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Subject: Recommendation from the Commission to the Council to authorise the Commission to negotiate on behalf of the Community a multilateral agreement on compensation to third party victims for damage caused by aircraft and arising from acts of unlawful interference or from general risks

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 March 2009

6224/09

RESTREINT UE

**JUSTCIV 40
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NOTE

from:	Presidency
to:	Committee on Civil Law Matters (General Questions)
No. prev. doc. :	6214/09 JUSTCIV 36 AVIATION 17
No. Cion prop.:	17312/08 AVIATION 304 JUSTCIV 267
Subject:	Recommendation from the Commission to the Council to authorise the Commission to negotiate on behalf of the Community a multilateral agreement on compensation to third party victims for damage caused by aircraft and arising from acts of unlawful interference or from general risks

1. Delegations will find attached a revised version of the aforementioned recommendation, drawn up by the Presidency in the light of Member States' written comments (6148/09 + ADD) and of the meetings of the Committee on Civil Law Matters (General Questions) on 23 January and 20 February 2009.
2. On 15 December 2008 the Commission submitted a Recommendation to the Council to authorise it to negotiate multilateral agreements on the compensation to third party victims for damage caused by aircraft and arising from acts of unlawful interference or from general risks.

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3. These negotiations are based on the following two documents:
 - (a) a draft Convention on compensation for damage caused by aircraft to third parties, resulting from acts of unlawful interference involving aircraft; and
 - (b) a draft Convention on compensation for damage caused by aircraft to third parties.
4. The negotiations will take place in the framework of a Diplomatic Conference convened by the International Civil Aviation Organisation (ICAO) on the modernisation of the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952.
5. This Diplomatic Conference is currently scheduled to take place in Montreal from 20 April to 2 May 2009.
6. As far as the Decision on a negotiating mandate concerns issues regarding jurisdiction and the recognition and enforcement of judgments relating to Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹:
 - (a) the United Kingdom and Ireland are taking part in the adoption and application of the Decision; and
 - (b) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not taking part in the adoption of the Decision and is not bound by it nor subject to its application.

¹ OJ L 12, 16.1.2001, p 1.

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7. On the basis of the foregoing, the Council is invited to:
- (a) authorise the Commission¹ to negotiate, in respect of matters falling within the exclusive competence of the European Community, multilateral agreements on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks, as set out in the negotiating directives;
 - (b) appoint a Special Committee to assist it in this task; and
 - (c) adopt the negotiating directives as set out in Annex I.
- 7a. For the purposes of paragraph 7, matters falling within the exclusive competence of the European Community are those which affect Community rules as regards jurisdiction and the recognition and enforcement of judgments as referred to in Council Regulation (EC) No 44/2001, in Council Regulation (EC) No 785/2004 on insurance requirements for air carriers and aircraft operators, in Council Directive 374/85/EEC on the approximation of laws, regulations and administrative provisions concerning liability for defective products [and in Council Directive 2004/80/EC relating to compensation to crime victims].
8. The Commission is to report back regularly to the Council on the progress of the negotiations and on their outcome.
- [9. For matters not mentioned in paragraph 7, Member States will use their best endeavours to reach a common position. Where a common position is agreed, the Presidency may be tasked with acting on behalf of the Member States in the negotiations. Where no agreed position can be reached, Member States shall be free to speak on their own behalf.]

¹ Having regard to the specific context of ICAO where the European Community has an observer status, the negotiations will be conducted by the Commission with the support of the Presidency.

NEGOTIATING DIRECTIVES

(Agreements on compensation to third party victims for damage caused by aircraft arising from acts of unlawful interference or from general risks)

A. (...) NEGOTIATING DIRECTIVES

(...)

1. In respect of matters falling within the exclusive competence of the European Community, the Commission¹ (...), in consultation with the Special Committee appointed to assist it in the negotiations, will make every effort to reach an agreement on the Convention on compensation for damage to third parties, resulting from acts of unlawful interference involving aircraft (hereinafter referred to as the "UIC") and on the Convention on compensation for damage caused by aircraft to third parties (hereinafter referred to as the "GRC"), while ensuring that Community's interests are duly preserved.

2. The negotiations must aim at the widest possible consensus between the participating States, so as to maximise the chances of wide subsequent ratification and ensure broad worldwide application of the Convention.

3. The negotiations should have as an objective ensuring that a fair and just balance between (...) the interests of the third party victims as well as those of the different actors in the aviation industry is reached.

(...)

¹ Having regard to the specific context of ICAO where the European Community has an observer status, the negotiations will be conducted by the Commission with the support of the Presidency.

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4. The **Community shall** ensure that the draft Conventions (**the UIC and the GRC**) contain appropriate provisions enabling the Community to become a Party thereto.¹

(...)

B. SPECIFIC NEGOTIATING DIRECTIVES

5. The **Commission (...)** shall ensure, to the fullest extent possible, the compatibility between the provisions of the draft Conventions and relevant Community legislation, without prejudice to the following guidelines:

a) **Jurisdiction and recognition and enforcement of judgments**

6. The provisions of the UIC and the GRC in the areas of jurisdiction and the recognition and enforcement of judgments should as far as possible be identical.

Jurisdiction

7. The **Commission (...)** should aim (...) at ensuring compatibility between current Article 31 of the draft UIC and current Article 16 of the draft GRC on the one hand, and European instruments relating to jurisdiction in civil matters on the other hand, i.e., as appropriate, the Brussels I Regulation², the Agreement with Denmark³ and the Lugano Convention⁴.

¹ **This clause does not imply that the European Community and its Member States will necessarily ratify the UIC and the GRC. In fact, for matters falling within the exclusive competence of the Community, the decision is to be taken by the Council on the basis of a Commission proposal.**

² Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p.1.

³ Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 299R, 16.11.2005, p. 62.

⁴ Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Lugano on 30 October 2007, JO L 339, 21.12.2007, p. 3.

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8. (...)

9. If it appears that such compatibility is not possible or justified, the Conventions should contain a disconnection clause ensuring (...) that the appropriate European instruments apply.

Recognition and enforcement of judgments

10. The Commission (...) should aim (...) at ensuring compatibility between current Article 33 of the draft UIC and current Article 17 of the draft GRC on the one hand, and European instruments relating to the recognition and enforcement of judgments in civil matters on the other hand, i.e., as appropriate, the Brussels I Regulation, the Agreement with Denmark or the Lugano Convention.

11. The Conventions must contain a disconnection clause ensuring that the appropriate European instruments apply.

12. Support should be given to current Article 34 of the draft UIC and current Article 18 of the draft GRC in such a way as to enable the Community, for matters within its exclusive competence, to enter into regional and multilateral agreements, provided that they do not result in a lower level of protection for any third party or defendant.

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b) Aspects relating to Regulation (EC) No 785/2004 on insurance requirements for air carriers and aircraft operators¹ (hereinafter referred to as "the Insurance Regulation")

13. The Commission (...) shall ensure, to the fullest extent possible, (...) consistency between current Article 7 of the draft UIC and current Article 9 of the draft GRC on the one hand, and the Insurance Regulation on the other hand.

[c) Aspects relating to Council Directive 374/85/EEC on the approximation of laws, regulations and administrative provisions concerning liability for defective products (hereinafter referred to as "the Product Liability Directive")

14. The Commission should aim at ensuring that under the Conventions there is an overall level of protection for victims that is equivalent to the protection available to them under the Product Liability Directive.

14a. The possibility of a disconnection clause ensuring the application of the Product Liability Directive should be pursued if it becomes clear in the course of the negotiations that the Conventions are not likely to ensure a level of protection for victims that is equivalent to the protection available to them under the Product Liability Directive. In that event the Commission should aim, to the fullest extent possible, to secure such a disconnection clause.

¹ OJ L 138, 30.4.2004, p. 1.

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[d) Aspects connected with Council Directive 2004/80/EC relating to compensation to crime victims¹

15. The Commission should aim, to the fullest extent possible, at the proper operation of this instrument.]²

(...)

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¹ OJ L 261, 6.8.2004, p. 15.

² Taking into account that a large majority of Member States consider that there is no EC competence enabling the Commission to negotiate in this field, the Presidency suggests deleting section (d).