EC/Australia Agreement: air services, replacing the bilateral agreements by a Community agreement

2005/0112(CNS) - 22/06/2009 - Final act

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

LEGISLATIVE ACT: Council Decision 2009/510/EC on the conclusion of the Agreement between the European Community and the Government of Australia on certain aspects of air services.

CONTENT: this Decision provides that the Agreement between the EC and Australia on certain aspects of air services is approved on behalf of the Community. This Agreement follows the finding by the Court of Justice that 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. This is contrary to Article 43 of the Treaty which guarantees nationals of Member States who have exercised their freedom of establishment the same treatment in the host Member State as that accorded to nationals of that Member State.

Following the Court of Justice judgements in the "Open Skies" cases, the Council authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement. The Commission negotiated an agreement with Australia that replaces certain provisions in the bilateral air services agreements between Member States and Australia.

- 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 (Pricing) resolves conflicts between the existing bilateral air services agreements and Council Regulation 2409/92 on fares and rates for air services which prohibits third country carriers from being price leaders on air services for carriage wholly within the Community.

The Agreement is concluded on behalf of the Community.