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## DECLASSIFICATION

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Subject: Preparation of the Council meeting (Transport, Telecommunications and Energy) on 11 and 12 June 2009  
Draft Decision by the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council, authorising the Commission to open negotiations with Georgia on a comprehensive air transport agreement  
- Adoption

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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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# RESTREINT UE



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 28 May 2009

10220/09

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## REPORT

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From :: General Secretariat of the Council

To: : Coreper

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No. prev. doc. : 9957/09 AVIATION 81 COEST 179 NIS 38 RELEX 470

No. Cion prop. : 5986/09 AVIATION 9 COEST 40 NIS 11 RELEX 99

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Subject : *Preparation of the Council meeting (Transport, Telecommunications and Energy) on 11 and 12 June 2009*

Draft Decision by the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council, authorising the Commission to open negotiations with Georgia on a comprehensive air transport agreement

- Adoption

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On 2 February 2009, the Commission submitted a Recommendation to the Council in order to authorise the Commission to open negotiations with Georgia on a comprehensive air transport agreement.

The Working Party on Aviation examined the above Recommendation and prepared the text of a draft Decision authorising the Commission to open the above negotiations with Georgia (see Annex). The only change with regard to the previous version is indicated by ~~strikethrough~~.

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In the Aviation Working Party on 14 and 20 May 2009 some delegations expressed their views on the Negotiating Directives and Ad hoc Procedures for Comprehensive Air Services Negotiations (Annex II of Doc. 5986/09). Following the request of a number of Member States (footnote 4, page 10), SE has indicated its readiness to pick up this discussion and pursue a review of the above directives and procedures under its Presidency.

Furthermore, DE, supported by AT, would like to replace the wording "*... a longer period of time...*" with a "*...period of two years...*" in the third sub-paragraph of point 5 (Conduct of the Negotiations) of Annex I to the Annex ("Negotiating Directives") (footnote 3, page 9).

DE also has a scrutiny reservation on the text of the third sub-paragraph of point 3 ("Structure of the agreement") of the "Negotiating Directives" (footnote 2, page 8), which was slightly modified at the last meeting of the Working Party.

## Task for COREPER

Following the above, COREPER is invited to settle the outstanding issues so as to allow the TTE Council, at its meeting on 11 June 2009, to adopt the mandate authorising the Commission to open negotiations with Georgia on a comprehensive air transport agreement.

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

authorising the Commission to open negotiations with Georgia with a view to establishing  
a comprehensive air transport agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2)  
in conjunction with Article 300(1) thereof,

HAS DECIDED AS FOLLOWS:

*Sole article*

The Commission is hereby authorised to open negotiations on behalf of the European Community  
and its Member States, within the limits of their respective competencies, with Georgia with a view  
to establishing a comprehensive air transport agreement.

The Commission shall conduct the negotiations in accordance with the directives set out in Annex I  
and the ad hoc procedure set out in Annex II to this Decision.<sup>1</sup>

This Decision shall be without prejudice to arrangements, in accordance with Community law and  
in particular Regulation (EC) No 847/2004 on the negotiation and implementation of air service  
agreements between Member States and third countries, for ongoing bilateral agreements between  
Member States and Georgia, pending the conclusion of a Community agreement.

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<sup>1</sup> The negotiations shall be conducted in a way that will ensure full and timely consultation of  
all relevant stakeholders, including the European airline industry, throughout the negotiations.

Application of this agreement to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated and to the continuing suspension of Gibraltar Airport from European Community Aviation measures existing as of 18 September 2006 as between Member States in accordance with the terms of the Ministerial Statement on Gibraltar Airport agreed in Cordoba on 18 September 2006.

*Done at Brussels,*

*For the Council  
The President*

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## NEGOTIATING DIRECTIVES

(The Community and its Member States-Georgia, comprehensive Air Transport Agreement)

### 1. Negotiating objectives

Based on the close political and economic relations between the European Community and its Member States, on the one hand, and Georgia, on the other hand, the agreement will need to cover a range of issues which aim essentially at market opening between the European Community and its Member States and Georgia where carriers of both sides can freely provide their services on the basis of commercial principles and compete on a fair and equal basis, subject to equivalent or harmonised regulatory conditions based on European legislation in the field of aviation.

### 2. Scope of the Agreement

A comprehensive air transport agreement would allow the Parties to establish a clear and coherent framework in which to develop their aviation relations constructively in years to come. The framework would be based on a global package of rights and obligations to ensure and promote, inter alia, the approximation of aviation laws to avoid conflicts of rules, and establish joint mechanisms for cooperation on security, safety and environmental standards and foster co-operation in the industrial field. The agreement would cover a number of issues, with the aim of ensuring the phased, reciprocal and sustainable opening of markets subject to a process of regulatory cooperation towards convergence and effective implementation of Community standards, while providing for an appropriate level of flexibility (e.g. in relation to transitional periods). The agreement shall not reduce the level of market access created by existing bilateral agreements. The Community will not grant any additional traffic rights between a point in the European Union and a point in a third country without further reference to the Council.

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- (1) The Commission shall ensure that the agreement is consistent with the EC Treaty and the relevant Community legislation.
- (2) The agreement should provide for adequate mechanisms for verification and information exchange, with the aim of ensuring mutual confidence in the fulfilment of obligations entered into, in order to ensure a level playing field.
- (3) The agreement should provide for stringent air safety and security provisions at a level comparable to that reached within the Community, taking into account the procedures, including audits, standards and developments applicable on or taking place in the territory of the Community.
- (4) The agreement should include effective provisions on competition and state aids to ensure a level playing field for all market operators.
- (5) The agreement should aim at associating Georgia in the implementation of the Single European Sky.
- (6) The agreement should cover intermodality aspects between different modes of transport.
- (7) The agreement should allow for the safeguarding of the flexibility to take action within the EU with respect to environmental issues, in particular in respect of measures to mitigate the impact of aviation on climate change, air quality and noise levels around airports.
- (8) The agreement should not prohibit the taxation of aircraft fuel supplied to aircraft. It should make it clear that rules relating to the taxation of fuel for aircraft of one Party shall be complied with by the other Party's air carriers when operating to, from or within the territory of the first Party.

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- (9) The agreement should aim at exploring the liberalisation of the investment regime between the Contracting Parties subject to appropriate safeguards.
- (10) A particular chapter could be dedicated to aviation development and/or (technical) assistance.
- (11) In implementing these objectives, the agreement should provide for the necessary flexibility, in particular with regard to transition periods, taking into account the need for Georgia to implement certain minimum standards, notably in the field of safety and security.
- (12) The Agreement should provide for a close link with other Common Aviation Area agreements, including Euro-Mediterranean Agreements.
- (13) The Agreement should not affect the field of VAT, with the exception of turnover tax on imports. Furthermore, the agreement should not affect the provisions of the respective agreements in force between a Member State of the European Union and Georgia for the avoidance of double taxation with respect to taxes on income and on capital.
- (14) Particular emphasis should be put, if necessary, on solving important "doing business" issues.

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## 3. Structure of the agreement

On its entry into force, the final agreement will progressively replace the relevant provisions of the existing bilateral air services agreements between EU Member States and Georgia, taking into account the horizontal air transport agreement between the Community and Georgia.

It shall be proposed that certain elements of a final agreement be implemented earlier than others in a phased approach.

The Commission should negotiate appropriate clauses in order to apply the agreement provisionally between its signature and its conclusion by the Parties, in accordance with the application of national law.<sup>2</sup>

## 4. Management of the agreement

Each Party will be responsible for enforcement of the agreement on its territory and with regard to its nationals and air carriers.

The agreement should provide for an appropriate dispute settlement mechanism and safeguard measures and a Joint Committee of representatives of the Parties shall be established, which will be responsible for the administration of the agreement and for its proper implementation.

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<sup>2</sup> DE has a scrutiny reservation on the text of this sub-paragraph.

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## 5. Conduct of the Negotiations

The Commission shall conduct the negotiations in accordance with these directives and the ad hoc procedure set out in Annex II to this Decision.

For areas of Member States' competencies, the Commission shall ensure during the negotiations that Member States' concerns are reflected adequately. The agreement, which shall be equally authentic in all official EU languages, shall include a language clause to that effect.

The Commission shall recommend the modification or the termination of the mandate, if no progress is made over a longer period of time<sup>3</sup> and no progress can be expected in the near future.

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<sup>3</sup> DE, supported by AT, wishes to set a specific time period: two years.

**AD HOC PROCEDURE FOR NEGOTIATIONS  
CONCERNING AN AGREEMENT BETWEEN  
THE EUROPEAN COMMUNITY AND ITS MEMBER STATES  
AND GEORGIA IN THE FIELD OF AIR TRANSPORT<sup>4</sup>**

I. Procedure

1. The Commission must conduct the negotiations on behalf of the Community and its Member States, in consultation with a Special Committee appointed by the Council to assist it in that task.
2. The Commission must report back regularly to the Council on the progress of the negotiations and on their outcome.

II. Rules of conduct to be observed

1. The authorisation to open negotiations automatically entails the establishment of a Special Committee for the negotiations in question.<sup>5</sup>

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

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<sup>4</sup> AT and DE have a reservation on the text. A separate review of Annex II, to take place at a later stage, was also supported by other delegations.

<sup>5</sup> For reasons of confidentiality it seems appropriate to provide that Member States' representatives shall be appointed by name and shall be the sole addressees of the documents relating to the negotiations. That does not mean that they may not be replaced or accompanied by experts.

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

To that end, the Commission must inform the Council General Secretariat of the schedule anticipated and forward the relevant documents as early as possible.

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

- (a) Each negotiating session must be preceded by a meeting within the Special Committee 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 must make the arrangements for such meetings in good time, in consultation with the Commission.

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

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

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

Talks at which the members of the Special 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.

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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 Chair of the Special Committee may attend such talks at his/hers request.

- (d) For areas of Community competence the Commission must be the spokesman for the Community during the negotiations, and the representatives of the Member States must speak only if invited 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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