



Council of the  
European Union

012109/EU XXVI. GP  
Eingelangt am 21/02/18

Brussels, 21 February 2018  
(OR. en)

10884/97  
DCL 1

AVIATION 27

### DECLASSIFICATION

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of document: 10884/97 RESTREINT

dated: 30 September 1997

new status: Public

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Subject: Negotiations between the European Community and the United States in  
the field of air transport

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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.

10884/97

RESTREINT

AVIATION 27

## REPORT

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from: the Permanent Representatives Committee (1st part)

to: the Council (Transport)

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No. prev. doc.: 10706/97 AVIATION 24

No. Cion report: 8801/97 AVIATION 21 [SEC(97) 1084]

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Subject: Negotiations between the European Community and the United States in the field of air transport

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### I. INTRODUCTION

- i. On 25 July 1996, the Council authorised the Commission to open negotiations on behalf of the European Community with the United States in the field of air transport with the objective of establishing a "Common Aviation Area" between the Parties concerned.<sup>(1)</sup> That mandate clearly distinguishes between two separate stages of negotiations, with the first stage concentrating on the regulatory measures ("soft rights") applicable to a Common Aviation Area, while, in a second stage, also questions relating to market access (such as traffic rights) could be discussed.

The mandate also clearly outlines the conditions which have to be met before proceeding from the first to the second stage of negotiations, the most important of which are:

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<sup>(1)</sup>doc. 8415/96 AVIATION 12 RESTREINT.

- "The first stage should end with the signature of an '**Agreed record**' on the possibilities of reaching understandings on the list of elements referred to in pp. 12 and 13, making clear the outcome of the discussions and the positions of the Parties in view of the Common Aviation Area";<sup>(2)</sup>
  - "The Commission will proceed to further evaluations between the individual stages in order to submit to the Council a **report** on the outcome of the first stage and, if possible, a **proposal for a mandate** for a second negotiating stage";<sup>(3)</sup>
  - "The Council will have the choice of adopting a decision on the report or of deciding on a specific mandate for a second negotiating stage if **significant results** have been obtained [...]".<sup>(4)</sup>
- ii. A first round of talks between the Community and the United States was held in Washington on 30-31 October 1996, the outcome of which was contained in doc. 11821/96 AVIATION 22 RESTREINT. At the Transport Council of 12 December 1996, Commissioner KINNOCK gave an oral report on those talks.
  - iii. On 3 April 1997, a second round of talks was held in Brussels.
  - iv. On 3 June 1997, the Commission submitted to the Council a report on the air transport negotiations with the United States, in which it requests the Council "to take note of this report and decide to authorize the Commission to open negotiations with the US on the whole system of the 'Common Aviation Area'" (i.e. to proceed to the second stage of negotiations);<sup>(5)</sup>
  - v. On 17 June 1997, Commissioner KINNOCK presented that report to the Transport Council. The Council "took note of that report and asked the Permanent Representatives Committee to examine its contents with a view to presenting a report to the next Council under the Luxembourg Presidency in October 1997".<sup>(6)</sup>

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<sup>(2)</sup>doc. 8415/96, p. 4.

<sup>(3)</sup>doc. 8415/96, p. 3.

<sup>(4)</sup>doc. 8415/96, p. 3.

<sup>(5)</sup>doc. 8801/97 AVIATION 21, p. 7.

<sup>(6)</sup>doc. 9071/97 PV/CONS 34 TRANS 89, p. 10.

- vi. On 24 September 1997, the Permanent Representatives Committee examined the Commission report. The outcome of that discussion is contained in Part II of this document.

## II. EXAMINATION OF THE COMMISSION'S REPORT

### 1. Presentation of the Commission's report by the Commission representative

When presenting the report referred to above, the Commission representative stressed, in particular, that:

- during the first two sessions of the talks with the United States on 30-31 October 1996 and 3 April 1997, respectively, a number of detailed working papers had been submitted to, and discussed with, the United States;
- the United States has indicated that it would be prepared to talk about "soft rights" only in the context of negotiations covering all aspects relating to a 'Common Aviation Area', thus also including questions relating to market access;
- the first two talks were concluded with the signing of procedural conclusions which constitute the agreed record of discussions<sup>(7)</sup>, since the United States had not been prepared to sign more detailed "Agreed Minutes";

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<sup>(7)</sup> The 'agreed record of discussions' reads as follows:

"Delegations of the US and the EU met on 3 April 1997 to continue discussions begun on 30 and 31 October 1996 regarding the possibility of a future aviation agreement between them. Both delegations considered these discussions positive and informative. They identified large areas of convergence between them, but also recognised that opinions differed regarding some subjects. The delegations will consult internally and then consult each other about the next steps" (doc. 8801/97, p. 5, paragraph 10).

- any further talks on the basis of the existing mandate would be very unlikely to lead to substantial results; In fact, a continuation of the negotiations on the present basis would be a waste of public resources;
- therefore, for a successful and effective continuation of the negotiations a mandate covering the whole system of the 'Common Aviation Area' would be indispensable;
- at the Transport Council of 17 June 1997, Commissioner KINNOCK confirmed, on behalf of the Commission, the request for an extension of the mandate to cover the whole system of the 'Common Aviation Area'.

## 2. Reactions by delegations

The Austrian, Greek, Spanish, French, Italian and Portuguese delegations rejected the Commission's request for an extension of the mandate at the current state of negotiations, arguing that:

- the previous two rounds of talks with the United States had been of an exploratory nature and could not be considered as real negotiations on the regulatory context that should apply to the 'Common Aviation Area';
- as a consequence, no "significant progress towards a stable framework establishing equivalent competitive conditions"<sup>(8)</sup> has been achieved so far;
- no "agreed minutes" on the list of elements referred to in pp. 12 and 13 of the mandate (e.g. antitrust and competition rules, ownership and control, CRS, code sharing, etc.) have been signed yet;

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<sup>(8)</sup>doc. 8415/96, p. 5.

- a premature discussion on issues relating to market access would involve the risk that any further talks would mainly focus on such questions, leaving aside "soft rights", the discussion of which seems to be of little interest to the United States;
- the United States had never officially declared that it would not be prepared to continue the negotiations on such "soft rights".

The Commission representative replied that the US Secretary of Transportation, Mr. Rodney E. Slater, clearly stated in a letter addressed to Commissioner Neil Kinnock (dated 21 May 1997), that the US "welcome(s) negotiations with the Commission at such time as it becomes the full representative of the Member States on all aviation economic matters, armed with a mandate to achieve a completely open North Atlantic market".

The United Kingdom delegation acknowledged that at this stage a third meeting with the United States would be unjustified, though it urged the Commission to pursue the promised written response by the United States on dispute settlement. For that delegation, discussion of a mandate covering questions relating to market access would be unwelcome at a time when they were engaged in bilateral negotiations with the United States. The Commission representative agreed to follow up on the question of dispute settlement.

The Netherlands delegation stated that, given the need for open markets at a time of increasing numbers of global alliances, it could, *in principle*, agree to an extension of the mandate to cover the whole system of the 'Common Aviation Area'.

The Commission representative acknowledged that it is difficult for certain Member States to authorise the Commission to proceed to the second stage of negotiations at a time where they are still engaged in bilateral negotiations with the United States. However, in order to carry the negotiations forward in a pragmatic manner, it might be worth considering the following scenario:

- The Commission would be authorised to discuss all matters relating to a Common Aviation Area;
- In view of the fact that the negotiations are very likely to be a time-consuming process, Member States should be free to pursue their own bilateral negotiations, and to provide for their own transitional arrangements until the establishment of the Common Aviation Area, provided that they act in consistency with their Community obligations.

Some delegations requested that detailed terms and conditions for such a pragmatic approach should be made available prior to the Council meeting.

The Chairman of the Permanent Representatives Committee concluded that, most probably, and in the light of any new developments by the Commission, the Council might proceed to an analysis of such an approach.

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