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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**DECISION OF THE COUNCIL AND THE REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION,
MEETING WITHIN THE COUNCIL**

**on the signature and provisional application of the Agreement in the form of an
Exchange of Letters on "Agreed Principles of the Modernisation of the existing system
of utilisation of the Transsiberian routes" between the European Community and its
Member States, on the one hand, and the Russian Federation, on the other hand**

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**on the conclusion of the Agreement in the form of an Exchange of Letters on "Agreed
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routes" between the European Community and its Member States, on the one hand, and
the Russian Federation, on the other hand**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The Agreement in the form of an Exchange of Letters on "Agreed Principles of the Modernisation of the existing system of utilisation of the Transsiberian routes" has been negotiated under a mandate received from the Council in March 2006.

- **General context**

Based on the negotiating directives of the mandate, the text of the agreement was agreed ad referendum at the final negotiating round on 24 November 2006 between Vice-president Barrot and Mr. Levitin, Transport Minister of the Russian Federation, in the margins of the EU-Russia summit in Helsinki.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with the other policies and objectives of the Union**

The agreement solves the issue of Siberian overflight payments requested by the Russian Federation from EC carriers for overflights over Russian territory which were an important stumbling block in EU-Russia relations. The payments are an EU-Russia trade irritant which has to be solved before Russia's accession to WTO. The agreement will strengthen transport cooperation in the framework of the EU-Russia Common Economic Space.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

All throughout the negotiating process, the Commission has been assisted by a Consultative Forum representing the industry that has been involved actively.

Summary of responses and how they have been taken into account

A number of meetings have been held with the Consultative forum, where the then current draft of the agreement was discussed. All comments have been duly taken into consideration.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The agreement will significantly improve the competitive situation of EC carriers on routes to destinations between the EU and Asia, in particular Japan, China, Hong Kong and South Korea through the gradual reduction of payments in the transition period and the abolishment of payments from 2014 onwards

Without agreement, EC carriers would have to continue paying for the right to transit the Russian Federation which would imply higher costs and reduced competitiveness for the airlines.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The agreement contains key principles which must be implemented in the bilateral agreements between Member States and the Russian Federation and includes the following results:

- 1) All payments after 1st January 2014 shall be cost-based, transparent and non-discriminatory between foreign carriers and in line with the Chicago Convention.
- 2) The provisions of bilateral agreements between EU Member States and the Russian Federation requiring prior conclusion of commercial agreements for Transsiberian routes shall be terminated.
- 3) All new frequencies granted by the Russian side during the transition period and beyond shall be free of payments and will not need the prior conclusion of a commercial agreement.
- 4) All frequencies currently leased by EC carriers from Russian carriers will be grandfathered. In return, the Member States will have the choice either of increasing overflight frequencies for the Russian side or agreeing bilaterally with the Russian side on any other means.
- 5) The current level of payments will be reduced in 2010 for certain parts of the payments.
- 6) In a separate letter, the Russian Minister Levitin stated the Russia Federation's readiness to increase overflight frequencies for EC carriers in future bilateral negotiations with Member States. The increase of overflight frequencies to Asian destinations will be made taking into account the traffic rights obtained by EU Member States to destinations in the Far East.

- **Legal basis**

Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2).

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

Member States were trying to solve in bilateral negotiations with the Russian Federation for more than 20 years without success.

Community action will better achieve the objectives of the proposal for the following reason(s).

Only Community action was able to achieve the results and to solve this issue in view of the resistance of the Russian Federation.

The result after 7 months of negotiations proves the efficiency of the work at EU level.

The agreement lays down general principles which will have to be implemented in bilateral air services agreements between Member States and the Russian Federation. Bilateral air services agreements will be amended, but will remain in force.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Member States will continue to carry out the traditional administrative tasks they execute in the context of international air transport, but under common principles applied uniformly by all Member States.

Member States will have to renegotiate bilateral air services agreement with the Russian Federation.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reason(s).

For the signature and provisional application of an international agreement no other instruments are available.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular
Article 80(2), in conjunction with the first sentence of the first subparagraph of Article
300(2),

Having regard to the proposal from the Commission,

Whereas:

- (1) The Council has authorised the Commission to open negotiations with the Russian Federation to solve the issue of Siberian overflight payments;¹
- (2) The Commission has negotiated on behalf of the Community and of the Member States an Agreement in the form of an exchange letter laying down "Agreed Principles of the Modernisation of the existing system of utilisation of the Transsiberian routes" (hereinafter, "the Agreement") in accordance with the Council Decision authorising the Commission to open negotiations
- (3) An Agreement was initialled at Helsinki on 24 November 2006;
- (4) On the same occasion Minister Levitin, Russian Minister of Transport, delivered a letter to Commission's Vice-President Barrot which states that "The Aeronautical Authority of the Russian Federation intends to continue its current practice of positive consideration of the requests by the EC Member states on the increase of the number of overflight frequencies made in the context of bilateral negotiations between the respective national Aeronautical Authorities. In the framework of the bilateral arrangements that may be reached in the course of such negotiations the Aeronautical Authorities of the Russian Federation will be ready to increase the number of overflight frequencies based on the principle of mutual benefit and equal opportunity taking into account the air navigation capacity of respective routes.

¹ Council conclusions on Siberia, 2721st Transport, Telecommunications and Energy, Council (Transport), Brussels, 27 March 2006

In the course of these negotiations, the Aeronautical Authority of the Russian Federation will take into account inter alia the rights available for EC Member States air carrier for operations to a third country on routes departing from their own territory. The increase of the number of overflight frequencies shall be made in accordance with the general principles of overall balance of interests of both Sides that capacity shall be related to the requirements of traffic between the countries of origin and destination, of traffic of the area through which the agreed services pass; and through airline operations. Duly motivated requests of the EC Member States will continue to be negotiated in good faith and on reasonable grounds."

- (5) The Agreement should be accompanied by an equalisation mechanism set up by the Community carriers concerned which avoids possible distortions of competition on Trans-Siberian routes during the transitional period while being compatible with the competition rules of the Treaty. Member States should only designate carriers for operations on those routes that participate in the equalisation mechanism
- (6) The Agreement negotiated by the Commission should be signed and applied provisionally by the Community and its Member States, subject to its conclusion at a later date;

HAVE DECIDED AS FOLLOWS:

Single Article

- 1. The signing of the Agreement in the form of an exchange of letters laying down "Agreed Principles of Modernisation of the existing system of utilisation of the Transsiberian routes" between the Community and its Members States, of the one part, and the Russian Federation, of the other part, is hereby approved on behalf of the Community and its Member States, subject to a subsequent decision concerning the conclusion of the Agreement.
- 2. The President of the Council is hereby authorised to designate the person empowered to sign the Agreement on behalf of the Community and its Member States.
- 3. Pending its entry into force, the Agreement shall be applied by the Community and its Member States from ...
- 4. The text of the Agreement, including its Annexes, which are an integral part thereof is attached to this Decision.

Done at Brussels,

*For the Council
The President*

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THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 80(2),
in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first
subparagraph of Article 300(3),

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Commission has negotiated on behalf of the Community and of the Member States an Agreement in the form of an exchange of letters laying down "Agreed Principles of the Modernisation of the existing system of utilisation of the Transsiberian routes" (hereinafter, "the Agreement") in accordance with the Council Decision authorising the Commission to open negotiations
- (2) An Agreement was signed on;
- (3) On 24 November 2006, with the occasion of the initialling of the Agreement, Minister Levitin, Russian Minister of Transport delivered a letter to Commission's vice-President Barrot which states that "The Aeronautical Authority of the Russian Federation intends to continue its current practice of positive consideration of the requests by the EC Member States on the increase of the number of overflight frequencies made in the context of bilateral negotiations between the respective national Aeronautical Authorities. In the framework of the bilateral arrangements that may be reached in the course of such negotiations the Aeronautical Authorities of the Russian Federation will be ready to increase the number of overflight frequencies based on the principle of mutual benefit and equal opportunity taking into account the air navigation capacity of respective routes.

In the course of these negotiations, the Aeronautical Authority of the Russian Federation will take into account inter alia the rights available for EC Member States air carrier for operations to a third country on routes departing from their own territory. The increase of the number of overflight frequencies shall be made in accordance with the general principles of overall balance of interests of both Sides that capacity shall be related to the requirements of traffic between the countries of origin and destination, of traffic of the area through which the agreed services pass; and through airline operations. Duly motivated requests of the EC Member States will continue to be negotiated in good faith and on reasonable grounds."

- (4) The Agreement should be accompanied by an equalisation mechanism set up by the Community carriers concerned which avoids possible distortions of competition on Trans-Siberian routes during the transitional period while being compatible with the competition rules of the Treaty. Member States should only designate carriers for operations on those routes that participate in the equalisation mechanism
- (5) The Agreement should be approved by the Community and its Member States;

HAVE DECIDED AS FOLLOWS:

Single Article

- 1. The Agreement in the form of an exchange of letters laying down "Agreed Principles of the Modernisation of the existing system of utilisation of Transsiberian routes" between the Community and its Members States, of the one part, and the Russian Federation, of the other part, is hereby approved on behalf of the Community and its Member States.
- 2. The text of the Agreement, including its annexes, which are an integral part thereof, is attached to this decision.
- 3. The President of the Council is hereby authorised to designate the person(s) empowered to deliver to the Russian Federation the diplomatic notes provided in the Agreement on behalf of the Community and its Member States.

Done at Brussels,

*For the Council
The President*

ANNEX

A. Letter from the European Community and its Member States

Sir,

1. I have the honour to refer to the negotiations between the Commission of the European Community and the Government of the Russian Federation on the modernisation of the system of utilisation of Transsiberian routes. The results of such negotiations are reflected in the attached “Agreed Principles on the Modernisation of the existing system of utilisation of the Transsiberian routes” (Annex I) and the Letter of 23 November 2006 by Minister Levitin to Mr Barrot, Vice-President of the Commission (Annex II)
2. I have the honour to propose that, upon the confirmation of your acceptance, this letter and its annexes together constitute an Agreement in the form of an Exchange of Letters between the European Community and its Member States, of one part, and the Russian Federation, of the other part. The agreement shall be applied provisionally by both parties from and shall enter into force 10 days after the later note in an exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Agreement have been completed.

I should be obliged if you would confirm that your Government is in agreement with the contents of this letter.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the European Community and its Member States

“B. Letter from the Russian Federation”

Sir,

I have the honour to acknowledge receipt of your letter of ... which reads as follows:

1. I have the honour to refer to the negotiations between the Commission of the European Community and the Government of the Russian Federation on the modernisation of the system of utilisation of Transsiberian routes. The results of such negotiations are reflected in the attached “Agreed Principles on the Modernisation of the existing system of utilisation of the Transsiberian routes” (Annex I) and the Letter of 24 November 2006 by Minister Levitin to Mr Barrot, Vice-President of the Commission (Annex II).
2. I have the honour to propose that, upon the confirmation of your acceptance, this letter and its annexes together constitute an Agreement in the form of an Exchange of Letters between the European Community and its Member States, of one part, and the Russian Federation, of the other part. The agreement shall be applied provisionally by both parties from and shall enter into force 10 days after the later note in an exchange of diplomatic notes between the Parties confirming that all necessary procedures for entry into force of this Agreement have been completed.

I have the honour to confirm that the above is acceptable to my Government and that your letter, including the annexes, and this reply together constitute an Agreement, in accordance with your proposal.

Agreed principles of the Modernisation of the existing system of utilisation of the Transsiberian routes²

I. Object and Scope

1. This instrument lays down Agreed Principles with respect to the modernisation of the existing system of overflights along specified Transsiberian routes by EC Member States air carriers.
2. The Agreed Principles rest on the assumption that the Russian Federation has not acceded to the International Air Services Transit Agreement signed in Chicago on 7 December 1944, and is therefore neither bound by the obligations of, nor enjoys the rights available under, that Agreement.

II. Modernisation of the system

1. No later than 1 January 2014, the provisions of the bilateral arrangements of respective Aeronautical Authorities containing the obligation of the EC Member States air carriers to enter into commercial agreements with Russian air carriers on the above routes shall be terminated. As a consequence, EC air carriers shall not make any payments resulting from commercial agreements in respect of overflights, except payments in accordance with paragraph II.2 of these Agreed Principles.
2. No later than 1 January 2014, any fees and charges applicable for overflying Russian and EU territories by EU and Russian airlines, respectively, shall be cost-related, transparent and not leading to discrimination between foreign airlines. Any such fees and charges shall be paid to the relevant public authorities and be in accordance with the requirements of the Chicago Convention.
3. At the date of the revision of the bilateral arrangements in accordance with point IV.1 at the latest, the number of overflight frequencies available to each side³ shall not be reduced. The number of overflight frequencies available to EC Member States shall include frequencies currently leased by the EC Member States air carriers from Russian air carriers. At the same time, the relevant EC Member State shall increase the number of overflight frequencies available to the Russian side⁴ so that it equals the number of overflight frequencies available to the EC Member State, or maintain the balance of rights under the bilateral air services agreements with the Russian side through any other means mutually acceptable for both sides.

² For the sole purpose of the present Agreed Principles Transsiberian routes shall include routes according to the definition in the respective bilateral arrangements for which the Russian Federation currently limits overflights and requires commercial agreements between designated carriers.

³ For the purpose of this provision « side » shall be understood as the Russian Federation or one of the EC Member States.

⁴ Overflight frequencies shall be operated by Russian carriers as provided under the existing bilateral arrangements between EU Member States and the Russian Federation.

III. Mechanism of Transition

1. Newly operated overflight frequencies on agreed specified routes shall not require prior conclusion of a commercial agreement between the designated carriers or payments⁵ resulting therefrom after the date of signature of the Agreed Principles.
2. From 1st January 2010, the provisions of the bilateral arrangements of respective Aeronautical Authorities shall be modified in order to ensure that
 - the right of the EC Member States air carriers to omit stopping in the territory of the Russian Federation under bilateral arrangement shall not be subject to any special commercial agreement with Russian designated air carriers or payment resulting therefrom.
 - any code-share operation using Transsiberian routes shall not be subject to any special commercial agreement with Russian designated air carriers or payments resulting therefrom.

From the date of signature of these Agreed principles, the Aeronautical Authorities shall not approve commercial agreements between designated carriers under the existing bilateral arrangements where the payments exceed the amount paid in 2006.

IV. Implementation modalities

1. [No later than 1st of January 2007], the Russian Federation and all EC Member States shall start consultations to be completed within 6 months with a view to ensuring that the bilateral arrangements comply with the provisions of Sections II and III of these Agreed Principles.
2. In consultations on the use of Transsiberian routes, the Russian Federation and EU Member States shall be governed by these Agreed Principles.

V. Consultations

The Parties agree within 15 days of a request to conduct consultations to discuss any issue related to the implementation of these Agreed Principles with the view to seek a mutually satisfactory solution.

⁵ [These payments from commercial agreements include inter alia the payments for code share, non stop services, transfer of services, use of Transpolar routes, technical landings and leased frequencies.]

ANNEX II

Mr. Jacques Barrot

Vice-President of the European Commission

Commissioner for Transport

Brussels

Dear Vice-President

The Ministry Transport of the Russian Federation welcomes the cooperation with European Commission in the framework of Working Aviation Group of the Russia – EU Transport dialogue. It intends to further develop cooperation in the field of aviation between Russia and EU.

The Aeronautical Authority of the Russian Federation intends to continue its current practice of positive consideration of the requests by the EC Member states on the increase of the number of overflight frequencies made in the context of bilateral negotiations between the respective national Aeronautical Authorities. In the framework of the bilateral arrangements that may be reached in the course of such negotiations the Aeronautical Authorities of the Russian Federation will be ready to increase the number of overflight frequencies based on the principle of mutual benefit and equal opportunity taking into account the air navigation capacity of respective routes.

In the course of these negotiations, the Aeronautical Authority of the Russian Federation will take into account inter alia the rights available for EC Member States air carrier for operations to a third country on routes departing from their own territory. The increase of the number of overflight frequencies shall be made in accordance with the general principles of overall balance of interests of both Sides that capacity shall be related to the requirements of traffic between the countries of origin and destination, of traffic of the area through which the agreed services pass; and through airline operations.

Duly motivated requests of the EC Member States will continue to be negotiated in good faith and on reasonable grounds.

Sincerely,

Igor LEVITIN