Christine de Veyrac), Luigi Cocilovo, Gerard Collins, Jean-Maurice Dehousse (for Danielle Darras), Nirj Deva (for Mathieu J.H. Grosch), Jan Dhaene, Den Dover (for Dieter-Lebrecht Koch), Garrelt Duin, Alain Esclopé, Giovanni Claudio Fava, Jacqueline Foster, Catherine Guy-Quint (for Ewa Hedkvist Petersen), Konstantinos Hatzidakis, Roger Helmer (for Sérgio Marques), Liam Hyland (for Adriana Poli Bortone, pursuant to Rule 153(2)), Juan de Dios Izquierdo Collado, Georg Jarzembowski, Giorgio Lisi, Nelly Maes, Emmanouil Mastorakis, Erik Meijer, Rosa Miguélez Ramos, Bill Miller (for John Hume), Enrique Monsonís Domingo, Francesco Musotto, Camilo Nogueira Román, Josu Ortuondo Larrea, Peter Pex, Wilhelm Ernst Piecyk, Joaquim Píscarreta (for James Nicholson), Giovanni Pittella (for Brian Simpson), Samuli Pohjamo, Bernard Poignant, José Javier Pomés Ruiz, Reinhard Rack, Dana Rosemary Scallon, Renate Sommer, María Sornosa Martínez (for Ulrich Stockmann, pursuant to Rule 153(2)), Dirk Sterckx, Joaquim Vairinhos, Ari Vatanen, Herman Vermeer, Luigi Vinci (for Alonso José Puerta, pursuant to Rule 153(2)), Mark Francis Watts and Brigitte Wenzel-Perillo (for Margie Sudre).

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached; the Committee on Legal Affairs and the Internal Market decided on 23 April 2003 not to deliver an opinion.

The report was tabled on 10 July 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council regulation on the negotiation and implementation of air service agreements between Member States and third countries (COM(2003) 94 – C5-0065/2003 – 2003/0044(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 94¹),
 - having regard to Article 251(2) of the EC Treaty and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0065/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0263/2003),
1. Approves the Commission proposal as amended;
 2. Asks for the matter to be referred to it again, should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 5

(5) All existing bilateral agreements between Member States and third countries that contain provisions contrary to Community law must be replaced by agreements that are wholly compatible with Community law

(5) All existing bilateral agreements between Member States and third countries that contain provisions contrary to Community law must be **amended or** replaced by **new** agreements that are wholly compatible with Community law;

Justification

Whether an agreement needs to be amended or newly concluded depends on the particular

¹ Not yet published in OJ.

case. That is why a sweeping statement is undesirable.

Amendment 2
Recital 6

***(6) The Community should undertake to
revise the elements in existing bilateral
agreements that infringe Community law;*** ***deleted***

Justification

When the object is to safeguard rights under the EC Treaty, it does not greatly matter who carries out the necessary revision.

Amendment 3
Recital 8

(8) It is essential to ensure that a Member State conducting negotiations takes account of Community law, broader Community interests and ongoing Community negotiations; ***To this effect an efficient and transparent verification procedure should be established;***

(8) It is essential to ensure that a Member State conducting negotiations takes account of Community law, broader Community interests and ongoing Community negotiations;

Justification

Under Article 230 of the EC Treaty the Commission already has the right to bring actions before the Court of Justice for infringements of the Treaty. The rapporteur believes that it will suffice in this instance for the Commission to exercise that right. To introduce a new procedure would be pointless because it would confer additional powers on the Commission although there is no discernible justification for doing so.

Amendment 4
Recital 9

(9) If Member States wish to associate air carriers in the process of negotiations, all air carriers with an establishment in the territory of the Member State concerned should be treated equally;

(9) If Member States wish to associate air carriers in the process of negotiations, all air carriers with an establishment in the territory of the Member State concerned ***and air carriers which are or might be***

*affected on account of their route network should be treated equally **if, on account of their route network, they are affected or might be affected in the foreseeable future;***

Justification

This part of the text should state more explicitly under what circumstances an airline is or might be affected by negotiations. Air carriers should be involved if, and only if, they might be affected by the subject matter of the negotiations. The amendment thus gives substantive expression to the principle of equal treatment.

Amendment 5 Recital 12

(12) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, measures for the implementation of this Regulation should be adopted by use of the **advisory** procedure provided for in **Article 3** of that Decision;

(12) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, measures for the implementation of this Regulation should be adopted by use of the **regulatory** procedure provided for in **Article 5** of that Decision;

Justification

The advisory procedure, which the Commission is proposing in order to implement the regulation, affords wide-ranging powers to the Commission. In particular, all that the assisting advisory committee is called upon to do under that procedure is to deliver an opinion, of which, although it is recorded in the minutes, the Commission must otherwise take merely the utmost account (Article 3(4), first sentence). Under the regulatory procedure, however, if a projected measure is not in accordance with the opinion of the committee, the Commission is required to submit a proposal to the Council relating to the measures to be taken and to inform Parliament. Furthermore, Parliament may inform the Council if it considers that the Commission is exceeding the implementing powers provided for in basic instruments adopted under the codecision procedure. The regulatory procedure is the best way to underpin the Commission's action. The division of competences between the Commission and individual Member States for the purposes of concluding air service agreements is central to the proposal for a regulation. Parliament and the Council should consequently not be prevented from exercising scrutiny.

Article 2(b) of the comitology decision stipulates that the regulatory procedure should be used

when the measures in question are of general scope and designed to apply essential provisions of basic instruments. The distribution of traffic rights and all other measures required under the regulation are measures of general scope.

Amendment 6

Recital 13

(13) Since the objectives of the proposed action, namely the co-ordination of negotiations with third countries with a view to concluding air services agreements, the necessity to guarantee a **harmonised** approach in the implementation and application of the agreements and the verification of compliance with Community law of such agreements, cannot be sufficiently achieved by the Member States and can therefore, by the reason of the Community-wide scope of this *regulation*, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. ***In accordance with the principle of proportionality, as set out in that Article, this regulation does not go beyond what is necessary to achieve those objectives;***

(13) Since the objectives of the proposed action, namely the co-ordination of negotiations with third countries with a view to concluding air services agreements, the necessity to guarantee a **collaborative** approach in the implementation and application of the agreements and the verification of compliance with Community law of such agreements, cannot ***always*** be sufficiently achieved by the Member States and can therefore, by the reason of the Community-wide scope of this *Regulation*, be better achieved at Community level, the Community may, ***in principle***, adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty;

Justification

The change and additions should be made in order to limit the Commission's powers.

The deleted passage is to be reinstated in the following new recital. The rapporteur believes that this point should be made into a separate recital so as to lay greater emphasis on the importance of the proportionality principle and, moreover, to spell out that principle more explicitly.

Amendment 7

Recital 13 a (new)

(13a) However, in accordance with the

principle of proportionality, as set out in that Article 5 of the EC Treaty, no further notification or authorisation requirements should be introduced if they unduly restrict Member States in their scope for action and go beyond the general provisions already laid down by law;

Justification

Recital inserted as explained in the justification for Amendment 6 to recital 13.

Amendment 8
Recital 13 b (new)

(13b) To enable a coordinated, focused approach to be adopted to the negotiation of Community air service agreements with third countries, a three-stage plan should be laid down. In the first stage the Commission should negotiate a Community agreement on an open aviation area with the United States. Community air service agreements should thereafter be negotiated and concluded with third countries which likewise have or are seeking to achieve a liberalised air transport market. At the third stage it should be determined in each individual case whether a Community agreement with a third country would constitute value added for the Member States;

Justification

Bearing in mind that less is sometimes more, the rapporteur believes that the future approach should proceed in accordance with a phased plan. Firstly, negotiations should be conducted with the United States with a view to establishing an open aviation area. This would make for legal certainty where the case law of the Court of Justice was concerned and also generate value added for European air carriers.

Secondly, the Commission should enter into negotiations with third countries which have liberalised their airspace arrangements or are at any rate willing to do so.

Thirdly, and finally, negotiations should be opened with third countries which have carried out no liberalisation. However, until such time as that could happen, the status quo should be maintained for reasons of legal certainty. It does not seem advisable to terminate existing agreements before new agreements have been concluded.

Amendment 9
Recital 13 c (new)

(13c) Negotiations relating to the conclusion of a Community agreement on an open aviation area with the United States should address the implementation of the ‘polluter pays’ principle, as laid down in Article 174(2) of the EC Treaty.

Justification

The ‘polluter pays’ principle is a fundamental element of the Community acquis which, thus far, has not been properly addressed in the field of aviation policy. Given the overriding significance of the transatlantic air transport market in global terms, and the lack of progress so far made at the level of ICAO, the negotiation of a new EC-US ‘open skies’ agreement would appear to be the ideal framework to give new impetus to reaching an international solution to the negative environmental impact of air transport growth.

Amendment 10
Recital 13 d (new)

(13d) Negotiation of a Community agreement on an open aviation area with the United States must also ensure the elimination of direct or indirect subsidies to United States air carriers, which distort the market to the detriment of Community carriers.

Justification

It is absolutely crucial that an EC-US 'open skies' agreement is concluded on the basis of a level competitive playing field. Recent public subsidies to US airlines risk placing EU carriers at a major competitive disadvantage, which could lead them to be swallowed up entirely in an open transatlantic aviation market, unless these issues are satisfactorily resolved during negotiations.

Amendment 11 Article 1, paragraph 1

1. In the absence of Community negotiations with a third country, or where a Community agreement exists, but ***addresses only a limited number of issues***, a Member State may, without prejudice to the respective competencies of the Community and its Member States, wish to enter into negotiations with that country concerning a new agreement or the modification or application of an existing ***air service*** agreement, its annexes or any other related bilateral or multilateral arrangement. ***If a Member State so decides it shall notify the Commission and the other Member States of its intentions in writing.***

1. In the absence of ***official*** Community negotiations with a third country, or where a Community agreement exists, but ***does not address all the issues***, a Member State may, without prejudice to the respective competencies of the Community and its Member States, wish to enter into negotiations with that country concerning a new agreement or the modification or application of an existing ***aviation*** agreement, its annexes or any other related bilateral or multilateral arrangement. ***Not later than one calendar month before they begin, the Commission shall inform Member States that official negotiations are to open.***

Justification

The Member States' power to negotiate should not be restricted until official negotiations have been opened. If such a watershed did not exist, the Commission could claim to have already entered into negotiations, and it would be impossible to check whether it had done so.

The amendment is designed to avert legal disputes and guarantee legal certainty for Member States as regards the conduct of negotiations. The text as it stands is so vague that it is impossible to determine beyond doubt when a Member State may still negotiate. The wording 'does not address all the issues' makes it clear that a Member State is entitled to negotiate even when just one aspect is not covered by an existing agreement.

The words 'the other Member States' should be deleted because under the EC Treaty, Member States are not entitled to monitor compliance with the Treaties. However, apart from enabling them to do, informing them would serve no purpose.

Member States must be informed in good time when the Commission exercises its powers.

Amendment 12
Article 1, paragraph 2

2. ***This notification shall include*** a copy of the agreement concerned ***and an indication of*** the provisions to be addressed in the negotiation, the objectives of the negotiation, and any other relevant information. ***It shall be transmitted at least one calendar month before contact is established with the third country concerned.***

2. ***Where a Member State acts pursuant to paragraph 1, it shall inform the Commission in writing, forward*** a copy of the agreement concerned, ***and indicate*** the provisions to be addressed in the negotiation, the objectives of the negotiation, and any other relevant information. ***In principle, the notification should be sent one calendar month before contact is established with the third country concerned.***

Justification

The changes to the wording clarify the sense of this provision.

The rule on the timing of notification is worded too strictly. Through the wording ‘should’ and ‘in principle’, Member States should be given greater latitude when sending notification. In addition, an explicit time frame should be laid down to link the notification date to the start of contacts.

Amendment 13
Article 1, paragraph 3

3. The Commission ***and the Member States*** may make comments to the Member State which has notified its intentions in accordance with ***paragraph 1. That Member State shall take such comments into account as far as possible in the course of the negotiations with the third country concerned.***

3. The Commission may make comments to the Member State which has notified its intentions in accordance with ***paragraph 2.***

Justification

Consequence of the justification for the amendment to Article 1(1), in which the reference to the other Member States has been deleted.

Amendment 14
Article 2

In so far as air carriers are to be associated with the negotiations referred to in Article 1, Member States shall treat equally all Community carriers with an establishment on their respective territories to which the Treaty applies.

In so far as air carriers ***or other stakeholders*** are to be associated with the negotiations referred to in Article 1, Member States shall treat equally all Community carriers with an establishment on their respective territories to which the Treaty applies ***and which hold a valid operating licence issued by the authorities of the Member State concerned and, on account of their route network, are affected or might be affected by the negotiations.. An 'establishment' means a subsidiary, branch, or agency on the territory of a Member State which is not owned by that State or by a national of that State.***

Justification

'Stakeholders' are already mentioned in the heading to this article and should likewise be mentioned in the text proper. This amendment is a consequence arising from the amendment to recital 9. In addition, the criterion of holding a valid operating licence should be specified. The term 'establishment' should be defined here in order to comply with the aims of the Court ruling and to that extent provide legal certainty.

Amendment 15
Article 3

Member States shall not enter into any ***arrangements that eliminate the possibility for more than one Community carrier to provide service in between its territory and a third country, either*** in respect of the entire air transport market between ***the*** two parties ***or*** on the basis of specific city pairs.

Member States shall not enter into any ***new agreements that limit the number of designated air carriers by comparison with existing agreements. This provision shall apply both*** in respect of the entire air transport market between ***any*** two parties ***and*** on the basis of specific city pairs.

Justification

The rapporteur believes that the text as it stands, which is intended not to remove the restrictions completely, but merely to ensure that they are not widened, has been couched in over-elaborate terms and could therefore be misunderstood. The amendment thus makes for greater comprehensibility.

Amendment 16 Article 4

1. Upon conclusion of the negotiations, the Member State concerned shall notify the Commission of the draft agreement and any other relevant documentation. *deleted*

2. Following the notification under paragraph 1 the Commission shall examine whether the draft agreement is compatible with Community law and the objectives of the Community in this field. If the Commission intends to object to the conclusion of the agreement, it shall take a decision to this effect in accordance with the advisory procedure laid down in Article 3 of Decision 1999/468/EC, in compliance with Article 7 and Article 8 thereof.

3. The Commission shall be assisted by the Committee established under Article 11 of Regulation 2408/92/EC.

Justification

Article 4(1) has been deleted because the text has become part of Article 2 of the amended regulation, for the reasons set out in the justification for the amendment concerned.

Article 4(2) should be deleted because the Commission, not least in view of the fact that the regulation is a transitional arrangement, cannot take steps beyond the proceedings for infringement of the Treaty that it is entitled to institute under Article 230 of the EC Treaty. If it were to implement its proposed procedure, its powers would be widened, and the possibility of referral to the Court of Justice circumvented.

The deletion of Article 4(3) follows logically from the deletion of paragraph 2.

Amendment 17

Article 5 a (new)

Article 5a - Mitigating the external impact of air transport

Member States shall progressively integrate implementation of the ‘polluter pays’ principle into all bilateral agreements which they enter into, or have previously entered into, with third countries. To this end, the Commission shall submit guidelines on the calculation and internalisation of external costs in the air transport sector within one year of the entry into force of this Regulation.

Amendment 18

Article 7

In notifying the Commission of negotiations and their outcome as foreseen in Articles 1 and 4, Member States shall clearly inform the Commission if any information therein is to be considered confidential. The Commission shall ensure that any information identified as confidential is treated appropriately without prejudice to regulation 1049/2001.

The Commission shall ensure that information supplied by Member States on negotiations and their outcome as foreseen in Article 1 is treated as confidential. Should the Commission wish for legitimate reasons to depart from such treatment, the consent of the Member States must be obtained in advance.

Justification

The Commission’s rights should not extend beyond the possibility of using confidential information on the understanding that it must be properly treated as such. Accordingly, the opposite approach should be adopted, in other words, confidentiality should, as a matter of principle, be assumed to be the rule, and any exceptions would require prior consent.

EXPLANATORY STATEMENT

1. Background

Under the 1944 Chicago Convention the worldwide regulatory framework has developed on the basis of bilateral air service agreements; this has likewise occurred between the Community Member States and the United States of America. In the 1990s bilateral 'open skies' agreements were concluded between the US and individual Member States in order to pave the way for alliances between American and European air carriers.

The main areas to undergo reform were the award of traffic rights, designation and licensing, withdrawal of authorisation, fair competition, pricing, and civil aviation safety. One of the stipulations resulting from the changes in the agreements is that the necessary operating licences and technical authorisations are granted subject to the condition that a substantial part of the ownership and actual control of the carrier concerned must be vested in the contracting party that designated the carrier, in nationals of that contracting party, or in a combination of the two.

In 1998 the Commission brought an action before the Court of Justice against those Member States which had concluded open skies agreements with the United States. The object was to establish that the Community's external competence and Article 43 of the EC Treaty had been infringed.

2. Court ruling of 5 November 2002

The Court of Justice ruled that in areas in which the Community, to implement a common policy provided for in the Treaty, had adopted provisions laying down common rules, in whatever form, Member States, whether acting individually or collectively, did not have the right to enter into obligations in relation to third countries which undermined those rules or altered their scope.

According to the Court, Regulation (EEC) No 2409/92 expressly prohibits third-country air carriers operating in the Community from introducing new products or fares lower than the ones existing for identical products. The Community legislative authority has thus restricted the freedom of those carriers to set prices, and the Community has at the same time acquired exclusive competence in the area covered by Article 1(3) of Regulation (EEC) No 2409/92 to enter into commitments by agreement with third countries regarding this restriction on the pricing freedom of non-Community carriers. It follows that, since the entry into force of the regulation, Germany acting alone has not been allowed to enter into commitments under international law relating to the fares to be charged on intra-Community routes by third-country carriers.

In the case in question, as the Court notes, the clause on the ownership and control of air carriers entitles the United States to withdraw, suspend, or limit the operating licences of a carrier designated by Germany if a substantial part of the ownership and actual control are not vested in Germany or German nationals. Consequently, the clause adversely affects all carriers having an establishment in Germany but not owned or controlled by that country or its nationals. The fact that Community carriers, unlike German carriers, could be excluded at any time from application of the air service agreement thus constitutes both discrimination and infringement of freedom of establishment as provided for in Article 43 of the EC Treaty.

3. Commission proposal

The Commission has responded to the judgment by proposing three measures to place relations between the Community and the United States in the aviation sector on a legal footing, establish a legal framework for ongoing negotiations and the implementation of all other air service agreements, and assign the appropriate competences to the Community and its Member States in the sphere of international aviation relations.

1. As regards the first point, the Commission is asking, firstly, the Member States to initiate procedures to terminate their agreements with the United States and, secondly, the Council to empower it to negotiate with the United States on behalf of the Community with a view to concluding a new EC-US agreement based on Article 300 of the EC Treaty.

2. It is also recommending that the Council authorise it to open Community-level negotiations with all parties to bilateral agreements on the question of ownership and control of air carriers. To deal with matters lying partly within Community competence and partly within the competence of the Member States, the Commission is proposing a Community approach, in other words close cooperation.

3. In addition, the third measure being proposed by the Commission is the regulation forming the basis of this report, on the negotiation and implementation of air service agreements between Member States and third countries. The regulation is to lay down a number of principles which, if observed, will shield Member States from the risk of infringing the Treaty.

These principles are as follows:

- Member States must organise their relations with third countries in such a way as to enable Treaty obligations to be fulfilled.
- The actions of Member States must support the initiatives, negotiating strategies, and aims of the Community.
- Member States must refrain from conducting negotiations on matters of exclusive Community competence or on which the Community is negotiating by virtue of a specific mandate.
- As regards bilateral agreements, Member States must inform the Commission about all planned international negotiations and their outcome so as to enable the Commission to keep track of and coordinate approaches to third countries and ensure compliance with Community law.

4. Remarks

In principle, the rapporteur supports the Commission communication, especially the first two measures that the Commission is proposing. Negotiation of a Community clause on ownership and control of air carriers is, in the final analysis, the only way to comply with the principles set out in the Court ruling of 5 November 2002 and translate them into practice. When many different rounds of negotiations are being conducted between individual Member States and third countries, the Union cannot be said to be taking a consistent attitude

to those countries.

Future action should proceed – as the Commission, indeed, tentatively suggests – in accordance with a phased plan.

The first step should be negotiations between the Community and the United States to establish an open aviation area. These are necessary not just because the bilateral air service agreements between various Member States and the US have given rise to Court rulings and the necessary legal certainty consequently has to be provided, but also because a Community agreement with the US will generate value added for European airlines.

In the second stage, the Council should authorise the Commission to open negotiations with all third countries which already have a liberalised air transport market or are willing to liberalise their market. That said, before negotiations opened, the Commission would have to determine in each particular case what value added would be entailed for Community airlines. For example, open skies agreements with smaller third countries with grossly oversized aircraft fleets are plainly not a goal to which European airlines would wish to aspire.

Thirdly, and finally, the Community could begin negotiations on agreements with third countries which had not yet liberalised their aviation sector. It is important to stress that these negotiations should not take place until the third stage, once the Community had successfully concluded air service agreements with the United States and all third countries that had liberalised or were willing to liberalise their aviation sector. That being the case, a general mandate for the Commission to conclude air service agreements on behalf of the Community with third countries will be conceivable and necessary only at a much later date. Until then, the status quo can be maintained, especially as it will be impracticable to terminate existing agreements before new agreements have been concluded. The situation is thus likely to ease regarding air service agreements and the aim of establishing an open aviation area, a fact which can only enhance the value of the agreements and the clauses to be negotiated, as well as helping to protect European air carriers.

3 June 2003

OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS

for the Committee on Regional Policy, Transport and Tourism

on the proposal for a European Parliament and Council regulation on the negotiation and implementation of air service agreements between Member States and third countries
(COM(2003) 94 – C5-0065/2003 – 2003/0044(COD))

Draftsman: Bill Newton Dunn

PROCEDURE

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Bill Newton Dunn draftsman at its meeting of 20 March 2003 .

It considered the draft opinion at its meetings of 7 April 2003 and 2 June 2003 .

At the latter/last meeting it adopted the following amendments unanimously.

The following were present for the vote Jorge Salvador Hernández Mollar (chairman), Johanna L.A. Boogerd-Quaak (vice-chairman), Giacomo Santini (vice-chairman), Bill Newton Dunn (draftsman), Alima Boumediene-Thiery, Kathalijne Maria Buitenweg, Ozan Ceyhun, Gérard M.J. Deprez, Adeline Hazan, Margot Keßler, Eva Klamt, Baroness Sarah Ludford, Marjo Matikainen-Kallström (for Charlotte Cederschiöld), Manuel Medina Ortega (for Sérgio Sousa Pinto), Marcelino Oreja Arburúa, Martine Roure, Heide Rühle, Olle Schmidt (for Francesco Rutelli), Joke Swiebel and Anna Terrón i Cusí .

SHORT JUSTIFICATION

The draftsman welcomes the Commission's intention to develop a consistent Community policy on air service agreements between the Member States and third countries.

The Court of Justice judgments of 5 November 2002 in the 'open skies' cases have created a legal vacuum for operators in the sector.

A similar legal vacuum has resulted from the agreement in principle reached between the Commission and the US customs authorities on 18 February 2003, on the transfer of EU carriers' passenger name records to the United States.

Since the 5 March 2003 European carriers have been facing a legal stalemate: on the one hand, under threat of heavy penalties, they are obliged to provide the US authorities with access to the personal data of passengers travelling from, to and via the USA, while on the other hand, the transfer of sensitive data within the meaning of Directive 95/46/EC constitutes a breach of Community law.

With a view to finding a way out of this difficult situation, the Commission intends to present, in accordance with Article 25(6) of Directive 95/46/EC, a proposal for a decision that will be submitted to Parliament in September 2003.

It is for this reason that, following several discussions with the Commission and the US authorities, the draftsman has decided not to table any amendments in this connection to the 'open skies' regulation.

He does, however, intend to draw the Committee on Regional Policy, Transport and Tourism's attention to the problem of protecting the personal data of airline passengers, the settlement of which will require hard negotiations. He will keep the committee up to date with further developments in this intricate matter.

Lastly, the draftsman would point out that the Community provisions that need to be safeguarded in both the existing bilateral agreements and the future 'open skies' agreement naturally include those on data protection, which are not explicitly referred to in the proposal for a regulation but which form part of the *acquis communautaire*.

CONCLUSIONS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to incorporate the following conclusion in its report:

1. The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Regional Policy, Transport and Tourism, as the committee responsible, to adopt the proposal.