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

2003/0044(COD) - 26/02/2003 - Legislative proposal

PURPOSE : to present a proposal for a regulation on the negotiation of air service agreements between the Member States and third countries. CONTENT: this document is a response to the judgements of the Court of Justice in the "open skies" cases of 05/11/02. The Court's judgements will have immediate legal effects: - several matters that are often covered by the provisions of these agreements now fall within the exclusive external competence of the Community; - the nationality clauses contained in nearly all the agreements constitute discrimination on the grounds of nationality contrary to the provisions of f Article 43 of the EC Treaty. Changes must be made to the current regime in order to bring existing relations with third countries into line with the Court's rulings of 05/11/03. As a first step, the Council has been asked to authorise the Commission to open Community negotiations with the United States on the creation of an Open Aviation Area. In addition, the following points are made: 1) It is of the utmost importance to allow all Community carriers to benefit from market access rights under the existing bilateral agreements, by agreeing with third countries on the designation of Community carriers. The Commission asks the Council to authorise Community negotiations on the designation of Community carriers on international routes to and from third countries and on matters within exclusive Community competence. 2) Within the Community, it is essential to ensure that Community airlines, Member States governments and the Community institutions are properly informed of all planned negotiations. This will permit the Commission and other Member States to identify matters of common interest and propose coordination where necessary. For airlines, greater transparency will permit them to take real advantage of their rights under the Treaty, which exist for the moment largely on paper. 3) It will not be possible to move immediately towards open air transport agreements with all bilateral partners and traffic rights from third countries to and form Member States are likely to remain limited in some cases. Therefore, it will be important to agree upon common principles for the allocation of traffic rights that will ensure that all interested Community carriers have a fair and equal chance of obtaining market access. The Commission submits a draft regulation, which will provide a framework for ensuring that information about negotiations and agreements in this complex area flows freely within the Community and establishes clear rules for the implementation of agreements in order to guarantee Community carriers fair and equal opportunities. The proposal contains the following: - Member States are required to inform the Commission of all planned negotiations. The Commission will examine all such notifications with a view to both verifying the compatibility of the proposed approach with Community law and identifying issues of broader Community interest that might be usefully discussed with other Member States or coordinated more closely at Community level; - Member States are required to notify the Commission of the outcome of then negotiation in order to permit it to verify the compliance of the outcome with Community law and to allow it to monitor the non-discriminatory implementation of the agreementprovisions, in particular in the area of traffic rights. - Member States are obliged to inform and accommodate all Community carriers with an establishment in their territory in a non-discriminatory manner. This involves requesting expressions of interest from all Community carriers in advance of opening negotiations with third countries, in order to ensure that their interests can be taken into account in the negotiations and so that they may be present at relevant discussions. Pending the opening of the negotiations envisaged above and the entry into force of the proposed regulation, legal uncertainty must be reduced. The Commission puts forwards some guidelines so that Member States can reduce the risk of conflict with their Treaty obligations: - conduct relations with third countries in accordance with Article 10 of the Treaty; - support Community initiatives; - refrain from entering into negotiations on matters of Community exclusive competence or which are the subject of Community negotiations under a specific mandate; - with regard to bilateral agreements, inform the Commission of all negotiations; - distribute any traffic rights arising

from bilateral agreements in a non-discriminatory manner between Community carriers with an establishment on their territory. A list of principles and procedures are set out in an annex to this document; - in order to give practical effect to the right of establishment, Member States must use the opportunities offered by their bilateral agreements to open routes to and from third countries to all Community carriers with an establishment on their territory on a fair and equal basis.