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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.

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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 February 2009

6214/09

RESTREINT UE

**JUSTCIV 36
AVIATION 17**

COVER NOTE

from: Presidency
to: Committee on Civil Law Matters (General Questions)
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 new version of the aforementioned recommendation, drawn up by the Presidency in the light of the meeting of the Committee on Civil Law Matters (General Questions) on 23 January 2009 and Member States' written comments (6148/09 + ADD).
2. On 15 December 2008 the Commission submitted to the Council 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 this Decision 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 this 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 this 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 Commission [,with the support of the Presidency,] to negotiate, for matters within the exclusive competence of the European Community¹, 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, together with the Annex thereto, as set out in Annex I.
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 7, Member States will coordinate their views in order to reach an agreed position. Where such positions have been agreed, they may be the subject of statements by the Presidency.

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¹ The negotiating directives are without prejudice to the position of each Member State, for matters falling within its competences as an ICAO Contracting State.

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ANNEX I

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. GENERAL NEGOTIATING OBJECTIVES

(...)

1. **The Commission [with the support of the Presidency,] will make every effort to reach an agreement on a Convention on compensation for damage to third parties, resulting from acts of unlawful interference involving aircraft (hereinafter referred to as the "UIC") and on a 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 Community shall ensure 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.**

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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.

(...)

B. SPECIFIC NEGOTIATING OBJECTIVES

5. The **Commission** [,with the support of the Presidency,] 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 be identical.**

Jurisdiction

7. The **Commission** [,with the support of the Presidency,] should aim, to the fullest extent possible, 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 Regulation³, the Agreement with Denmark⁴ and the Lugano Convention⁵.**

³ 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.

⁴ 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.

⁵ 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. If it appears that such compatibility is not possible, the Commission [,with the support of the Presidency,] should assess whether the subject matter of either Convention justifies a departure from the general scheme of the Brussels I Regulation, the Agreement with Denmark and the Lugano Convention.

9. If it appears that such a departure is not justified, then the Conventions should contain a disconnection clause ensuring, to the fullest extent possible, that the appropriate European instruments apply.

Recognition and enforcement of judgments

10. The Commission [,with the support of the Presidency,] should aim, to the fullest extent possible, 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) 785/2004 on insurance requirements for air carriers and aircraft operators⁶ (hereinafter referred to as "the Insurance Regulation")

13. The Commission [,with the support of the Presidency,] should aim, to the fullest extent possible, at ensuring 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 products⁷ (hereinafter referred to as "the Product Liability Directive")

14. The Commission [,with the support of the Presidency,] should aim, to the fullest extent possible, at ensuring consistency between current Article 28 of the draft UIC and current Article 12 of the draft GRC on the one hand, and the Product Liability Directive on the other hand, as far as the manufacturer is concerned.

[d) Aspects connected with Council Directive 2004/80/EC relating to compensation to crime victims⁸

15. The Commission [,with the support of the Presidency,] should aim, to the fullest extent possible, at the proper operation of this instrument.]

⁶ OJ L 138, 30.4.2004, p. 1.

⁷ OJ L 210, 7.8.1985, p. 29.

⁸ OJ L 261, 6.8.2004, p. 15.

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ANNEX TO ANNEX I

(...)

RULES OF CONDUCT TO BE OBSERVED DURING THE NEGOTIATIONS

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

(...)

1. The authorisation to open negotiations automatically entails the establishment of a Special Committee for the negotiations in question⁹. To this end, Member States shall notify the (...) General Secretariat **of the Council** as soon as possible, in whatever manner they choose, of the names of their representatives on this Committee.
 2. The negotiations must be prepared for in good time. To this end, the Commission (...) shall inform the (...) General Secretariat **of the Council** of the schedule anticipated and forward the relevant documents as soon as possible.
 3. Close coordination shall be maintained between the Commission, **the Presidency** and the Member States, **with the aim of defining a common position or establishing guidelines**.
- (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, **with the General Secretariat of the Council**, shall make the arrangements for this meeting in good time, in consultation with the Commission.

⁹ 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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- (b) Coordination meetings shall be held on the spot throughout the negotiations at the initiative of the Commission, the Presidency or a Member State. The Presidency, **with the General Secretariat of the Council**, shall make arrangements for such meetings and, if necessary, **the General Secretariat of the Council** shall draw up documents on the outcome of the discussions held.
- (c) Members of the Special Committee shall be invited to attend all (...) 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. During such talks the Commission **and the Presidency** may be accompanied by a limited number of members of the Special Committee, acting as experts. (...)

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