Basic information

2003/0044(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Air transport between the Community and third countries: negotiation and implementation of air service agreements **Subject** 3.20.15.02 Air transport agreements and cooperation	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
RETT Regional Policy, Transport and Tourism	SCHMITT Ingo (PPE-DE)	19/03/2003

Former committee responsible	Former rapporteur	Appointed
RETT Regional Policy, Transport and Tourism	SCHMITT Ingo (PPE-DE)	19/03/2003

Former committee for opinion	Former rapporteur for opinion	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	NEWTON DUNN Bill (ELDR)	20/03/2003
JURI Legal Affairs and Internal Market	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Transport, Telecommunications and Energy	2515	2003-06-05
Transport, Telecommunications and Energy	2499	2003-03-27
Transport, Telecommunications and Energy	2551	2003-12-05
Transport, Telecommunications and Energy	2531	2003-10-09

European Commission

Commission DG	Commissioner
Energy and Transport	

Key events

Date	Event	Reference	Summary
26/02/2003	Legislative proposal published	COM(2003)0094	Summary
10/03/2003	Committee referral announced in Parliament, 1st reading		
27/03/2003	Debate in Council		
05/06/2003	Debate in Council		
08/07/2003	Vote in committee, 1st reading		Summary
08/07/2003	Committee report tabled for plenary, 1st reading	A5-0263/2003	
02/09/2003	Decision by Parliament, 1st reading	T5-0356/2003	Summary
02/09/2003	Debate in Parliament		
05/12/2003	Council position published	13732/1/2003	Summary
15/01/2004	Committee referral announced in Parliament, 2nd reading		
17/03/2004	Vote in committee, 2nd reading		Summary
17/03/2004	Committee recommendation tabled for plenary, 2nd reading	A5-0179/2004	
30/03/2004	Decision by Parliament, 2nd reading	T5-0195/2004	Summary
14/04/2004	Act approved by Council, 2nd reading		
29/04/2004	End of procedure in Parliament		
30/04/2004	Final act signed		
30/04/2004	Final act published in Official Journal		

Technical information

Procedure reference	2003/0044(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	EC Treaty (after Amsterdam) EC 080-p2
Stage reached in procedure	Procedure completed
Committee dossier	RETT/5/20067

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0263/2003	08/07/2003	
Text adopted by Parliament, 1st reading/single reading		T5-0356/2003 OJ C 076 25.03.2004, p. 0038-0097 E	02/09/2003	Summary
Committee recommendation tabled for plenary, 2nd				

reading		A5-0179/2004	17/03/2004	
Text adopted by Parliament, 2nd reading		T5-0195/2004 OJ C 103 29.04.2004, p. 0029-0131 E	30/03/2004	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	15247/2003	25/11/2003	
Council position	13732/1/2003 OJ C 054 02.03.2004, p. 0033-0039 E	05/12/2003	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0094	26/02/2003	Summary
Commission communication on Council's position	COM(2003)0008	09/01/2004	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2004)0265	07/04/2004	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0923/2003	16/07/2003	
EESC	Economic and Social Committee: opinion, report	CES0947/2003 OJ C 234 30.09.2003, p. 0021-0023	16/07/2003	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2004/0847
OJ L 195 02.06.2004, p. 0003-0006 Summary

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

2003/0044(COD) - 07/04/2004 - Commission opinion on Parliament's position at 2nd reading

The European Commission accepts both of the amendments proposed by Parliament at second reading, namely: - an amendment to clarify the wording of the first indent of the first subparagraph of Article one; - an amendments clarifying the wording of Article 4(2) of the German proposal.

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

2003/0044(COD) - 30/03/2004 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution drafted by Ingo SCHMITT (EPP-ED, D) approving the Council's common position subject to a drafting amendment. Parliament took the view that, when negotiating agreements on an open aviation area, it should be ensured that direct and indirect subsidies to air carriers are made inadmissible, as the market would otherwise be distorted to the detriment of Member State or Community carriers, and that bilateral air service agreements should not be replaced by Community agreements unless the third country concerned has a liberalised market or a Community agreement with a third country would result in added value for the Member States.

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.

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

2003/0044(COD) - 02/09/2003 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Ingo SCHMITT (EPP-ED, Germany) and made some amendments to the proposal. (Please see the summary of 08/07/03.)

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

2003/0044(COD) - 05/12/2003 - Council position

In its common position, the Council maintained the basic structure of the Commission's proposal, in particular notification of an intention to negotiate in Article 1 and a system for approving the outcome of negotiations in Article 4, although significant changes were made to refine and reinforce the legal framework. These changes aim at improving the workability of the Commission's proposal by making the conditions under which Member States are authorised to negotiate and conclude agreements that touch on matters of Community competence more specific. Three changes should be particularly stressed in this regard: - the scope of the draft Regulation was broadened so as to also include cases where Member States negotiate with a third country with which the Commission is also negotiating on behalf of the Community. Through this extension of scope, the Council was able to secure acceptance of the notion of parallel negotiations at Community and national level. This, inter alia, permits routine updating of existing bilateral agreements pending the outcome of Community level negotiations; - a fast track procedure, whereby Member States are authorised automatically to conclude agreements on behalf of the Community if they include certain standard clauses, has been introduced; - the principle that Member States may provisionally apply agreements pending the outcome of Community verification procedures has been introduced. Under the new Article 4, the Commission retains powers to block agreements where negotiations have not resulted in the inclusion of standard Community clauses (and the agreements might consequently infringe Community law), or in cases where the Commission is itself actively negotiating with the third country concerned on the basis of a mandate granted by the Council. In both situations the Commission decides together with an advisory committee of Member States. Several other less fundamental, but nevertheless significant, changes to the Commission's proposal have been introduced. These include the following: - the obligation on Member States in Article 1 to notify each other regarding forthcoming negotiations has been removed. Now the Commission is the central repository of such notifications which it must make available to other Member States. This is a less bureaucratic and more streamlined system; - the text of Article 2 has been broadened to require equal treatment of all interested parties (not only air carriers) as regards their association with negotiations taking place; - the intention behind Article 3, the prohibition of more restrictive arrangements, has been clarified; - a timescale for publication of procedures has been added in Article 6. (Previously there was a deadline only for publication of changes, but not of the procedures themselves); - regarding confidentiality (Article 8, formerly Article 7), the intention underlying the Commission's proposal - that confidentiality restrictions could prevent notifications being passed on to other Member States - has been retained but clarified further; - the relevant standard provisions regarding the airport of Gibraltar have been introduced. Out of the 17 amendments adopted by the European Parliament, theCouncil fully incorporated three of them into its common position and four of them in part or in principle. These amendments mainly correspond to those accepted in a similar fashion by the Commission. In light of these amendments, the common position - aims to strengthening the legal framework set out by this draft regulation. It further specifies both the type of agreements or related documents which are covered by this draft regulation , and the Member States'obligations when Community negotiations are actively underway; - clarifies the obligation on Member States to notify the Commission of their planned negotiations, and thus integrates this Parliament amendment in principle. Only the Commission must be notified by a Member State which intends to enter into negotiations, the other Member States having the possibility to request copy of this notification to the Commission. A special procedure is also set out in case of exceptional circumstances; - seeks to clarify that any agreement which would reduce the number of Community carriers which may, in accordance with existing arrangements, be designated to provide air services between the territory of a Member State and a third country, is prohibited.

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

preservecontinuity 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.

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

2003/0044(COD) - 09/01/2004 - Commission communication on Council's position

The Commission considers that the common position unanimously adopted on 5 December 2003 does not alter the aims and approach of its proposal and can therefore support it.