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DECLASSIFICATION

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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COUNCIL OF
THE EUROPEAN UNION

Brussels, 21 April 2009

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JUSTCIV 87
AVIATION 66

OUTCOME OF PROCEEDINGS

from : Committee on Civil Law Matters (ICAO Coordination)
on : 15 April 2009

Subject : Summary of discussions

1. Adoption of the agenda

The Committee adopted the agenda set out in CM 1525/09.

2. Preparation for ICAO Diplomatic Conference (Montreal, 20 April - 2 May 2009)

The Chair reminded delegations that the negotiating mandate (doc. 7737/09 JUSTCIV 64 AVIATION 46 - RESTREINT UE) had been adopted in the JHA Council on 6 April 2009 and that this coordination meeting had been convened in the context of Article 300 of the EC Treaty. The Chair clarified that the objective of the meeting was an exchange of views with a view to preparing the ICAO Diplomatic Conference. It was pointed out that within the scope of the negotiating mandate cooperation between the Member States and the Commission would be of utmost importance.

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a) Rules relating to jurisdiction and the recognition and enforcement of judgements

On the basis of a working document from the Presidency the Committee examined how to ensure compatibility between the current Article 31 of the draft UIC¹ and current Article 16 of the draft GRC² on the one hand and European instruments, especially the Brussels I Regulation,³ on the other hand.

Most delegations and the Commission representative agreed with the Presidency that achieving full compatibility between the Conventions and the European instruments would be the ideal solution and that a disconnection clause would only be necessary if this ideal could not be achieved. One delegation expressed concerns whether it was justified to modify the rules on jurisdiction in the Conventions solely to ensure compatibility with the Brussels I Regulation and reminded the Committee of the global context of the Conventions.

Some delegations pointed out that within the UIC the possibility of multiple jurisdiction would call for a mechanism for consolidation if the damage exceeded the sum referred to in Article 18(2) of the draft UIC. It was also pointed out that if the disconnection clause was the way forward, there could be a risk that some third States could also want their own disconnection clauses in order to protect their own citizens or operators and that therefore an alteration of the current draft could even be harmful to Community interests.

Some delegations raised doubts about whether the disconnection clause on jurisdiction suggested by the Presidency actually achieved compatibility with the European instruments. However, the Chair concluded that the final wording of a possible disconnection clause would depend on the outcome of the negotiations.

¹ Convention on compensation for damage to third parties, resulting from acts of unlawful interference involving aircraft

² Convention on compensation for damage caused by aircraft to third parties

³ Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L 12, 16.1.2001, p.1.

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As for recognition and enforcement of judgements, some delegations considered that the current Article 34 of the draft UIC and the current Article 18 of the draft GRC were not disconnection clauses at all. The Commission representative stated that in their view these provisions amounted to partial disconnection clauses. The Commission representative advised the delegations against opening negotiations on this and asked to consider whether these provisions were sufficient for the purposes of ensuring compatibility with EU instruments.

The Committee endorsed the line set out by the Presidency as a basis for further negotiations. The Chair invited the delegations to suggest alternative drafting for the possible disconnection clause.

b) Aspects relating to Regulation (EC) 785/2004 on insurance requirements for air carriers and aircraft operators

The Committee exchanged views on whether the current Article 7 of the draft UIC and the current Article 9 of the draft GRC on the one hand, and the Insurance Regulation on the other hand were consistent. While several delegations agreed that the draft Conventions were consistent with the Insurance Regulation, some other delegations raised doubts about the effect of the drop-down clause and the relationship with Article 2(2) of the Insurance Regulation.

The Committee agreed that these questions should be under further scrutiny during the negotiations.

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c) Aspects relating to Council Directive 374/85/EEC on the approximation of laws, regulations and administrative provisions concerning liability for defective products

The Committee took note of a working document prepared by the UK delegation. The UK delegation introduced their working document and stated that they would prefer not to alter the current Article 28 of the draft UIC and that they also did not favour a disconnection clause.

The Commission representative, however, pointed out that under the negotiating mandate the Commission was obliged to negotiate the insertion of a disconnection clause in case the final outcome of negotiations departed from the Product Liability Directive. A number of delegations expressed hesitations about the channelling mechanism and pointed out that if this was eliminated there would be no need for a disconnection clause.

The Committee endorsed the line set out by the Presidency as a basis for further negotiations. The Chair invited the delegations to suggest alternative drafting for the possible disconnection clause.

d) REIO clause

The Committee endorsed the line set out by the Presidency, but considered that the draft of a REIO clause suggested by the Secretariat of the ICAO (DCCD Doc No. 14, -/4/09) would also be acceptable.

3. Coordination in Montreal

The Chair informed the delegations that the first coordination meeting in Montreal would take place on 20 April 2009, at 8.45. a.m. at the ICAO Headquarters. The Chair also invited delegations to register already on 19 April 2009 in order to avoid delays on 20 April 2009. The invitation to the first meeting would be sent out shortly and further coordination would be decided upon on the spot.

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4. Any other business

Some delegations asked the Commission representative about the legal basis of the participation of the Commission in the Conference of Parties set up by the current Article 8 of the draft UIC.

The Commission representative argued that the Community should take part in the Conference of Parties as altering the amounts in the current Article 4 of the draft UIC as well as activating the drop-down clause would directly affect the Insurance Regulation and therefore the Community had exclusive competence.

Some delegations expressed doubts on this.

It was agreed that the matter needed further consideration.

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