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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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AVIATION 18
PECOS 141

DECISION BY THE COUNCIL

on

authorizing the Commission to open negotiations
on air transport market access agreements between
the European Community and Bulgaria, the Czech Republic,
Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia

The Council, acting on a Commission recommendation, hereby authorizes the Commission to open negotiations on behalf of the European Community with Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia in the field of air transport.

The Commission shall conduct the negotiations in accordance with the principles and negotiating directives in Annex I and in accordance with the ad hoc procedure in Annex II.

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Negotiations on Air Transport Market Access Agreements between the European Community and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia

1. Principles

1.1. The following broad principles have been identified as being necessary to determine how the CECs adapt to EC market conditions.

- ▶ There should be a phased approach to market liberalisation with each phase being conditional upon the progressive adoption by the Associated States of the 'acquis communautaire' particularly as regards EC standards in relation to technical, safety, environmental and other harmonisation areas. In this regard, the latest JAA standards would have to be taken into account where these have not yet been incorporated into Community law.
- ▶ A significant standard of harmonisation should be settled for the first phase with the final phase representing the full membership of the EC by the States concerned.
- ▶ The number of phases should be kept to a minimum so as to avoid over complex agreements.
- ▶ Negotiations should at all times take account of progress made in negotiation with the CECs in the other transport sectors and broad developments in their political relationship with the EC generally.

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- 1.2. The Commission will be assisted in its negotiations by a special committee of representatives of Member States, in accordance with the ad hoc procedure contained in the Appendix, and main developments will be reported to the Council of Ministers on a regular basis.

NEGOTIATING DIRECTIVES

2. General objective

- 2.1. The overall objective of the negotiations is to integrate the air transport markets (both scheduled and non-scheduled) of the European Community, which should be considered as a single market for the purpose of these negotiations, with those of Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, as part of the wider political commitment of these CECs, in time, becoming members of the EC.
- 2.2. Preferably, this objective would be reached by the conclusion of one multilateral regime between the Community and the CECs or a number of them. However, existing air transport services between the States concerned (CECs) are governed by rules which, to a considerable extent, date back to the requirements of centrally planned economies. This makes it difficult to establish a genuine multilateral regime during the initial phases of air transport market integration. Therefore, bilateral agreements between the EC and the Associated States may have to be considered as an alternative. In addition, the establishment of a relationship between the CEC States, which takes account of the overall objective of these negotiations, might also be necessary. To facilitate progress, agreements between the European Community and a particular group or groups of CECs might also be considered.

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- 2.3. The agreement(s) should be coherent with the regulatory regime in the Community and should create a framework which allows air carriers to operate in Europe with a maximum of flexibility on the basis of the same economic, commercial and competition rules.
- 2.4. This should be, after a gradual process, on the basis of full acceptance by the CECs of the Community "acquis" on civil aviation.
- 2.5. So as to ensure a balance between liberalisation and harmonisation in the technical, safety, environmental and other areas, a phased approach is necessary, along the following lines:
- ▶ significant progress on liberalisation at each stage,
 - ▶ parallelism between liberalisation and harmonisation, particularly in relation to all aspects of safety which is vital for the success of this process
 - ▶ safeguards for ownership/control requirements so as to avoid interests in countries not parties to the agreements taking advantage of this process
 - ▶ A significant standard of harmonisation to be guaranteed by the CECs for the first phase, with third/fourth freedom rights being granted in return, and with the possibility of traffic rights being available to CEC carriers between EC Member States in cases where standards are applied which are closer to those applied in the EC.
- 2.6. As was the case with the Community, a gradual liberalisation of market access and tariffs regimes, together with appropriate safeguards and phasing-in procedures are proposed in order to ensure a co-ordinated development and progressive liberalization and also in order to maintain a fair competitive situation.

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- 2.7. The aim is to arrive at a situation which corresponds to Community rules as soon as possible. A clear timetable for achieving such objectives must, therefore, be part of such initial agreements. Careful monitoring of developments and a regular review of progress must also be foreseen, particularly in relation to application of JAA standards.
- 2.8. As the agreement(s) will not lead to full liberalisation initially, some existing relations between Member States and the CECs may, during a transitional period, be more liberal than the agreements envisaged. In such cases, special provisions are foreseen to ensure that where more liberal rules exist already, these rules will, subject to their conformity with Community law, prevail so as to avoid more restrictive rules being introduced than the ones that are applicable today. In order to ensure an orderly development of air services between individual Member States and CECs, Member States may, until the entry into force of the final stage of liberalization, conclude with CECs bilateral arrangements which are more flexible than the initial Community-CEC agreement(s) envisaged. Such arrangements shall be in conformity with Community obligations, including Rules of Procedure of the Council ⁽¹⁾, and they can be implemented if they respect the general policy objectives of the Community negotiations, in particular in the areas of safety and technical standards. Such provisions were incorporated in the first and second aviation packages within the EC, in Article 10 of Council Decision 87/602 ⁽²⁾ and Article 13 of Council Regulation 2343/90 ⁽³⁾, respectively.

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⁽¹⁾ These Rules include the decision on the operation of the Working Party on Aviation (doc. 7662/93 AER 47 Annex I). According to this decision the Working Party on Aviation should be consulted as regards future bilateral negotiations.

⁽²⁾ OJ No L 374 of 31.12.1987.

⁽³⁾ OJ No L 217 of 11.08.1990.

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2.9. During the negotiations and the internal consultation procedure, Norway shall be involved as appropriate in recognition in particular of the fact that SAS is a Community airline.

Given that Iceland is party to the EEA agreement, the same recognition might be extended to Iceland if so requested. The Council would, however, decide on the matter at the appropriate time.

3. Relationship between agreements on market access and adaptation to Community legislation

3.1. As already stated in paragraph 2.5, any agreement has to be based on the identification of an appropriate balance between the extent of opening up aviation markets and progress made in relation to the implementation by States concerned of their obligation to adapt aviation legislation to the Community's air transport legislation. It is clear that full implementation of the Third Package rules would necessitate de facto full harmonisation and implementation of law in other areas.

3.2. In relation to parallelism, rules clearly related to market access (slots, computer reservation systems) and the Community's safety and noise standards merit specific attention. The extension of the Third Package rules requires equivalent technical and operational standards to those applied in the Community to be also effectively applied and enforced by the CECs, particularly in the safety and environmental fields. The harmonisation of technical standards is very important particularly when fifth-freedom elements are part of the agreement on market access. Accordingly very strict monitoring and enforcement arrangements must be put in place for each step of the process.

3.3. Any initial agreement will also have to safeguard rules on effective control of air carriers eligible to access the markets in question. The spirit of Art. 4 of the Regulation No. 2407/92 has, therefore, to be part of any agreement. Interests in countries not parties to the agreements should not be able to benefit from any arrangement under these agreements.

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4. The substantive content of the Agreement(s)

4.1. The agreement should cover the following areas, on the basis of non-discrimination on grounds of nationality; nevertheless the freedom of movement for workers will remain governed by the dispositions of the existing Association Agreements: likewise concerning the rights of establishment and the freedom of services the full application to the Central European countries of the principle of non-discrimination on grounds of nationality should only occur in the final stage of market liberalisation.

(1) Entitlement to provide services and to establish

For the purpose of these agreements, the right to own or establish an air carrier in any of the countries which are parties to the agreement(s) will form an integral part of the full market access process. At the very least, it is necessary to define, particularly in an initial agreement, the precise technical and economic preconditions for carrying out air services, as well as ownership/control requirements.

(2) Traffic Rights

Ultimately, all the freedoms of the air must be opened-up, ranging from the right to overfly to cabotage. This includes rules on related areas such as capacity and combination of points. Any limitation particularly as regards designation will have to take into account the needs of interested parties in the Community. In case of such limitations, complete opening-up of regional air services should be envisaged. Third and fourth freedom traffic rights should be part of any initial agreement while limitations on capacity and pricing of the type used in the first and second packages might be applied taking into account existing bilateral agreements. Traffic rights between EC Member States (fifth freedom) for CEC carriers might be possible in the first phase, depending on progress made in the harmonisation area.

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For EC carriers, however, fifth freedom rights on routes between CEC States are an important component of the first phase.

Any agreement will also have to include, as appropriate and on a country by country basis, safeguard rules on wet lease and code-sharing as part of the gradual liberalisation of market access. Interests in countries not parties to the agreements should not be able to benefit from any provisions of these agreements.

(3) **Special conditions for regional services with small aircraft**

The conditions for new entrants is one of the elements which has been recognised in the Community rules on market access (Article 6 of Regulation 2408/92) and on slot allocation (Article 9 of Regulation 95/93). This is important for any air services to and from regions with a developing economy and should therefore be assured in a first phase.

(4) **Traffic distribution within airport systems**

This right must be retained for Community Member States and is part of the harmonisation under the Europe agreements. However, it must be safeguarded from the outset that such rules cannot discriminate among air carriers.

(5) **Limits to the exercise of traffic rights**

While a certain transitional period has been recognised in the Community rules and therefore might be granted to the CECs, this should only be done on the basis of full reciprocity.

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(6) **Exceptional circumstances limiting the capacity**

A mechanism for stabilising capacity in situations of great financial difficulty for a country's air transport industry can be granted along the lines of Art. 10 of Regulation 2408/92 where capacity limitations do not apply to air services. However, it must be ensured that full transparency is ensured and that the Community has the necessary possibilities to participate in such a decision.

(7) **Air fares regime**

Where Community air carriers are involved in situations where a decision may have to be taken on excessive fares or a downward spiral, full transparency must be ensured both for international and domestic air services. Definition of a regime applicable to air fares including dispute settlement must be clearly set out. In a first and second phase, the mechanism from the first and second packages might be included, particularly if technical harmonisation has not caught up.

(8) **Relations with third countries (countries not parties to the agreements) and international organisations**

Consultation mechanisms must be included in the agreement(s) in order to endeavour to establish Common Positions in relations with third countries, (countries not parties to the agreements) and international organisations.

(9) **Competition**

In addition, the agreement(s) should confirm, to the extent necessary, the question of applicable competition rules.

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(10) Other related aspects

International Services

Definition of application, scope and conditions under which public authorities can intervene for the sake of ensuring air transport services of a public service nature would only be considered on the same basis as implemented in the Community.

Domestic Services

While harmonisation under the Europe agreements should ensure that the same rules are applied in the CEC countries as in the Community, the agreement must ensure the right of Community air carriers to participate in such services on the same conditions, in particular as soon as cabotage rights are phased-in.

5. Enforcement provisions

- 5.1. For the purposes of monitoring and enforcing the agreements, effective and substantive measures and procedures will have to be agreed so as to achieve the objective of ensuring an appropriate balance at all times between the degree of liberalisation to be achieved on the one hand and the implementation of appropriate harmonisation measures on the other hand. For the competition rules, important provisions have already been made both in the Europe Agreements and in the implementing rules.
- 5.2. Implementation of agreements covering market access would as a general rule be preconditioned by effective enforcement of competition rules in the aviation sector. Supplementary rules in addition to the provisions of the Europe Agreements would be required in particular if air transportation between the States concerned is covered by means of genuinely multilateral arrangements or by means of interlocking bilateral agreements.

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5.3. Appropriate rules will also have to be negotiated to ensure effective control of the application and efficient enforcement of the agreements themselves. Scope and substance of such rules will have to depend on the degree of liberalisation to be achieved but they have to include the possibility for Contracting Parties to take appropriate measures in case of disagreement and even unilateral action in extreme circumstances (e.g. predatory behaviour) if consensus cannot be reached. Furthermore, such rules will have to ensure the safeguarding of the roles of Community institutions in relation to interpretation of the Community acquis as well as the need for full transparency and consultation in areas of relevance for achieving the goals of the agreement(s). The move in any agreement to a higher level shall be based on a proposal from the Commission to the Council together with a report on the level of harmonization achieved.

5.4. In the case of full adaptation to the Community acquis, provisions on institutional integration will be necessary by a CEC or bloc of CECs to ensure that the role of the Commission and the Court of Justice are appropriately catered for.

6. Special provisions

6.1. For the administration of each of the agreement(s), a specific Joint Committee, with representatives of both Parties, will be established. Notwithstanding the functions of the Association Council(s) as defined in the Association Agreement(s), these Committees should ensure the proper implementation of the agreements, monitor the development of the markets and ensure that carriers compete fairly and on equal terms. Where appropriate, the Committees should make use of the procedures under the Europe agreements as much as possible.

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6.2. Where the agreement(s) cover air transport services between CECs, implementing rules will have to ensure a clear definition of responsibilities of each Party and an effective implementation of the agreement(s) also in those circumstances. Furthermore, speedy and effective enforcement mechanisms applicable amongst all parties will be provided for with unilateral action being resorted to only in extreme circumstances and on the basis of proportionality.

6.3. Moreover, appropriate mechanisms should be included in the agreements for their adaptation to modifications of Community legislation and new Community rules.

7. Period of validity

7.1. The agreement(s) should be of an unlimited duration, but should be reviewed after five years, subject to any provisions agreed in the wider framework of the "Europe agreements" or in accession negotiations. However, this period should be shortened if, before the expiry of the five year period, a further step towards full market integration can be made. The review will be prepared in the Joint Committees.

8. Termination of the agreement(s)

8.1. Parties to the agreement(s) should be able to withdraw from the agreement after consulting the other party in advance and on giving due notice.

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CHECKLIST OF SUBJECTS

A. Subjects for the aviation agreements

- ▶ non discrimination on grounds of nationality **(first priority)**
- ▶ traffic rights **(1-4 freedoms, first priority)**, **(5th freedom on a case by case basis)**, **(7th freedom, second priority)** and **(8th/9th freedoms, third priority)**
- ▶ participation of air carriers **(first)**
- ▶ air fares regime **(first)**
- ▶ capacity regime **(first)**
- ▶ entitlement to establish an air carrier (Right of establishment) **(third)**
- ▶ conditions for public service obligations both internationally and domestically **(second and third)**
- (¹) ▶ conditions for temporary exclusive concessions **(second)**
- (¹) ▶ special conditions for regional services with small aircraft **(first)**
 - ▶ combination of services **(first)**
 - ▶ traffic distribution within airport systems **(first)**
 - ▶ ground handling **(first)**
 - ▶ exceptional circumstances limiting the exercise of traffic rights **(first)**
 - ▶ exceptional circumstances limiting the capacity **(first)**
 - ▶ procedural provisions **(first)**
 - ▶ consultation mechanism and rules in relation to the inclusion of future Community legislation **(first, as appropriate)**
 - ▶ consultation mechanisms concerning relations with Third countries and international- organisations **(first)**

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(¹) These items are of low priority but could form an element in any of these phases.

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B. Important harmonization and competition measures for aviation

- ▶ conditions for the granting of an operating licence **(first)**
- ▶ conditions for the leasing of aircraft as regards safety **(first)**
- ▶ conditions for public service obligations domestically **(third)**
- ▶ rules for Computer Reservation Systems **(first)**
- ▶ rules for denied boarding compensation **(first)**
- ▶ rules governing the investigation of civil aviation accidents and incidents **(first)**
- ▶ rules of competition **(first)**
- ▶ rules on limiting noise emissions **(first)**
- ▶ rules for the allocation of slots at congested airports **(first)**
- ▶ personnel licences
 - = rules on harmonization **(first)**
 - = rules on the mutual acceptance after harmonization and full membership of JAA **(third)**
- ▶ rules on the procurement of air traffic management equipment and systems **(first)**
- ▶ application of Joint Aviation Requirements and a commitment to the important objective of full membership of JAA **(first)**
- ▶ accession to Eurocontrol, at the earliest opportunity **(first)**

This checklist is not necessarily exhaustive.

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ANNEX II

AD HOC PROCEDURE FOR NEGOTIATIONS
CONCERNING AGREEMENTS BETWEEN THE EC
AND THE CENTRAL AND EASTERN EUROPEAN COUNTRIES
IN THE FIELD OF AIR TRANSPORT

I. Procedure

1. The Commission shall conduct the negotiations on behalf of the Community, in consultation with a special committee appointed by the Council to assist it in this task. Here, the rules of conduct outlined under II below shall apply.
2. The Commission shall report back regularly to the Council on the outcome of the negotiations.

II. Rules of conduct to be observed

1. The authorization to open negotiations automatically entails the establishment of a Special Committee for the negotiations in question ⁽¹⁾.

To this end, Member States shall notify the Council General Secretariat as soon as possible, in whatever manner they choose, of the names of their representatives on this Committee.

2. The negotiations must be prepared for in good time.

To this end, the Commission departments shall inform the Council General Secretariat of the schedule anticipated and forward the relevant documents as soon as possible.

⁽¹⁾ For reasons of confidentiality it seems appropriate to lay down that Member States' representatives are appointed by name and are the sole addressees of the documents relating to the negotiations. This does not mean that they cannot be replaced or accompanied by experts.

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3. Close coordination shall be maintained between the Commission and the Member States.

- (a) Each negotiating session shall be preceded by a meeting within the Council bodies in order to identify the key problems for the Community and its Member States and to define, if possible, a common position or establish guidelines.

The Presidency shall make the arrangements for this meeting in good time, in consultation with the Commission.

- (b) Coordinating meetings shall be held on the spot throughout the negotiations at the initiative of the Commission, the Presidency or a Member State.

The Presidency shall make arrangements for such meetings and, if necessary, shall draw up documents on the outcome of the discussions held.

- (c) Members of the Special Committee shall be invited to attend all of the negotiating sessions.

Talks at which the members of the Committee are not present should be exceptional and must not take the place of the normal procedure. In any event the Special Committee must be adequately briefed on any such talks.

During such talks the Commission may be accompanied by a limited number of members of the Special Committee acting as experts. In any event, the Chairman of the Special Committee may attend these talks at his request.

- (d) For areas of Community competence the Commission shall be the spokesman for the Community during the negotiations, and the representatives of the Member States shall speak only if requested to do so by the Commission. Furthermore, the representatives of the Member States must take no action which is likely to handicap the Commission in its work.

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