

Air transport: protection against unfair pricing practices from countries not members of the Community

2002/0067(COD) - 18/12/2003 - Council position

The Council has unanimously adopted the common position. The Council made a number of general changes to the Commission's proposal which are acceptable because they would ensure its aims were met. The Commission accepted wholly, in part or in principle forty-six out of the sixty amendments proposed by the European Parliament at its first reading. Of these, the Council has included 29, either literally, partly or in principle, in its common position the most significant changes incorporated into the common position are the following: - the relationship between this Regulation and Member States' bilateral air service agreements has been clarified. The principle of giving priority to Member State agreements has been accepted; - the scope of Article 5 regarding unfair pricing practices has been extended to cover all non-Community carriers and not only those that are state-controlled as proposed by the Commission. The Council considers that the limitation to state-controlled carriers was discriminatory and ignored the reality that privately-controlled operators could engage in unfair practices. As a counter-balance to ensure that such a provision would be used only in a limited way; - the Council, sharing the Parliament's unease with the notion of "normal fare rates" in Article 5, and also concerned by the methodology proposed by the Commission to arrive at such rates, followed the Parliament in preferring the term "normal competitive pricing" and in inserting a list of criteria to be used when comparing airfares. In addition, the common position deletes the methodology in the proposal and instead requires the Commission, assisted by a Regulatory Committee, to develop a more detailed methodology for determining the existence of unfair pricing; - the common position takes up the Parliament's suggestion that redressive measures should preferably take the form of duties; - for the imposition of definitive measures and the review of such measures, the Council amended the applicable comitology procedure from advisory to regulatory. In addition, the amendments rejected by the Council are as follows: - referring to the World Trade Organisation as an appropriate forum to discuss and regulate international civil aviation; - providing that provisional measures cannot under normal circumstances be imposed more than six months after the initiation of proceedings; - providing for drafting suggestions and/or certain changes of substance in relation to Article 5. These amendments are not compatible with the newly drafted provisions of Article 5 and its enhanced scope; - imposing on Member States that have sufficient evidence regarding the granting of subsidies and the injuries resulting therefrom to the Community industry to forward such evidence to the Commission; - stipulating that a complaint must be rejected if injury has not been sufficiently demonstrated in the complaint. However, a similar idea is set out in recital 13 of the text agreed in the common position; - calling on the Commission to submit an evaluation report to the European Parliament and to the Council; - providing for drafting suggestions to enhance the scope and/or clarity of the draft regulation. - make a link between the proposed regulation and the broader powers of the Community in the external relations in the aviation transport sector; - require countervailable subsidies to be specific, discriminatory, trade-distorting and to cause significant material injury to one or more Community carriers; - set out procedures providing for the reimbursement of third-country carriers where excessive redressive duties would have been imposed; - excluding marketing carriers under code share agreements from the scope of the Regulation; - exclude from the definition of the Community industry Community carriers which are related, for example by means of an alliance agreement, to an allegedly subsidised third-country carrier; - requires the Commission to submit a report to the Council together with a proposal for closure of the investigation; - reverse the presumption whereby the imposition of redressive measures is deemed to be in the interest of the Community where actual injurious subsidisation has been established in the course of the investigation.