

Air transport between the Community and third countries: negotiation and implementation of air service agreements

2003/0044(COD) - 29/04/2004 - Final act

PURPOSE : to coordinate the negotiations and implementation of air service agreements between Member States and third countries. LEGISLATIVE ACT : Regulation 847/2004/EC of the European Parliament and of the Council on the negotiation and implementation of air service agreements between Member States and third countries. CONTENT : the Council approved the amendments of the European Parliament to the Common Position on the negotiation and implementation of air services agreements between Member States and third countries. The Regulation adopted in the form of the common position thus amended establishes a framework, consistent with the functioning of the global aviation market, within which Member States can continue to negotiate and implement such agreements whilst respecting Community law in this area of "mixed competence". This Regulation creates a system of notification and authorisation for the bilateral negotiations led by the Member States with the aim of ensuring the conformity of the existing agreements with Community law. It imposes certain obligations concerning consultation of stakeholders and participation in negotiations; prohibition on introducing more restrictive arrangements and distribution of traffic rights. More specifically, the Regulation states that : - a Member State may, without prejudice to the respective competencies of the Community and its Member States, enter into negotiations with a third country concerning a new air service agreement or the modification of an existing air service agreement, its Annexes or any other related bilateral or multilateral arrangement, the subject matter of which falls partly within the competence of the Community, provided that: - any relevant standard clauses, developed and laid down jointly between Member States and the Commission, are included in such negotiations and the notification procedure set out is complied with; - where a Member State intends to enter into such negotiations it shall notify the Commission of its intentions in writing. This notification shall include a copy of the existing agreement, if available, other relevant documentation and an indication of the provisions to be addressed in the negotiations, the objectives of the negotiations and any other relevant information. The Commission shall make the notification and, on request, the accompanying documentation, available to other Member States, subject to the requirements of confidentiality. The information shall be transmitted at least one calendar month before formal negotiations are scheduled to commence with the third country concerned; - a Member State shall not enter into any new arrangement with a third country, which reduces the number of Community air carriers which may, in accordance with existing arrangements, be designated to provide services between its territory and that country, neither in respect of the entire air transport market between the two parties nor on the basis of specific city pairs; - Member States should establish non-discriminatory and transparent procedures for the distribution of traffic rights between Community air carriers. In applying those procedures Member States should have due regard to the need to preserve continuity of air services; - where a Member State concludes an agreement, or amendments to an agreement or its Annexes, that provide for limitations on the use of traffic rights or the number of Community air carriers eligible to be designated to take advantage of traffic rights, that Member State shall ensure a distribution of traffic rights among eligible Community air carriers on the basis of a non-discriminatory and transparent procedure. It is recalled that the proposal for the Regulation was made in the wake of the European Court of Justice rulings of 5 November 2002 regarding bilateral air service agreements concluded by eight Member States with the United States. These judgements confirmed that the agreements in question included provisions falling within the exclusive competence of the Community. Furthermore, the Court confirmed that Member States are not exclusively competent to negotiate and conclude a classical bilateral air services agreement. Lastly, it should be noted that the application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is

situated. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation. ENTRY INTO FORCE : 30/05/2004.