

EC/India agreement: air services

2008/0121(CNS) - 20/06/2008 - Legislative proposal

PURPOSE: to conclude an Agreement between the European Community and India on certain aspects of air services.

LEGISLATIVE ACT: Council Decision.

CONTENT: on 5 June 2003 the Council granted the Commission a mandate to open negotiations with third countries on the replacement of certain provisions in existing agreements with a Community agreement (the “horizontal mandate”). The objectives of such agreements are to give all EU air carriers non-discriminatory access to routes between the Community and third countries, and to bring bilateral air service agreements between Member States and third countries in line with Community law. 120 International aviation relations between Member States and third countries have traditionally been governed by bilateral air services agreements between Member States and third countries. Traditional designation clauses in Member States’ bilateral air services agreements infringe Community law. They allow a third country to reject, withdraw or suspend the permissions or authorisations of an air carrier that has been designated by a Member State but that is not substantially owned and effectively controlled by that Member State or its nationals. This has been found to constitute discrimination against Community carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. There are further issues, such as obligatory commercial agreements between airlines where compliance with Community law should be ensured through amending or complementing existing provisions in bilateral air services agreements between Member States and third countries.

In accordance with the “horizontal mandate”, the Commission has negotiated an Agreement with India that replaces certain provisions in the existing bilateral air services agreements between Member States and India:

- Article 2 of the Agreement replaces the traditional designation clauses with a Community designation clause, permitting all Community carriers to benefit from the right of establishment;
- Article 4 brings provisions in bilateral agreements which are clearly anti-competitive (obligatory commercial agreements between airlines) in line with EU competition law.

When negotiating the Agreement, it was emphasised that the Agreement shall not affect the volume or balance of traffic rights. To this effect the terms of a letter to be sent by the EC and its Member States to India following the signature of the "horizontal agreement" were defined. This letter, which was endorsed by the Member States within the Special Committee, is being sent to the Council together with this proposal.