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Subject: Communication from the Commission on the consequences of the Court judgements of 5 November 2002 for European air transport policy

- follow up including examination of the draft Council Decision on authorising the Commission to open negotiations with the United States in the field of air transport

Delegations will find attached the partially declassified version of the above-mentioned document.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 January 2003

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ADDENDUM TO REPORT

from : the Presidency

to : Coreper

No. Cion 14663/02 AVIATION 181

Comm. :

No. prev. doc. 5534/03 AVIATION 7 RELEX 20

Subject : Communication from the Commission on the consequences of the Court judgements of 5 November 2002 for European air transport policy

- follow up including examination of the draft Council Decision on authorising the Commission to open negotiations with the United States in the field of air transport

The text as it results from its examination by the Aviation Working Party at its meetings of 14 and 28 January 2003 is set out in the Annex.

¹ DRAFT DECISION BY THE COUNCIL

on

authorising the Commission to open negotiations
with the United States in the field of air transport

The Council, acting on a Commission recommendation, hereby authorises the Commission to open negotiations on behalf of the European Community² with the United States in the field of air transport.

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

This Decision is without prejudice to arrangements, in accordance with Community law, for ongoing bilateral agreements between Member States and the United States, pending the conclusion of an Open Aviation Area agreement.³

¹ General scrutiny reserves maintained by F, FIN, IRL and P.

² It was agreed to verify at a later stage, and in the light of the views of the Council Legal Service, whether this is the appropriate formulation for what is likely to be a mixed competence agreement.

³ Compromise text to which the initial reaction of the Group was positive. All delegations maintain a scrutiny reserve and the Cion a reserve.

I. MECHANISM OF THE COMMUNITY NEGOTIATIONS WITH THE US**i) Single agreement**

Any agreement for the establishment of an "Open Aviation Area" is to be conceived as a single agreement.

Similarly to Member States' bilateral negotiations, an agreement will be concluded only when the procedures required by the respective legislation of the Parties have been finalised.

ii) Institutional Arrangements

The Commission shall be assisted, during the negotiations, by a Special Committee designated by the Council. The Commission will regularly inform the Council on the progress of the negotiations.⁴

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**AD HOC PROCEDURE FOR NEGOTIATIONS
CONCERNING AN AGREEMENT BETWEEN
THE EC AND THE UNITED STATES OF AMERICA
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 authorisation to open negotiations automatically entails the establishment of a Special Committee for the negotiations in question.⁶

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.

⁵ Reserve from the Cion on the inclusion of Annex II.

⁶ 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.

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 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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