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DECLASSIFICATION¹

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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.

¹ Document declassified by the European Commission on 8 September 2023.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 15 January 2006

5276/07

RESTREINT UE

**AVIATION 16
RELEX 17
CDN 1**

COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 11 January 2007

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Recommendation from the Commission to the Council in order to authorise the
Commission to open negotiations on a comprehensive air transport agreement
with Canada

Delegations will find attached Commission document SEC(2006) 1129 final.

Encl.: SEC(2006) 1129 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.01.2007
SEC(2006) 1129 final

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RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open negotiations on a comprehensive air transport agreement with Canada

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EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

In its Communication "Developing a Community civil aviation policy towards Canada", which is proposed together with this Recommendation, the Commission set out its views on the need for strengthened co-operation with Canada in the air transport sector and the mutual benefits of opening up the EU-Canada air traffic market.

- **General context**

International aviation relations between Member States and Canada are governed by bilateral air services agreements between Member States and third countries. These agreements are partially restrictive and lead to distortions of competitions between EC carriers on the trans-Atlantic market.

Moreover, the proposed agreement would establish legal certainty for aviation relations between the EU and Canada. None of the current bilateral agreements are in line with Community law.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with the other policies and objectives of the Union**

The conclusion of an comprehensive aviation agreement with Canada will stimulate economic growth in the aviation sector and contribute to the objectives of the Lisbon Strategy. It will improve the regulatory environment, reduce administrative burdens, increase synergies and also take into account other EU policies objectives, for example in the field of environment. In addition, the agreement will serve a fundamental objective of the Community external aviation policy by establishing legal certainty for EU-Canada aviation relations.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Member States as well as the industry (airlines, airports and other stakeholders) will be consulted throughout the negotiations of such an agreement.

Summary of responses and how they have been taken into account

Their comments will be taken into account in the process of negotiations.

- **Collection and use of expertise**

Scientific/expertise domains concerned

Economic regulation, aviation safety and security, market development

Methodology used

SWOT analysis

Main organisations/experts consulted

Independent consultants

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

The report advocates the start of negotiations on a comprehensive aviation agreement between the EU and Canada.

Means used to make the expert advice publicly available

The study is published on the CIRCA database.

- **Impact assessment**

The liberalisation of air traffic between Canada and the EU would create particular benefits for markets which are still governed by restrictive air services agreements between Member States and Canada.

It could remove existing capacity and pricing restrictions and therefore open opportunities of the industry and consumers. Lifting of existing geographic restrictions (limited number of points) could increase further the number of services between the EU and Canada. In particular, limitations to the Western Coast (Vancouver) and to smaller EU Member States should be lifted.

An increase in (direct) air services would enhance trade and tourism flows between the EU and Canada and, hence, bring wider economic benefits to the EU economy. Airports and aviation-related industries as well as the aircraft manufacturing industry would also benefit from a further increase in air services between the EU and Canada.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposed negotiation of an agreement on an open aviation area with Canada will further strengthen the good relations with Canada in view of the common objectives of reforming the framework for international air transport. It will bring economic benefits

to air carriers, airports, passengers, shippers, the tourism industry and the wider economy both within the European Union and in Canada. It will further strengthen the important transatlantic economic links and complement the aviation agreement between the US and the European Union. In addition and equally importantly, it will be a milestone on the path towards an international reform of the regulatory framework governing the air transport sector

- **Legal basis**

EC Treaty Art. 300 (1)

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

Maintaining the status quo of bilateral air services agreements between Member States and Canada would deny the EU-Canada market the growth opportunity seen in other examples of opened air transport markets. Such a scenario may also imply real losses as other markets press ahead with liberalisation to exploit the network structure of international aviation. Beyond its negative impact on consumers, it would disadvantage EC carriers on the North-Atlantic aviation market.

Community action will better achieve the objectives of the proposal for the following reason(s).

An agreement at EU level will bring significant benefits to all European actors and will strengthen the position of the industry in global competition. Moreover, it will remove differences in the Member States' bilateral air services agreements with Canada lead to inequalities in the opportunities available to Community air carriers.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s). First, regulatory aspects in the field of aviation (for example competition, state aid, safety, security) fall often under Community competence and cannot be dealt with by Member States. The Community alone can negotiate these important aspects. Secondly, the political and economic weight of the EU will significantly widen the economic benefits for industry and consumers with the help of an agreement.

The agreement will create the basis for aviation relations between EU Member States and Canada where there is currently no legal basis and thus establish a level playing field between all EC carriers.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

An EU-Canada Open Aviation Agreement is the most efficient instrument to improve EU-Canada aviation relations.

The proposed agreement will not impose any additional administrative or financial burden neither on Member State authorities nor on the industry.

- **Choice of instruments**

Proposed instruments: recommendation.

Other means would not be adequate for the following reason(s).

A proposal for a negotiation directives by the Council is the foreseen procedure for international transport negotiations according to Article 300 (1) of the EC Treaty.

4) **BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

5) **ADDITIONAL INFORMATION**

- **Simplification**

The proposal provides for simplification of legislation.

A comprehensive aviation agreement will replace 17 bilateral air services agreements between Member States and Canada by one single agreement

RECOMMENDATION

In the light of the above Communication the Commission recommends:

- a) that the Council authorise the Commission to open negotiations on behalf of the European Community with Canada with a view to concluding a comprehensive air transport agreement;
- b) that the Commission will conduct these negotiations in accordance with the negotiating directives attached hereto as Annex.

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ANNEX

NEGOTIATING DIRECTIVES FOR A COMPREHENSIVE AIR TRANSPORT AGREEMENT WITH CANADA

1. Scope of the Agreement

A comprehensive air transport agreement would allow the Community and Canada to establish a clear and coherent framework in which to constructively develop their aviation relations in the coming years. 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).

- The Commission shall ensure that the agreement is consistent with relevant Community legislation.
- The agreement will need to provide 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.
- The agreement will need to provide for stringent air safety and security provisions, at a level comparable to that reached within the Community.
- The agreement should allow for safeguarding 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.
- 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 Party shall be complied with by the other Party's air carriers when operating to, from or within the territory of the first Party.
- The agreement should give air carriers from the Contracting Parties the right to establish themselves in the territory of the other Party 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.

2. 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) covering the territories of the Community 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.

3. Structure of the agreement

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

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

The Commission should negotiate appropriate clauses in order to apply provisionally the agreement between its signature and its conclusion by the parties.

4. Management of the agreement

Each Party 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. 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.

The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

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