

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0179/2004

18 March 2004

*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council regulation on the negotiation and implementation of air service agreements between Member States and third countries
(13732/1/2003 – C5-0013/2004 – 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

At its sitting of 2 September 2003 Parliament adopted its position at first reading 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 – 2003/0044(COD)).

At the sitting of 15 January 2004 the President of Parliament announced that the common position had been received and referred to the Committee on Regional Policy, Transport and Tourism (13732/1/2003 – C5-0013/2004).

The committee had appointed Ingo Schmitt rapporteur at its meeting of 19 March 2003.

It considered the common position and the draft recommendation for second reading at its meetings of 20 January, 17 February and 16-17 March 2004.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Paolo Costa (chairman), Helmuth Markov (vice-chairman), Ingo Schmitt (rapporteur), Sylviane H. Ainardi, Emmanouil Bakopoulos, Rolf Berend, Philip Charles Bradbourn, Giorgio Calò (for Dirk Sterckx), Felipe Camisón Asensio, Luigi Cocilovo, Christine de Veyrac, Giovanni Claudio Fava, Jacqueline Foster, Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Karsten Knolle (for Renate Sommer), Dieter-Lebrecht Koch, Giorgio Lisi, Emmanouil Mastorakis, Erik Meijer, Enrique Monsonís Domingo, James Nicholson, Camilo Nogueira Román, Peter Pex, Wilhelm Ernst Piecyk, Samuli Pohjamo, Bernard Poignant, José Javier Pomés Ruiz, Alonso José Puerta, Reinhard Rack, Elisabeth Schroedter (for Nelly Maes), Brian Simpson, Ulrich Stockmann, Joaquim Vairinhos, Dominique Vlasto (for Margie Sudre), Mark Francis Watts.

The recommendation for second reading was tabled on 18 March 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Council common position for adopting a European Parliament and Council regulation on the negotiation and implementation of air service agreements between Member States and third countries
(13732/1/2003 – C5-0013/2004 – 2003/0044(COD))**

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (13732/1/2003 – C5-0013/2004),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2003) 94)²,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Regional Policy, Transport and Tourism (A5-0179/2004),
1. Takes the view that, when negotiating agreements on an open aviation area, it should be ensured that direct and indirect subsidies to air carriers will be made inadmissible, as the market would otherwise be distorted to the detriment of the Member States' or Community carriers, and that bilateral air service agreements should not be replaced by Community agreements unless the third country concerned has a liberalised market or a Community agreement with a third country would result in added value for the Member States;
 2. Amends the common position as follows;
 3. Instructs its President to forward its position to the Council and Commission.

Council common position	Amendments by Parliament
Amendment 1 Article 1, paragraph 1	
1. A Member State may, without prejudice to the respective competencies of the Community and its Member States, enter into negotiations with a third country concerning a new air service agreement or the modification of an existing air service	1. A Member State may, without prejudice to the respective competencies of the Community and its Member States, enter into negotiations with a third country concerning a new air service agreement or the modification of an existing air service

¹ Texts Adopted, 2.9.2003, P5_TA(2003)0356.

² Not yet published in OJ.

agreement, its Annexes or any other related bilateral or multilateral arrangement, the subject matter of which falls partly within the competence of the Community, provided that:

– any relevant standard clauses, developed jointly between Member States and the Commission, are included in such negotiations; and

agreement, its Annexes or any other related bilateral or multilateral arrangement, the subject matter of which falls partly within the competence of the Community, provided that:

– any relevant standard clauses, developed **and laid down** jointly between Member States and the Commission, are included in such negotiations; and

Justification

The amendment is designed to ensure that the standard clauses, which at present do not yet exist in complete form, will not only be jointly framed, but also jointly laid down by the Commission and the Member States.

Amendment 2 Article 4, paragraph 2

2. Where the negotiations have resulted in an agreement which incorporates the relevant standard clauses referred to in Article 1(1), the Member State shall be authorised to conclude the agreement.

(Does not affect English version.)

Justification

(Does not affect English version.)

EXPLANATORY STATEMENT

I. 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, in particular as regards the award of traffic rights, fair competition, pricing, and civil aviation safety.

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

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. In addition, it confirmed that the agreements discriminated against air carriers not established in the Member States in question, as opposed to established carriers, and violated freedom of establishment under Article 43 TEC.

II. Commission proposal

The Commission 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 asked, 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 TEC.

2. It also made a recommendation calling on the Council to 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 proposed a Community approach, in other words close cooperation.

3. In addition, the third measure proposed by the Commission was 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.

III. Parliament's first reading

In its report (A5-0263/2003) Parliament fundamentally supported the Commission communication, especially the first two measures proposed. 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.

Parliament believed that future action should proceed 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. 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. Thirdly, and finally, the Community could begin negotiations on agreements with third countries which had not yet liberalised their aviation sector. This approach would make for an orderly and harmonious transition from bilateral to Community air service agreements. In addition, it would, firstly, enable the apprehensions of the Member States' air carriers to be taken properly into account and, secondly, afford a sufficiently long time-frame, a fact which would certainly enhance the value of Community air service agreements.

IV. Council common position

Discussions between the Council and the rapporteur already began while the first reading was being concluded and continued after it was over. Both sides were seeking common ground with the aim of producing a Council common position to form the basis of a compromise allowing the procedure to be brought to a close at second reading. In this they have succeeded because the common position has largely taken over Parliament's proposals. Only in a few cases does it depart from Parliament's views.

In particular, the common position accepts Parliament's central demand that Member States should continue to be empowered, without need for prior authorisation from the Commission, to negotiate and conclude bilateral air service agreements, even if the subject matter of those agreements were to lie to some extent in the sphere of Community competence. This,

however, is subject to the proviso that 'standard clauses' laid down jointly by the Commission and the Member States must be incorporated in the agreements. As well as enabling Member States to exercise continuing freedom of action (subsidiarity), this approach allows for the fact that the Commission cannot conduct negotiations simultaneously with every third country with which air service agreements now exist or are to be concluded in the future; the Commission, moreover, has to date not been given a general mandate to conclude air service agreements between third countries and the Community.

The definition of 'establishment' has merely been recorded in the minutes but not set out in the text of the regulation. Citing the Court of Justice's 'open skies' case law, the Council takes the view that a Community air carrier can be assumed to be established if it operates in one or more Member States under stable and permanent organisational arrangements.

V. Recommendation for second reading

In the light not only of the Council common position, but also of further discussions with the Council, the rapporteur is confident that the regulation on the negotiation and implementation of air service agreements between Member States and third countries can be dealt with and the procedure concluded at second reading. He believes that it would be desirable to reach a compromise so as to avoid a conciliation procedure and thus enable the regulation to enter into force more quickly, as would be useful, especially since the situation as it stands is legally unsatisfactory for all concerned. To increase the prospects of an early agreement between Parliament and the Council, he has decided in the main not to reinstate the amendments rejected or not taken over in full by the Council.

At first reading, for example, Parliament took the view that if the Commission was unwilling to endorse a bilateral air service agreement negotiated by a Member State, the matter should be dealt with by the regulatory procedure under Article 5 and not the consultation procedure under Article 3. This difference of opinion has, however, become considerably less significant because, as outlined above, there is an understanding to the effect that Member States may continue to negotiate bilateral air service agreements if they include the standard clauses. Furthermore, although it is proposing to opt for the consultation procedure, the Council has accommodated Parliament's wishes to the extent that Article 7(2) of the regulation also refers to Article 7 of Decision 1999/468/EC, which explicitly stipulates that the Commission must inform Parliament about procedures in progress.

The rapporteur is, however, proposing four amendments to Parliament: some are altered or updated versions of amendments from first reading, whereas others seek to clarify the text of the common position.

Amendment 3 is designed to ensure not only that standard clauses are 'developed' by the Commission and the Member States jointly, but also that their substance is laid down jointly with definitive effect. Amendment 4, which applies to the German text, is intended for clarification. The replacement of the word '*wird*' with the word '*ist*' serves to establish beyond doubt that if it abides by the standard clauses, a Member State is empowered by law to conclude a bilateral air service agreement, without needing prior authorisation from the Commission.

Amendment 1 expresses Parliament's political will that rules making subsidies inadmissible have to be incorporated into air service agreements being negotiated.

In Amendment 2 Parliament is stating its political view that Community air service agreements are desirable in the interest of Community air carriers if they entail added value compared with bilateral agreements.