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## **REPORT**

on developing the agenda for the Community's external aviation policy  
(2005/2084(INI))

Committee on Transport and Tourism

Rapporteur: Saïd El Khadraoui

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on developing the agenda for the Community's external aviation policy (2005/2084(INI))

*The European Parliament,*

- having regard to the communication from the Commission, 'Developing the agenda for the Community's external aviation policy' (COM(2005)0079),
  - having regard to the Conclusions of the Council of 27 June 2005 on 'Developing the agenda for the Community's external aviation policy',
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism (A6-0403/2005),
- A. whereas aviation is still a growing industry with great economic potential, both in Europe and elsewhere,
- B. whereas the Court of Justice has ruled that some of the existing bilateral aviation agreements concluded by Member States contravene principles of EC law and should therefore be amended,
- C. whereas, when concluding aviation agreements with third countries, the Community can bring its full economic and political influence to bear and prevent discrimination between EU airlines,
- D. whereas convergence of regulations is particularly important, and is indeed a precondition for the conclusion of such agreements, especially regulations on safety, security, competition, state aid, the environment and the social rights of workers,
- E. whereas, when negotiating agreements, the Commission should draw on the expertise and information of Member states and other interested parties and should involve them before, during and after negotiations with third countries,

#### **General principles**

1. Recognises the global nature, economic importance and continuing growth of the aviation sector, as well as the need to manage the effects of this growth on air traffic management, safety and the environment, and therefore the need to develop a common external aviation policy;
2. Insists on the need for a coherent strategy for developing a common external aviation policy and considers agreements with the USA, Russia and China respectively as prerequisites;

3. Recognises the need to bring existing bilateral agreements into line with Community law, on the basis of the ruling of the Court of Justice, through adaptation by the Member States themselves or, preferably, through the conclusion of Community agreements under the so-called horizontal mandate, drawing on the expertise and information of Member States and other interested parties;
4. Stresses the need to avoid preventing Member States from negotiating whilst active negotiations are underway on Community agreements;
5. Emphasises that bilateral agreements should be adapted as soon as possible in order to avoid legal uncertainty;
6. Recalls that the commencement of negotiations on Community agreements, which, by nature, take more time than horizontal negotiations, can only be supported if a clear, coherent negotiation strategy exists;
7. Recognises that this approach can be complemented by a more fundamental change in external aviation policy, which would provide benefits to European consumers and the EU industry through the adoption of new and ambitious agreements between the Community and third countries;
8. Considers that in the event of long, drawn-out negotiations, with partner countries showing a protectionist attitude, bilateral coordination of traffic rights would be a possibility;
9. Fully supports the principle of a dual, indivisible agenda for such negotiations, linking the opening-up of markets to regulatory convergence;

### **Market opening**

10. Emphasises that new agreements should be balanced in terms of market access, and might include issues such as cabotage, rights of establishment, ownership and control and state aid, but only on a basis of strict reciprocity;
11. Recognises that, although open skies agreements are desirable, they may not always be possible;
12. Recognises that where an open skies agreement is not possible the continuation of the existing bilateral regimes should be preferred, albeit as a temporary solution;
13. Calls on the Commission to develop fair and transparent mechanisms for the distribution of traffic rights among Member States in such cases;
14. Calls for a realistic agenda for negotiations, with the selection of the countries to negotiate with being based on clear and sound criteria and an analysis of their economic and regulatory situation;

15. Suggests that these criteria include economic aspects, with priority being given to countries of substantial importance for the European market, such as the USA, Russia and China;

### **Regulatory convergence**

16. Emphasises that the opening-up of markets should always follow regulatory convergence, and that the degree of liberalisation should be linked to the degree to which a level playing field is achieved;

### **Safety and security**

17. Recognises that safety and security standards are of vital importance to passengers, crew and the aviation sector in general, and that the standards of third countries may not always be equal to those in the European Union; notes that the EU could play a pioneering role in applying and upholding internationally recognised standards on a global scale;
18. Suggests, therefore, that references to ICAO and EU safety regulations be made in agreements with third countries and that Member States increase their efforts, through bilateral cooperation and EASA, to help third countries which lack a sufficient safety level to attain such a level;
19. Calls on the Commission, in order to improve safety in the short run, to propose, by no later than the end of 2006, better procedures under Directive 2004/36/EC ('SAFA Directive') for monitoring the safety of the aircraft of third-country carriers;
20. Calls on the Commission to submit a proposal to extend the competence of EASA in this field;
21. Underlines the importance of the development of an EU security policy for transport, which should be included in the negotiating agendas for aviation agreements;

### **Environment**

22. Recognises that the aviation sector has several negative environmental effects, in particular as a source of noise and as a significant contributor to climate change, but recognises also that airports and air carriers have already made, and will continue to make, significant efforts to reduce and avoid noise and emission pollution;
23. Welcomes, in this respect, the communication from the Commission on possible measures to reduce the contribution of the aviation sector to climate change, and looks forward to the adoption of clear policies for better air traffic management and for the operational procedures and infrastructural circumstances of airports; and also looks forward to other measures, such as integration of aviation into the European emissions trading system with equal treatment of EU and non-EU air carriers;

## **Social policy**

24. Urges the Commission, therefore, to insist on the introduction of references in new agreements to relevant international legislation relating to social rights, in particular the labour standards embodied in the fundamental conventions of the International Labour Organisation (ILO 1930-1999), the OECD guidelines for Multinational Enterprises (1976, revised 2000) and the Rome Convention on the Law Applicable to Contractual Obligations (1980);
25. Insists that EU social legislation should be applied to employees recruited and/or employed in EU Member States, in particular the Directives concerning the consultation and information of employees (2002/14/EC, 98/59/EC and 80/987/EC), the Directive on the organisation of working time of mobile staff in civil aviation (2000/79/EC) and the Directive concerning the posting of workers in the framework of the provision of services (96/71/EC);

## **Conduct of negotiations**

26. Stresses that negotiations should be carried out in close cooperation with the Member States, which have the necessary expertise and experience to carry out such negotiations;
27. Calls on the Commission to ensure that the European Parliament and all relevant stakeholders are fully informed and consulted before and throughout the negotiations, by means of an agreed consultation road-map;
28. Instructs its President to forward this resolution to the Council and Commission.

## EXPLANATORY STATEMENT

### Introduction and general principles

Although the aviation industry has been passing through an economically difficult period, it remains a worldwide industry of great economic importance, which moreover is again undergoing sustained growth. Growth of international air traffic from and to Europe means economic growth for airlines, airports and many associated enterprises in the EU. This economic growth can also create new jobs. However, growth also means increasingly congested skies. It is necessary to guide this growth in such a way that safety is not jeopardised and the environmental impact remains controllable.

The EU's most important partner in the field of aviation is the USA. Apart from this highly developed market, however, new markets are opening up. In its communication, the Commission particularly discusses these new growing markets, such as Russia, China and India. By way of illustration, 75% of passenger transport from Russia to third countries is to destinations in the EU, and by 2007 passenger transport in China and India is expected to increase by 9% and 6% respectively.

Over the years, Member States have concluded many bilateral aviation agreements with third countries. The total number is now approximately 2000. The Commission considers that at least parts of these bilateral agreements contravene EC law by granting exclusive rights to airlines from the Member State concerned and because some of their provisions violate the exclusive competence of the Community. The Commission has brought actions against a number of Member States before the Court of Justice, which on 5 November 2002 duly found against eight Member States. These judgments have accelerated the development of a Community aviation policy in relation to third countries.

There are two ways in which the Community is developing an external aviation policy:

1. existing bilateral agreements are being brought into line with Community law;
2. new comprehensive agreements are being concluded between the Community and third countries.

Re 1. Existing bilateral agreements can be amended by the Member States themselves. They should then incorporate standard clauses as referred to in Regulation No 847/2004. Existing bilateral agreements can also be amended en bloc if the Community concludes an agreement with a third country under the so-called 'horizontal mandate'. At the same time, such a Community agreement makes it possible for the said clauses to be incorporated into a series of bilateral agreements concluded by Member States.

Re 2. In addition, the Community can conclude a new agreement with a third country which replaces the existing bilateral agreements of the Member States. So far, such a mandate has been granted only for negotiations with the USA, Morocco, Romania, Bulgaria and the countries of the Western Balkans. The advantage of this approach is not only that it prevents discrimination between EU countries but also that the Community speaks with a single voice and can act exerting its full economic and political influence in relation to third countries.

## **Market opening**

If markets between the EU and third countries are liberalised, it is very important that this market opening should be balanced. This means firstly a balanced distribution of landing rights between the two parties. However, the two sides should also have equal access to each other's domestic markets, the principal elements being the right to cabotage, establishment and rules governing ownership and control. Attention should also be devoted to the provision of State aid, which must not distort competition.

Sometimes it is appropriate to work towards an open skies agreement, under which access to each other's air space is completely free. This is possible, in particular, if there is also sufficient harmonisation of regulation, ensuring a level playing field. If a level playing field does not yet exist, the preference may be for mutual recognition of a certain number of landing rights. In such cases the Commission must devise arrangements for assigning to Member States the rights which have been negotiated on behalf of the EU. Both during the negotiations and when distributing landing rights, the Commission must take account of the rights which Member States have already acquired under bilateral agreements.

In its communication, the Commission mentions numerous countries with which it would be possible to negotiate new aviation agreements. The Commission cannot negotiate with all of them simultaneously, and must set priorities. As it indicates itself, countries close to the EU are important in this context, as well as in connection with the neighbourhood policy which is under development. For all the other countries listed, a thorough economic analysis needs to be made as a basis for setting priorities.

## **Regulatory convergence**

In order to achieve a level playing field, convergence of regulations needs to be achieved between the two parties. The greater the mutual opening-up of markets, the greater the need for convergence of regulations. In addition to regulations which directly affect market access, which have already been mentioned, such as rules on ownership and control, consideration needs to be given to rules on safety, the environment and social policy.

Most existing bilateral agreements contain few references, if any, to such rules. Your rapporteur believes that this is a shortcoming which hampers the attainment of a balanced global aviation market. Small steps are being taken towards convergence, for example the incorporation of the clause stipulating that the levying of tax on aviation fuel must be possible, at the minimum for flights within the European Community.

Common rules on the technical safety of aircraft and security are a priority here. In the field of air safety, ICAO has drawn up recommendations. A reference to these should be included in new aviation agreements. If countries have difficulties in complying with these standards, Member States should shoulder their responsibilities by providing technical assistance. In addition, the EU itself can improve its safety inspections of aircraft from third countries. This can be done quickly by introducing better procedures under Directive 2004/36/EC (the 'SAFA Directive') and in the longer term by expanding the powers of EASA in this field. Your rapporteur proposes calling on the Commission to submit these proposals, which have already



been promised, without delay. Security should also be a major subject in negotiations with third countries - a subject which, if anything, is becoming even more important.

In the field of the environment, there are still few international rules governing aviation. This is despite the fact that it is generally recognised that aviation is a major and growing contributor to the greenhouse effect. In addition to improving technical requirements, other measures are needed to reduce emissions from aviation. Emissions trading and taxation of aviation fuel are possible measures. The Commission will publish a communication on the subject this year. At all events, it is necessary, in accordance with Directive 2003/96/EC and the judgment of the Court of Justice, to make provision in bilateral and new Community agreements for the levying of tax on aviation fuel for flights within the Community. This can be done by deleting the existing exemptions from taxation of fuel provided for in bilateral agreements or by inserting a clause which explicitly makes such taxation possible. Your rapporteur considers that such a clause should also apply to flights from and to the Community, and should not have to be restricted to flights within the Community. In addition, the EU should continue to promote the cause of worldwide environmental rules for aviation, as the European Parliament stressed in its resolution P6\_TA(2004)010 of 16 September 2004.

As observed above, growth of international air travel could increase employment in the EU. But opening-up of markets must not lead to social dumping if flights from, to or within the Community are performed by workers employed under less stringent social provisions which are in force in third countries. Moreover, this could present a risk to safety if workers from third countries do not have to comply with the same requirements, for example in the field of training and flying and rest periods. In order to gain a clearer picture of such risks, whenever negotiations are held with a third country its social regulations should also be examined. Your rapporteur therefore advocates that aviation agreements should include references to the generally applicable international rules in this field, particularly those of the ILO and OECD and those in the Rome Convention on the Law Applicable to Contractual Obligations. Where workers are recruited and/or work in the EU, they should in addition be subject to EU law and the law applicable in the Member State concerned. According to case law, the place where a person is deemed to work is the place where he normally performs his duties. Thus regular cabotage within the EU can be regarded as employment in the EU.

### **Conduct of negotiations**

Although the Commission, by law, has the competence to negotiate aviation agreements with third countries, it has virtually no experience of doing so. It therefore seems wise to involve representatives of Member States closely in the negotiations in order to have the benefit of their experience. In addition, it is also necessary to involve other interested parties, such as representatives of the two sides of industry and airports. Pursuant to Article 300 of the EC Treaty, the European Parliament has to be consulted about the conclusion of an agreement between the Community and a third country, unless the agreement results in amendment of a rule which has been adopted under codecision, in which case Parliament's assent is required. Your rapporteur advocates that the Commission should therefore inform Parliament regularly about aviation negotiations which it is conducting or intends to conduct with third countries.

## PROCEDURE

<b>Title</b>	Developing the agenda for the Community's external aviation policy	
<b>Procedure number</b>	2005/2084(INI)	
<b>Basis in Rules of Procedure</b>	Rule 45	
<b>Committee responsible</b> Date authorisation announced in plenary	TRAN 9.6.2005	
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary		
<b>Not delivering opinion(s)</b> Date of decision		
<b>Enhanced cooperation</b> Date announced in plenary		
<b>Motion(s) for resolution(s) included in report</b>		
<b>Rapporteur(s)</b> Date appointed	Saïd El Khadraoui 11.5.2005	
<b>Previous rapporteur(s)</b>		
<b>Discussed in committee</b>	13.9.2005 21.11.2005	
<b>Date adopted</b>	22.11.2005	
<b>Result of final vote</b>	for: 39 against: 5 abstentions: 0	
<b>Members present for the final vote</b>	Inés Ayala Sender, Etelka Barsi-Pataky, Michael Cramer, Arūnas Degutis, Armando Dionisi, Saïd El Khadraoui, Robert Evans, Mathieu Grosch, Ewa Hedkvist Petersen, Jeanine Hennis-Plasschaert, Georg Jarzembowski, Dieter-Lebrecht Koch, Jaromír Kohlíček, Jörg Leichtfried, Fernand Le Rachinel, Bogusław Liberadzki, Eva Lichtenberger, Patrick Louis, Ashley Mote, Michael Henry Nattrass, Seán Ó Neachtain, Janusz Onyszkiewicz, Josu Ortuondo Larrea, Willi Piecyk, Luís Queiró, Reinhard Rack, Luca Romagnoli, Gilles Savary, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Gary Titley, Georgios Toussas, Marta Vincenzi, Roberts Zīle	
<b>Substitutes present for the final vote</b>	Zsolt László Becsey, Den Dover, Markus Ferber, Zita Gurmai, Elisabeth Jeggle, Sepp Kusstatscher, Helmuth Markov, Rosa Miguélez Ramos, Willem Schuth	
<b>Substitutes under Rule 178(2) present for the final vote</b>		
<b>Date tabled – A6</b>	9.12.2005	A6-0403/2005