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

2004/0289(CNS) - 23/12/2004 - Legislative proposal

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

PROPOSED ACT : Council Decision.

CONTENT : to recall, international aviation relations between Member States and third countries have been traditionally governed by bilateral air services agreements. Following the judgements of the Court of Justice of the European Communities in the cases C-466/98, C-467/98, C-468/98, C-471/98, C-472/98, C-475/98 and C-476/98, the Community has exclusive competence with respect to various aspects of external aviation.

In addition, the Court of Justice clarified the right of Community air carriers to benefit from the right of establishment within the Community, including the right to non-discriminatory market access. 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, the Council authorised the Commission in 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement. The Commission has negotiated an agreement with the Republic of Chile that replaces certain provisions in the existing bilateral air services agreements between Member States and Chile.

Part of this Agreement replaces the traditional designation clauses with a Community designation clause, permitting all Community carriers to benefit from the right of establishment. The Agreement also aims to resolve legal irregularities stemming from the infringement of Community competence.

As regards the taxation of aviation fuel, the Agreement shall resolve conflicts between the existing bilateral air services agreements and Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity.

On the issue of pricing, the Agreement aims to resolve 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.

Moreover, the proposal states that subject to its subsequent conclusion at a later date, the President of the Council is hereby authorised to designate the person or persons empowered to sign on behalf of the

Community the agreement between the European Community and Chile on certain aspects of air services. Pending its entry into force, the agreement shall be applied provisionally from the first day of the first

month following the date on which the parties have notified each other of the completion of the necessary procedures for this purpose.