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

2005/0161(CNS) - 26/08/2005 - Legislative proposal

PURPOSE : to conclude an Agreement between the EC and Morocco on certain aspects of air services.

PROPOSED ACT : Council Decision

CONTENT : International aviation relations between Member States and third countries have been traditionally governed by bilateral air services agreements between them. However, following the judgments of the Court of Justice in certain recent cases (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 policy. The Court of Justice has also 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 judgments, the Commission has negotiated an Agreement with Morocco that replaces certain provisions in the existing bilateral air services agreements between Member States and Morocco:

-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.

-Articles 4 and 5 of the Agreement address two types of clauses concerning matters of Community competence. Article 4 deals with the taxation of aviation fuel, a matter which has been harmonised by Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, and in particular Article 14(2).

-Article 5 (Tariffs) resolves conflicts between the existing bilateral air services agreements and Council Regulation No 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 Council is asked to approve the Decisions on the signature and provisional application and on the conclusion of the Agreement and to designate the persons authorised to sign the Agreement on behalf of the Community.