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Subject: Draft Decision by the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on authorising the Commission to open negotiations with Canada in the field of air transport

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, 25 July 2007

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AVIATION 136
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NOTE

From : Council Secretariat

To: Delegations

No. Cion prop. : 5276/07 AVIATION 16 RELEX 17 CDN 1

No. prev. doc. : 11850/07 AVIATION 129 RELEX 566 CDN 17

Subject : Draft Decision by the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on authorising the Commission to open negotiations with Canada in the field of air transport

Introduction

In light of the discussion at the Working Party on 23 July 2007, delegations will find attached a further revised draft Decision on the above subject. The changes with regard to the previous version are indicated in **bold**.

AT has a general scrutiny reservation on the text.

DE has a linguistic reservation on the text.

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ANNEX

DRAFT DECISION BY THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION,

MEETING WITHIN THE COUNCIL,

authorising the Commission to open negotiations

with Canada in the field of air transport

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 Canada with a view to establish an Open Aviation Area.

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 of this Decision.¹

This Decision is without prejudice to arrangements, in accordance with Community law and in particular Regulation (EC) N° 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 Canada, pending the conclusion of a Community agreement.

¹ 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.

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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 at 18th September 2006 as between Member States in accordance with the terms of the Ministerial Statement on Gibraltar Airport agreed in Cordoba on the 18th September 2006.

Done at Brussels,

*For the Council
The President*

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NEGOTIATING DIRECTIVES

(European Community and its Member States - Canada, Open Aviation Area)

1. Negotiating objectives

The agreement shall establish legal certainty for all operations covered by the agreement.

The aim of the negotiations with Canada shall be to establish an Open Aviation Area (OAA) between the European Community and its Member States and Canada where carriers of both sides can freely establish themselves (either directly, through joint ventures or through majority ownership) and freely provide their services on the basis of commercial principles and be able to compete on a fair and equal basis subject to equivalent or harmonised regulatory conditions.

The agreement shall provide for equal conditions of access for all Community air carriers to the Canadian market. Any additional traffic rights between points in the European Community and points in a third country shall not be granted, without further reference to the Council. The agreement shall not reduce the level of market access created by existing bilateral agreements.

2. Scope of the agreement

A comprehensive air transport agreement would allow the Community and its Member States, on the one hand, and Canada, on the other hand, to establish a clear and coherent framework in which to constructively develop their aviation relations in the coming years.

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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, establish joint mechanisms for co-operation 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 a reciprocal, sustainable and balanced opening of markets accompanied by a process of regulatory co-operation towards convergence, while providing for an appropriate level of flexibility (e.g. in relation to transitional periods).

- (1) As a matter of priority, the Commission shall ensure, through a binding commitment made by the authorities of Canada, that the agreement is consistent with the EC Treaty and relevant Community legislation. **Should the Commission encounter difficulties in achieving such commitment it shall refer to the Special Committee and, if appropriate, to the Council prior to pursuing negotiations.**²
- (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.
- (4) The agreement should include provisions on competition and state aids to ensure a level playing field for all market operators.
- (5) The agreement should allow for safeguarding the flexibility to take action within the Community 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.

² All delegations have a scrutiny reservation on this paragraph 2(1).

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- (6) The agreement should not prohibit taxation of aircraft fuel supplied to aircraft. It should make clear that rules relating to the taxation of fuel for aircrafts of one side shall be complied with by the other side's air carriers when operating to, from or within the territory of the first side.
- (7) The agreement should give air carriers from one side the right to establish themselves in the territory of the other side and freely provide their services on the basis of commercial principles and be able to compete on a fair and equal basis and subject to equivalent and harmonised regulatory conditions.
- (8) The agreement should aim at the liberalisation of the investment and control regime.
- (9) Particular emphasis should be put on solving important "doing business" issues, such as pricing/tariffs.
- (10) 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 Canada for the avoidance of double taxation with respect to taxes on income and on capital.

3. Structure of the agreement

The final agreement will replace the relevant provisions of the existing bilateral air services agreements between EU Member States and Canada.

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

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The Commission should negotiate appropriate clauses in order to apply provisionally the agreement between its signature and its conclusion by the parties, in accordance with the application of national law.

4. Management of the agreement

Each side will be responsible for enforcement on its territory and with regard to its nationals and air carriers.

The agreement shall provide for an appropriate dispute settlement mechanism.

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 of this Decision.

For areas of Member States' competencies, the Commission shall ensure during the negotiations that Member States' concerns are reflected adequately.

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

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**AD HOC PROCEDURE FOR NEGOTIATIONS
CONCERNING AN AGREEMENT BETWEEN
THE EUROPEAN COMMUNITY AND ITS MEMBER STATES
AND CANADA IN THE FIELD OF AIR TRANSPORT**

I. Procedure

1. The Commission shall 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 this task.
2. The Commission shall report back regularly to the Council on the progress of the negotiations and on the outcome of these negotiations.

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.³

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.

³ 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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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.

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 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 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 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 these talks at his/hers 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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