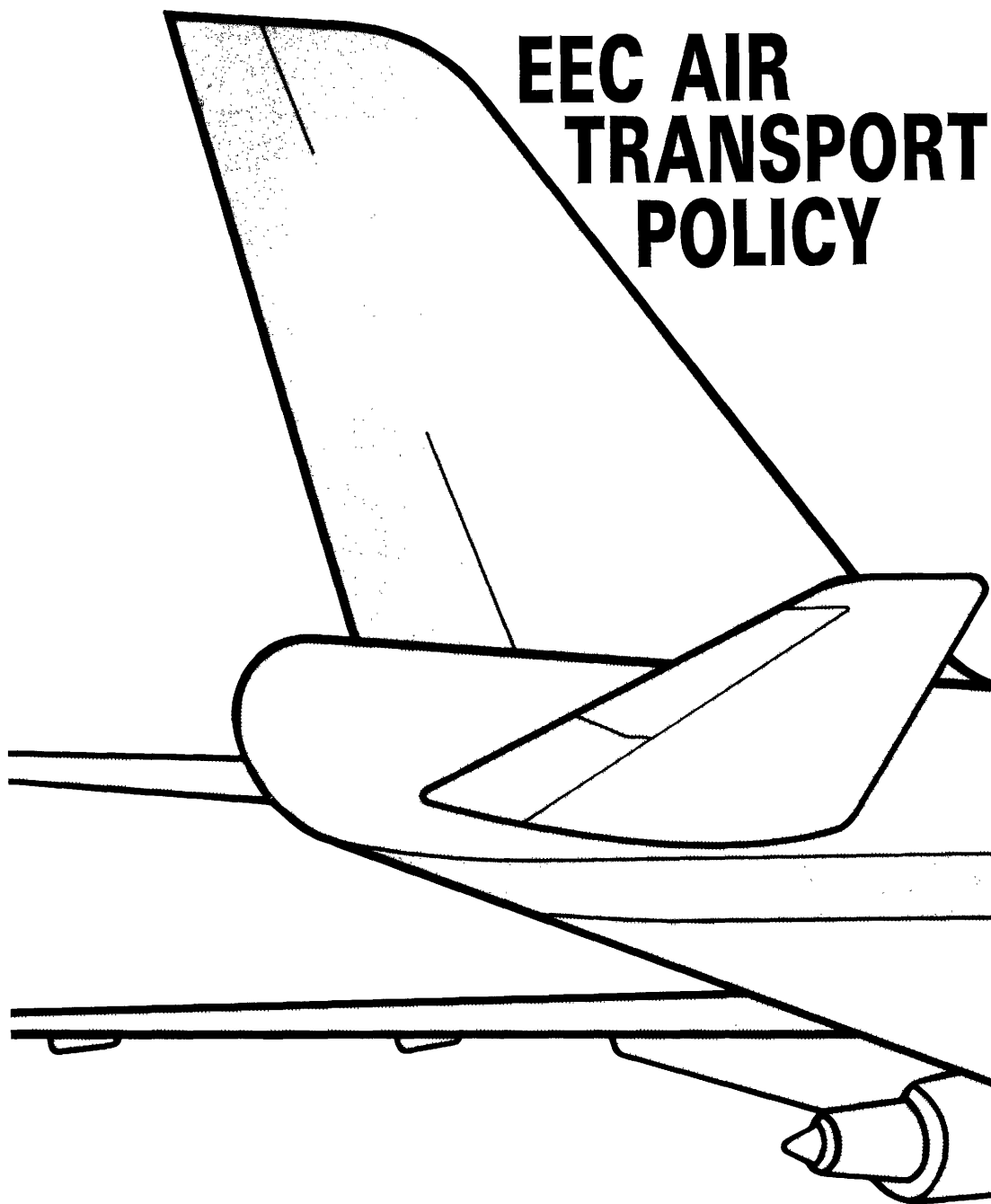


ECONOMIC AND SOCIAL  
CONSULTATIVE ASSEMBLY

# EEC AIR TRANSPORT POLICY



*EUROPEAN  
COMMUNITY*

*ECONOMIC AND  
SOCIAL COMMITTEE*

The European Communities' Economic and Social Committee, chaired by Mr Gerd MUHR, approved this Opinion at its 229th Plenary Session of 25 and 27 September 1985.

The preliminary work was done by the Section for Transport and Communications chaired by Mr Alfred DELOURME, with Mr John KENNA as Rapporteur.

ECONOMIC AND SOCIAL COMMITTEE  
OF THE EUROPEAN COMMUNITIES

# **EEC AIR TRANSPORT POLICY**

**Civil Aviation Memorandum No. 2**

**PROGRESS TOWARDS THE DEVELOPMENT  
OF A COMMUNITY AIR TRANSPORT POLICY**

**OPINION of the Economic and Social Committee**

**REPORT of the Section for Transport**

Brussels, October 1985

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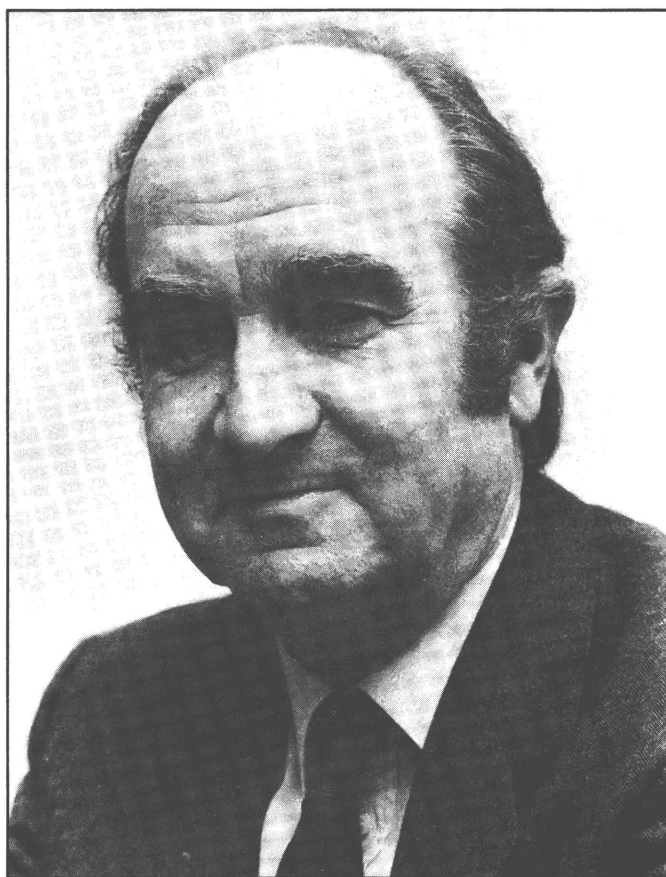
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## C O N T E N T S

	page
Foreword by the President .....	II
<b>OPINION of the Economic and Social Committee on the <i>Civil Aviation Memorandum No. 2 - Progress towards the Development of a Community Air Transport Policy</i> .....</b>	<b>1</b>
<b>REPORT of the Section for Transport and Communications on <i>Civil Aviation Memorandum No. 2 - Progress towards the Development of a Community Air Transport Policy</i>.....</b>	<b>13</b>
Contents .....	14
Terms of reference : procedure .....	17
The Air Transport Policy initiatives of Community bodies - ESC Opinions ..	19
New ideas of the Commission concerning a common air transport policy - summary of the second memorandum .....	30
Comments on the second memorandum .....	35
 <b>APPENDIX 1 to the REPORT</b> <i>Summary minutes of the hearing of the European Organizations, held on 10 / 11 October 1984 at ESC headquarters, Brussels.</i> .....	 <b>47</b>
 <b>APPENDIX 2 on the REPORT</b> <i>Statistics and definitions</i> .....	 <b>63</b>



## **FOREWORD BY THE PRESIDENT**

A common transport policy is one of the basic mandates of the EEC Treaty. The importance of transport for the Community's economy needs no stressing. With 6.5% of Community GDP and more than 6 million workers, it occupies a key position.

After the first enlargement of the Community, the Member States were obliged to reconsider their plans, extending them with a common programme for sea and air transport begun in 1973. The latter forms the subject of the present brochure.

Although the Council of Ministers has already adopted a large number of legal provisions, it cannot be denied that overall results have been disappointing. The European Parliament's suit against the Council of Ministers for inaction provided a spectacular illustration of this.

For its part, the ESC has never accepted the Council's attitude, and has tried again and again to stimulate new initiatives in the various areas of transport policy. These have often been launched in collaboration with the European Parliament. We are particularly indebted to Mrs WEBER and Mr DELOURME, who have chaired the Section over the last few years, and to the Rapporteurs for the individual Opinions.

The ESC papers published in this brochure bear witness to the need for progress on the Common Transport Policy and to the need to extend it beyond the "traditional" areas of road, rail and inland waterway.

***Gerd MUHR,***  
***President of the Economic and Social Committee***



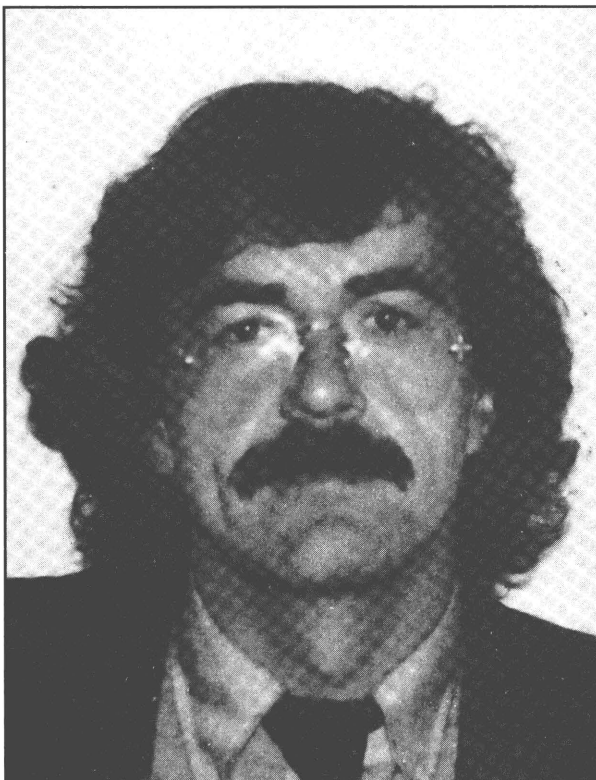
*Alfred DELOURME*  
*President of the Transport Section*



*John KENNA*  
*Rapporteur*



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*Chairman of the Study Group*



*Dietmar CREMER*  
*Co-Rapporteur*



*Kurt PLANK*  
*Co-Rapporteur*

# **O P I N I O N**

of the Economic and Social Committee

on the

Civil Aviation Memorandum No. 2

Progress towards the Development of a Community Air Transport Policy

(COM (84) 72 final)

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On 3 April 1984 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the

*Civil Aviation Memorandum No. 2 - Progress towards the development of a Community Air Transport Policy (Communication and Proposals by the Commission to the Council)<sup>(1)</sup>.*

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 September 1985 in the light of the Report by Mr KENNA, Rapporteur, and Mr CREMER and Mr PLANK, Co-Rapporteurs.

At its 229th Plenary Session (meeting of 26 September 1985) the Economic and Social Committee adopted the following Opinion by 88 votes for and 4 against:

## **1. Introduction**

1.1. The Committee's Opinion on the Commission's Memorandum No. 2 is examined under the following two headings:

1.2. General comments on the Commission's initiative for the development and implementation of a common air transport policy (Part 3 of the Memorandum).

1.3. Specific comments on proposals for legislation contained in the Annexes to the Memorandum, namely Annex I - Bilateral Agreements, Annex II - New Proposals on Air Tariffs, Annex III - Application of Community Rules on Competition, Annex IV - State Aids, Annex V - Stand Still Clause, and Other Pertinent Issues.

1.4. The Committee also took account of issues which were, in its Opinion, insufficiently covered by the Memorandum, including social aspects, safety, customs and administrative formalities, and some matters concerning general aviation. These are the main issues in the Memorandum which affect the development of a common air transport policy. The Report which supports the Opinion takes account of all the matters raised in the Memorandum, some of which are not examined in detail in the Opinion. The Report also includes reference to previous Opinions of the Committee on air transport policy.

## **2. General comments**

2.1. In general, the Committee welcomes the initiative taken by the Commission as a step towards the creation of a common air transport policy. This is consistent with its earlier Opinions calling for action to develop the Community's common transport policy as a whole. The Committee notes that the Commission's Memorandum seeks to establish "an overall framework for a Community air transport policy designed to improve the efficiency and profitability of the air transport industry as well as the quality and price of the product it offers". In the Committee's view, this should be closely linked to the goals of maintaining and developing employment and of improving staff expertise. These are the goals which should form the basis of a common policy in this sector, rather than flexibility for flexibility's sake.

---

(1) OJ No. C 182 of 9 July 1984, pp. 1 to 6 (only Annexes I, IIIA, IIIC and V).

2.2. The Committee supports the general objectives but notes the following:

2.2.1. The issues are complex e.g. the attempt to apply the rules of competition to air transport while at the same time trying to create a common air transport policy.

2.2.2. There are divergent views within the Committee on how a common air transport policy can be developed.

2.2.3. There are different views on how far Community policy should go towards liberalization.

2.2.4. There is a need for greater emphasis on social issues to which the Memorandum gives insufficient attention.

2.2.5. There are many positive aspects in the present system.

2.2.6. The Commission's proposals do suggest change which would introduce greater flexibility so as to soften some rigid aspects of the present arrangements.

2.2.7. The Commission has not paid adequate attention to recommendations made by the Committee in previous Opinions.

2.3. The Committee notes and agrees that deregulation as in the USA is not proposed in the Memorandum. However, the Committee also agrees that some changes in the present regulatory framework are possible with a view to the continued development of a more comprehensive and efficient air transport system for Europe. To the extent that such changes result in increased demand for international air transport services there will be greater opportunities for job creation in air transport and ancillary services. In addition a larger air transport market will also benefit other economic sectors such as tourism, hotels and industry. The Committee therefore suggests that policy should allow more commercial freedom in European air transport.

2.4. The aim must be a comprehensive air transport policy as part of the Community transport policy, which should inter alia include the following:

- other transport modes;
- protection of the environment;
- optimization of air safety;
- safeguarding and creation of jobs;
- the optimal use of capacity;
- the international character of air transport;
- differences between scheduled and charter traffic;
- a market-oriented user-friendly approach;
- facilitation of frontier crossings;
- research and development in this sector;
- cooperation in search and rescue;
- mutual recognition of licences and diplomas.

2.5. A Community Air Transport Policy will only succeed if it leads to a strengthening of the airline industry in the Community.



2.6. The Committee notes that the Commission proposals do not involve taking airlines in the Community out of the existing international regulatory system for civil aviation.

2.7. The Committee presents views on the various proposals in the Annexes to the Memorandum with these objectives in mind.

2.8. The Committee would urge the Council to take into account the aspects referred to in point 2.4. above.

### **3. Specific comments on proposals in the Annexes**

#### **3.1. Bilateral Agreements between Member States (Annex 1)**

3.1.1. The Committee agrees with the Commission's proposals as follows:

3.1.1.1. Agreements between airlines governing sharing of capacity including the traffic to be carried and revenue sharing should be allowed but should not be imposed by Member States. Arrangements of this kind should as a matter of principle be the responsibility of airlines.

3.1.1.2. The guiding principle should be that the airlines involved should have fair and equal opportunity and that capacity should reflect the potential traffic demand. It is impossible at present to fix any percentages owing to the lack of established criteria and definite bases of calculation and periods.

3.1.1.3. The Committee therefore questions whether a mathematical formula (the proposed 25% minimum share) is desirable in principle. There is concern that this could tend to induce excess capacity. The guiding principle should be that:

3.1.1.3.1. airlines should not be forced out of business by unfair competition;

3.1.1.3.2. airlines should be expected to earn their traffic;

3.1.1.3.3. success should be encouraged and rewarded.

3.1.1.4. In summary, bilateral agreements between Member States should in future be guided by the following principles:

3.1.1.4.1. capacity to be related to traffic demand;

3.1.1.4.2. fair and equal opportunity to compete;

3.1.1.4.3. no right to 50% of the market;

3.1.1.4.4. no specified level for a minimum share.

#### **3.2. Tariffs (Annex II)**

##### **3.2.1. General comments**

3.2.1.1. The Committee agrees with the proposals from the Commission as follows:

3.2.1.1.1. To achieve the overall objectives of the Memorandum and greater commercial freedom for airlines the procedures for resolving disputes between Governments should be speeded up.

3.2.1.1.2. Inter-airline consultation, especially in regard to the maintenance of customer/consumer benefits such as the inter-lining system should be allowed but should not be mandatory.

3.2.1.1.3. The process which governs tariff formulation must take due account of consumer interests and result in tariffs which are flexible, responsive to the market, allow airlines to innovate and are rapidly adaptable; recently introduced reforms in this area should be encouraged.

3.2.1.1.4. Greater flexibility should however not result in policies which could threaten the viability of the air transport system especially on the less dense routes.

3.2.1.1.5. The prescribed annual consultations should embrace all interest groups - users, employees and airlines.

### **3.2.2. Zones of flexibility**

3.2.2.1. The Committee considered this proposal in great detail. The Committee has reservations about the ability of the proposed zones system to achieve greater flexibility. It feels that the application of the system in its present form could be very complex and could inhibit rather than help a faster process of approval. There is also some concern that the proposed zone system could in effect allow Governments to continue to resist change. If this were so the proposal would not be in keeping with the general thrust of the objectives to increase flexibility in setting tariffs.

3.2.2.2. As regards the question of double approval versus country of origin approval, the Committee suggests that the crux of the problem is the resolution of disputes between Governments. In short the Committee feels that in the case of dispute either Government should be free to refer the matter to an accelerated arbitration process.

### **3.3. Competition - Annex III A, B and C**

3.3.1. In general, the Committee acknowledges that the rules of competition should apply to Community air transport. However, it recalls the views expressed in its Opinion of 27 January 1983 on the earlier Commission proposals regarding the application of the rules of competition. (In summary, these views were: a dual legal basis (Articles 84(2) and 87); rules to ensure orderly competition; special account to be taken of the specific problems of international aviation; there should be a comprehensive air transport policy as part of a common transport policy; the extraterritorial effects of EEC law to be noted; a balance to be made between various interests, including consumers, airlines, governments and air transport trade unions; optimization of safety standards; harmonization of the conditions of competition).

3.3.2. Notwithstanding the differences of view between the call for the application of the rules of competition in full to the European air transport services and the concern that a common air transport policy is the first priority, the Committee can in general terms, subject to the views expressed in its previous Opinions and the following comments, support the main thrust of the Commission's revised proposals on competition. Bearing in mind that the aim must be to achieve greater efficiency in the European air transport system, the Committee therefore makes the following comments on the various elements in Annex III.

3.3.2.1. Exemptions under the Rules of Competition should be granted for consultation between airlines on fares and for pooling agreements on a voluntary, non-coerced basis. The possibility of revenue transfer should not be mandatorily limited to 1% of the pool revenue on a particular route as proposed by the Commission but should be such as to stimulate rather than restrict competition. Where such exemptions are subject to limitations in time, they should be kept under review so that, where experience has demonstrated in practice that they are beneficial, as intended, they can be extended for reasonable periods.

3.3.2.2. The Committee agrees with the Commission that the measures to introduce a more competitive environment should not jeopardize the future viability of European Community air transport and should also take due account of the social interests as expressed in paragraph 3.8. of this Opinion.

3.3.2.3. The Committee also points out that the effects of the Commission's proposals on the worldwide integrated air transport system should be fully considered. The Community system must be compatible with the worldwide system.

#### **3.4. State Aids - Annex IV**

3.4.1. The Committee agrees that effective control of State aids is essential for the proper functioning of a Community regime in air transport. The Committee considers that a Council Regulation, adopted under Article 94 of the EEC Treaty, would be the best means of ensuring effective application of rules governing State aids in air transport on the basis of criteria laid down by the Commission after consulting the joint committee of air transport employers and trade unions.

3.4.2. The Committee attaches particular importance in respect of the following principles:

3.4.2.1. no distortion of competition between undertakings from different States;

3.4.2.2. aid should be economically and socially advantageous;

3.4.2.3. aid should be fully transparent and controlled.

#### **3.5. Non-discrimination and standstill provisions**

3.5.1. The Committee has no objections to the proposals of the Commission on these matters.

#### **3.6. Infrastructure, customs formalities - simplified customs clearance procedures in Community airports**

3.6.1. The Committee recognizes that a proportion of airlines' operating costs arise from charges paid for airport and air navigation facilities and services. Therefore, it is important that services provided by authorities in Member States in this area are efficient and where appropriate are standardized to an optimum degree so as to support the objective of creating a regulatory framework in which intra-Community air transport can develop. Special attention should be given to safety standards.

3.6.2. Unlike intra-Community road and rail users, general aviation crews and passengers are subject to full customs formalities both on departure and on arrival. This means that international flights can only take place between airports with customs facilities, which severely restricts the flexibility of general aviation traffic.

3.6.3. The Community could improve the situation by, for example, abolishing the customs formalities at either the point of arrival or departure of intra-Community flights and by introducing a system of spot checks, as is the case with the other modes of transport (international flights are all subject to flight plans and are therefore easily identifiable).

#### **3.7. Third countries**

3.7.1. The Committee notes that the application of the rules of competition outside the Community as originally envisaged would disrupt international relations in air trans-

port. On the other hand, now that the regulation governing the application of competition rules is to apply only to air transport within the EEC, there are likely to be legal uncertainties. In determining any regulatory changes for intra-EEC routes, care should be taken not to jeopardize the benefits which flow from the existing integrated system involving airlines from Member and non-Member States.

3.7.2. Any change in the regulatory framework should ensure that Community-based airlines are not at a disadvantage vis-à-vis carriers from third countries, particularly where they operate services between two Community States.

### **3.8. Social issues**

3.8.1. The Committee draws attention to the following aspects relating to social issues in air transport.

3.8.1.1. Regulatory changes should avoid undue disruption in the social environment as a result of more open competition.

3.8.1.2. The Memorandum ignores the effects on employment and working conditions of productivity gains already achieved.

3.8.1.3. Competition policy must take full account of social issues. It is therefore requested that a joint committee of employers and trade unions be set up for the civil aviation sector, as has already been done in other sectors of transport. This committee should deal with questions such as:

- a) the mutual recognition of licences;
- b) the harmonization of working and training conditions, with a view to social progress;
- c) the effects of proposals at EEC level;
- d) the safeguarding and expansion of jobs; and
- e) studies.

3.8.1.4. Although the Committee notes that the Community social policy applies in general to the air transport sector, the Memorandum makes insufficient reference to the social aspects in the proposals for the development of air transport policy.

3.8.1.5. The formulation of policy guidelines and/or proposals for air transport services should in future provide scope for consultation on the implications of such proposals on the socio-economic dimension.

3.8.1.6. Specific conditions of employment in air transport should be established by agreement between employers and employees and their organizations at national and local level.

3.8.1.7. The Committee also recommends the elaboration of Regulations regarding social conditions in air transport aimed at safeguarding and expanding jobs and improving working conditions.

### **3.9. General aviation**

3.9.1. The Committee approves the Commission's objectives with regard to general aviation.

3.9.2. The mutual recognition of licences and qualifications in general aviation poses fewer problems than it does in other areas and could therefore be achieved in a much shorter space of time.

3.9.3. Europe's technological and industrial base should be exploited at Community level and not by the Member States separately.

**3.10. Search and rescue cooperation** (point 25, page 14 of the Memorandum)

3.10.1. The Committee would refer to three earlier Opinions<sup>(2)</sup> dealing with the free movement of rescue and emergency services (especially airborne) and the development of high technology (and possibly multi-purpose) equipment in the field of civil defence (sea rescue, fire-fighting, combating oil pollution, etc. ...)

3.10.2. The Committee endorses point 25 of the Memorandum although it would underline that such cooperation already exists in the air above the seas.

**3.11. Accident investigation** (point 26, page 15 of the Memorandum)

3.11.1. Many countries publish accident reports from which lessons can be learnt. Such reports are published either in shortened form or in extenso. Such practices should be encouraged - as should any publications likely to lead to improved safety.

**3.12. Protection of consumers in the case of overbooking**

3.12.1. The many rigid practices which cause passengers to suffer should be abolished. Thus, for example, when flights to a given destination are full, and especially when airlines have sold more tickets than the numbers of seats available and so are unable to fulfil their commitments, passengers should be able to fly in planes of airlines which operate on the same routes but which are not allowed to pick up passengers.

**3.13. Airworthiness certificates**

3.13.1. A single market should be established in the following areas:

3.13.1.1. airworthiness criteria;

3.13.1.2. validation of certificates;

3.13.1.3. modification of original certificates.

3.13.2. In this connection the Committee would refer to the technical comments contained in the Report.

Done at Brussels, 26 September 1985.

The Chairman  
of the Economic and  
Social Committee

**Gerd MUHR**

The Secretary-General  
of the Economic and  
Social Committee

**Roger LOUET**

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(2) Opinion on the proposal for a Council Regulation establishing a Community scheme to provide forests in the Community with increased protection against fire and acid rain (OJ No. C 248 of 17/9/84, p. 1); Opinion on the Proposal for a Council Directive on the drawing up of contingency plans to combat accidental oil spills at sea (OJ No. C 248 of 17/9/84, p. 20); Opinion on the Commission Communication to the Council on the protection of the environment in the Mediterranean basin (OJ No. C 160 of 1/7/85, p. 2).

## APPENDIX

to the Opinion of the Economic and Social Committee

**1. The following amendments were rejected during the discussion:**

**Page 3 - paragraph 2.4.**

Replace the present text with the following:

*"The aim must be a comprehensive Air Transport Policy, as part of the Community Transport Policy as a whole, which would include all the relevant elements of such a policy.*

*The major elements are discussed in detail in this Opinion. Other aspects such as safety, environment and links with other transport modes must have their appropriate place in this policy.*

*However, the Section believes that progress in the Community Air Transport Industry should not be delayed until each and every element can be included. Such delay would run counter to the overall objective, as agreed by the Section to create a more efficient air transport system for Europe".*

**Reason**

While it is acknowledged that a fully comprehensive air transport policy must embrace a very wide range of issues, nevertheless significant progress can be and should be made by concentrating initially on the major elements contained in the Memorandum and discussed elsewhere in the Opinion. Other issues, important though they may be, should not necessarily be included as a pre-condition for progress on the most immediate issues. Otherwise overall initiatives towards the creation of a common transport policy as advocated in paragraph 2.1. could be hindered.

**Outcome of the voting**

Votes in favour:	41
Votes against:	54
Abstentions:	4

**Page 5 (3.2.1.1.6.) (3.2.1.1.5. in the Committee Opinion as adopted)**

Delete.

**Outcome of the voting**

Votes in favour:	25
Votes against:	61
Abstentions:	0

## 2. Result of voting on the Opinion as a whole

The following Members, present or represented, voted in favour of the Opinion:

Mr	AMATO	Mr	MOLS SØRENSEN
Mr	BAGLIANO	Mr	MORSELLI
Mr	BERNASCONI	Mr	MULLER
Mr	BLESER	Mr	MURPHY
Mr	BODDY	Mr	NIELSEN B.
Mr	BONETY	Mrs	NIELSEN M.
Mr	BREITENSTEIN	Mr	NIERHAUS
Mr	CAMMANN	Mr	de NORMANN
Mr	CAMPBELL	Mr	PAGGI
Mr	CAVAZZUTI	Mr	PEARSON
Mr	COLLE	Mr	PELLETIER
Mr	CREMER	Mr	PLANK
Mr	CURLIS	Mr	POETON
Mr	DASSIS	Mr	PRONK
Mr	DE GRAVE	Mr	QUERLEUX
Mr	d'ELIA	Mr	RAFTOPOULOS
Mr	DELLA CROCE	Mrs	RANGONI-MACCHIARELLI
Mr	DELOURME	Mr	REGALDO
Mr	DRAGO	Mr	ROMOLI
Mr	DRILLEAUD	Mr	ROSEINGRAVE
Mr	DUNET	Mr	SAIU
Mr	EMO CAPODILISTA	Mr	SCHNIEDERS
Mrs	ENGELEN-KEFER	Mr	SCHOEPGES
Mr	ETTY	Mr	SCHWARZ
Mr	FLUM	Mr	SMITH A.
Mr	FULLER	Mr	SMITH L.
Mr	GEUENICH	Mr	SOULAT
Mr	GLESENER	Mr	SPIJKERS
Mr	HAMMOND	Mr	STAHLMANN
Mr	HANNON	Mr	STARATZKE
Mr	HOUTHUYS	Mr	STORIE-PUGH
Mr	JARVIS	Mr	STORM-HANSEN
Mr	JASCHICK	Mrs	STROBEL
Mr	JENKINS	Mr	SWIFT
Mr	KENNA	Mr	TAMLIN
Mr	KIRSCHEN	Mr	VANDEN BROUCKE
Mr	KITSIOS	Mr	VAN DER MENSBRUGGHE
Mr	LAW	Mr	VAN MELCKENBEKE
Mr	LOJEWSKI	Mr	VERCELLINO
Miss	MADDOCKS	Mr	WAGNER
Mr	MASPRONE	Mrs	WEBER
Mr	MASUCCI	Mrs	WILLIAMS
Mr	MERAVIGLIA	Mr	de WIT
Mr	MILNE	Mr	ZINKIN

The following Members, present or represented, voted against the Opinion:

Mr	FORTUYN
Mr	HEMMER
Mr	LÖW
Mr	NOORDWAL



*Kurt PLANK, Co-Rapporteur, congratulates John KENNA, Rapporteur*

*René BONETY, Chairman of the Study Group with Mrs. Le THE MAI, Assistant*





# **R E P O R T**

of the Section for Transport and Communications

on

Civil Aviation - Memorandum No. 2

Progress towards the Development of a Community Air Transport Policy

(COM (84) 72 final)

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Rapporteur: Mr KENNA

Co-Rapporteurs: Mr CREMER

Mr PLANK

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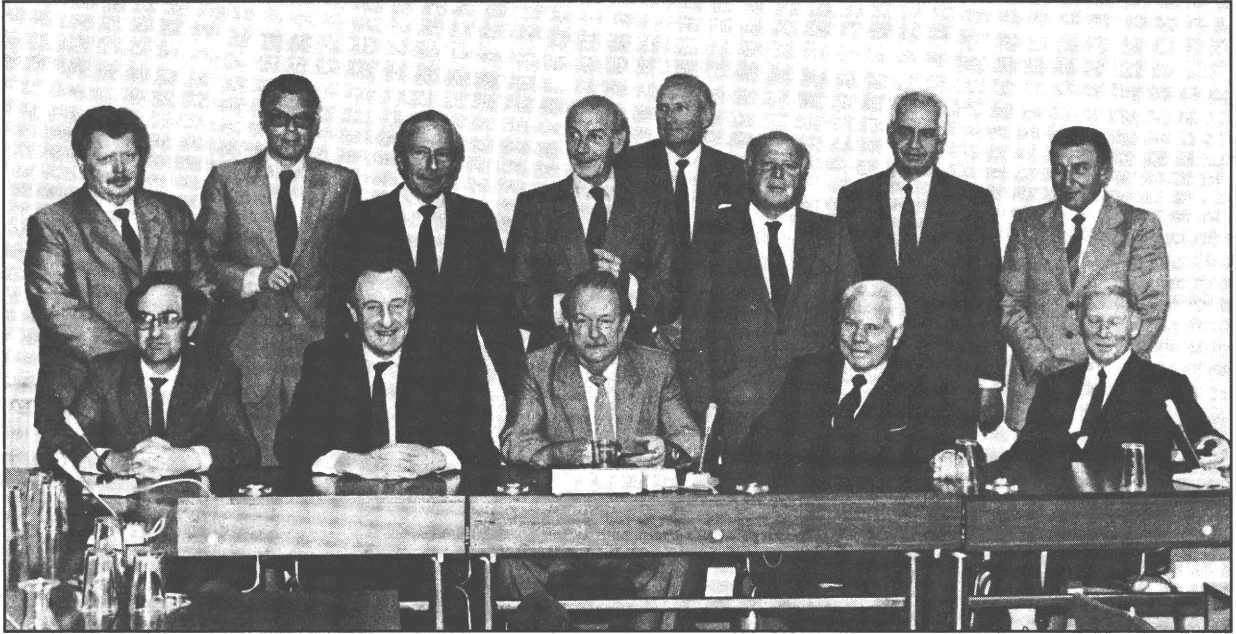
# C O N T E N T S

	Page
<b>1. Terms of reference: procedure</b> .....	17
1.1. Referral .....	17
1.2. Study Group .....	17
1.3. Contacts with European Organizations .....	18
1.4. Hearing (10/11 October 1984) .....	18
1.5. Working methods of Study Group and Section .....	18
1.6. Purpose and structure of Report .....	19
<b>2. The Air Transport Policy initiatives of Community bodies - ESC Opinions</b> .....	19
2.0. Preliminary comments .....	19
2.1. Commission memorandum of 12 November 1960 on the applicability of Treaty competition rules to air transport .....	19
2.2. Memorandum of 10 April 1961 on the basic approach to be adopted in common transport policy .....	20
2.3. Action programme for a common transport policy (23 May 1962) .....	20
2.4. Council Regulation No. 141 (26 November 1962) .....	20
2.5. Commission statements at the Council meetings of 1964 and 1970 ....	20
2.6. Draft Council Decision on the first measures of a common approach to air transport (21 June 1972) .....	21
2.7. Report and Draft Decision - action programme for the European aeronautical sector (1 October 1975) .....	22
2.8. The 1974 and 1978 judgements of the Court of Justice .....	22
2.9. Action taken by the Council in June 1977 and 1978 .....	23
2.10. Introduction of consultation procedure 1979/80 .....	24
2.11. Limitation of noise emissions .....	24
2.12. First memorandum of 4 July 1979 .....	24
2.13. Air accident investigation 1980 .....	27
2.14. Interregional air services 1981/83 .....	27
2.15. Express low weight air cargo .....	28
2.16. Application of competition rules to air transport .....	28
2.17. Report of 23 July 1981 on the level of scheduled passenger air fares and the procedures for fixing these fares .....	29
2.18. Proposal for a Council Directive on tariffs for scheduled air transport between member States (1981).....	29
2.19. Amended Directive on the limitation of noise emissions from subsonic aircraft .....	29
2.20. Other initiatives .....	29
<b>3. New ideas of the Commission concerning a common air transport policy - summary of the second memorandum</b> .....	30
3.1. Reactions to the first summary of memorandum of 1979 .....	30
3.2. Economic developments in the air transport sector since the first memorandum as a starting point for further ideas .....	30
3.3. Objectives of the second memorandum .....	25

3.3.1.	Balancing of interests without deregulation .....	31
3.3.2.	Flexibility and more competition in the present regulatory system .	31
3.3.3.	Restriction to intra-Community air transport .....	32
3.3.4.	Other important guidelines for the common air transport policy .....	32
3.4.	Measures set out in the second memorandum .....	32
3.4.1.	Policy proposals regarding competition .....	32
3.4.1.1.	Bilateral agreements between member States .....	32
3.4.1.2.	Amendments to the 1981 proposal on air tariffs .....	32
3.4.1.3.	Inter-airline agreements .....	33
3.4.1.3.1.	Capacity sharing .....	33
3.4.1.3.2.	Revenue sharing .....	33
3.4.1.3.3.	Joint operations .....	33
3.4.1.3.4.	Tariff consultations .....	33
3.4.1.3.5.	Nature of exemptions .....	33
3.4.2.	Action on State aids .....	33
3.4.3.	Measures to reduce airline costs .....	34
3.4.3.1.	Infrastructure .....	34
3.4.3.2.	Facilitation of air freight services .....	34
3.4.4.	Other measures .....	34
3.4.4.1.	Access to the market .....	34
3.4.4.2.	Non-scheduled services .....	34
3.4.4.3.	Social issues .....	35
3.4.4.4.	Research .....	35
3.4.4.5.	Aircraft noise .....	35
3.4.4.6.	General aviation .....	35
3.4.5.	International relations .....	35
<b>4.</b>	<b>Comments on the second Memorandum .....</b>	<b>35</b>
4.1.	Introduction .....	35
4.2.	General Comments on the Commission's basis considerations concerning a common air policy as contained in Part 3 of the Memorandum .....	36
4.3.	Specific Comments on the Commission's proposals contained in the Annexes .....	37
4.3.1.	Bilateral Agreements between Member States (Annex I) .....	37
4.3.2.	Tariffs (Annex II) .....	38
4.3.3.	Competition (Annex III) .....	40
4.3.4.	State Aids (Annex IV) .....	41
4.3.5.	Non-discrimination and Standstill Clause (Annex V) .....	42
4.4.	Specific Comments to other measures .....	42
4.4.1.	Social issues .....	42
4.4.2.	Economic, social and industrial importance of general aviation .....	43
4.4.3.	Search and rescue cooperation .....	43
4.4.4.	Accident investigation .....	43
4.4.5.	Protection of consumers in the case of overbooking .....	44
4.4.6.	Airworthiness certificates .....	44
4.4.7.	Special airworthiness certificates .....	44
4.4.8.	Equipment criteria .....	44
4.4.9.	Customs formalities .....	44

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*The Study Group*

*Back : BEYERTT, VAN DER MENSBRUGGHE, LAW, BOS, REHM, MORSELLI, KAMIZOLAS, MERAVIGLIA.  
Front : CULLETON, KENNA, BONETY, PLANK, STORIE-PUGH*

*The Section examines the Opinion 11 September 1985*



## 1. Terms of reference - procedure

1.1. On 3 April 1984<sup>(1)</sup> the Council decided to consult the Economic and Social Committee on:

*Civil Aviation - Memorandum No. 2, Progress Towards the Development of a Community Air Transport Policy*

(COM(84) 72 final).

1.2. On 11 April 1984 the Section for Transport and Communications, entrusted with the preliminary work by the Committee Chairman, set up a Study Group composed as follows:

- Chairman :** Mr BONETY *France* : Expert in the Economic Department of the French Democratic Confederation of Labour (CFDT)
- Rapporteur :** Mr KENNA *Ireland* : Director of Transport and Foreign Trade, Confederation of Irish Industry
- Co-Rapporteurs :** Mr CREMER *Deutschland* ; Head of Section, Economic Policy Department of the Federal Council of the German Trade Union Confederation (DGB)
- Mr PLANK *Deutschland* : Head of the Transport Policy and International Relations Department, Deutsche Lufthansa AG, (Cologne)
- Members :**
- Mr BOS *Nederland* : Mayor of Katwijk
- Mr FORTUYN *Nederland* : Chairman, Netherlands Transport Liaison Committee; Member of the Economic and Social Council
- Mr KAMIZOLAS *Hellas* : Director at the Ministry for the National Economy with responsibility for the affairs of the Council for Economic and Social Policy (SKOP)
- Mr LAW *United Kingdom* : Deputy Chairman, National Freight Company PLC)
- Mr MASPRONE *Italia* : Vice-Director General for the Coordination of the Activities of the Economic and Social Committee of the European Communities; General Confederation of Italian Industry (CONFINDUSTRIA)
- Mr MERAVIGLIA *Italia* : President of the Court of Arbitration of the Italian Federation of Textile and Garment Workers, (FILTRA) affiliated to the Italian Confederation of Trade Unions (CISL)
- Mr MOLS SØRENSEN *Danmark* : Member of the Executive Committee of the Danish Federation of Civil Servants and Salaried Employees' Organizations; Federation of Merchant Navy Officers
- Mr MORSELLI *Italia* : Director of the International Relations Department of the Confederation of Italian Cooperatives, Rome
- Mr SCHNEIDER *Luxembourg* : General Secretary of the General Confederation of Labour (LUX); President of the Luxembourg Federation of Railway and Transport Workers, Civil Servants and Employees
- Mr STORIE-PUGH *United Kingdom* : Former President of the Royal College of Veterinary Surgeons
- Mr VAN DER MENSBRUGGHE *Belgique* : General Adviser, Bekaert S.A.; Professor Extraordinary at the Catholic University of Louvain
- Experts :**
- Mr BAASCH *Danmark* : for the Employers' Group (Secretary-General, Danish Shipowners' Council)
- Mr BEYERTT *Deutschland* : for the Workers' Group (Permanent Secretary, International Transport Workers' Federation)
- Mr CULLETON *Ireland* : for the Rapporteur (Director, European Affairs, Aer Lingus)
- Dr. REHM *Deutschland* : for the Various Interests' Group (Consultant, Bonn) (former State Secretary ("Staatssekretär"))

(1) The Council letter of 9 April only specified an Opinion on various annexes to the memorandum. Following a letter from the Committee Secretary-General (18 April) the terms of reference were broadened to cover the memorandum and all its annexes, on the grounds that a comprehensive evaluation could only be carried out in a more general context.

1.3. The Rapporteur, Mr KENNA, acting on behalf of the Study Group, drew up a 20-item questionnaire on the memorandum and the annexes. This questionnaire was sent to 22 European organizations, with a request to forward written replies by 21 September 1984:

1. ACE<sup>(2) (3)</sup> Independent Air Carriers of the EC
2. AEA<sup>(2) (3)</sup> Association of European Airlines
3. BEUC European Bureau of Consumers' Organizations
4. CEEP<sup>(2) (3)</sup> European Centre of Public Enterprises
5. CES European Trade Union Confederation (ETUC)
6. CLECAT<sup>(4)</sup> European Freight Forwarders
7. COFACE<sup>(2)</sup> European Committee of Families Organizations
8. CSTCE<sup>(2) (3)</sup> Committee of Transport Workers' Unions in the EC
9. EBAA<sup>(2) (3)</sup> European Business Aviation Association
10. ECAC<sup>(5)</sup> European Civil Aviation Conference
11. EHA European Helicopters' Association
12. ERA European Regional Airlines Organization
13. EUROCOOP European Consumers' Cooperatives
14. FATUREC<sup>(2) (3)</sup> Federation of Air Transport User Representatives in the EC
15. IATA<sup>(2) (3)</sup> International Air Transport Association
16. IAOPA<sup>(4)</sup> International Council of Aircraft Owner and Pilot Associations
17. ICAA<sup>(2) (3)</sup> International Civil Airports Association
18. ICAO<sup>(5)</sup> International Civil Aviation Organization
19. ICC<sup>(4)</sup> International Chamber of Commerce
20. NTAA<sup>(2)</sup> National Travel Agents' Association within the EEC
21. UNICE Union of Industries in the EC
22. WEAA<sup>(2)(6)</sup> Western European Airports Association

The organizations were informed that they would be invited to attend a hearing in October 1984, which would provide an opportunity to consider the issues in more detail and evaluate counter-arguments.

1.4. The hearing was held on 10/11 October 1984, in conjunction with a Study Group meeting. In addition to members and the organizations listed under 1.3., invitations were extended to representatives of the Council, the European Parliament (Transport Committee) and the Commission. The oral and written contributions are summarized in Appendix 1, which also contains a list of participants.

1.5. The Study Group evaluated the papers submitted, and the additional information provided later by the participating organizations (including those who had not completed their internal discussions at the time of the hearing). The Study Group then continued its discussions and drew up a Draft Report for the Section for Transport and Communications, which formed the basis of the Opinion.

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(2) Written answers received

(3) Participant in hearing

(4) Observer at hearing

(5) Assistance offered or answers promised for later (ECAC)

(6) Represented by ICAA at hearing

1.6. The following Report updates earlier ESC Opinions on air transport and supplements the 1982 Report on Transport Policy in the 1980s, which concentrated on inland transport. Section 2 describes the Community initiatives and ESC Opinions. Section 3 describes the Commission's basic thinking about common air policy (memorandum and appendices). Section 4 assesses the Commission's thinking and sets out views expressed by Committee members.

## **2. The air transport policy initiatives of Community bodies, ESC Opinions**

2.0. A sophisticated transport system, including efficient air transport, is fundamental to the economic integration of the Community.

2.0.1. **The Economic and Social Committee (ESC)** has often examined air transport issues. The various initiatives of the Commission are listed in its memorandum of 15 March 1984 and are recapitulated below. The ESC has issued Opinions on most of these initiatives and has basically endorsed their objectives - while insisting that a common air policy must be part of an overall transport policy, and must allow for the circumstances of the rival modes of transport and for the special features of the transport sector.

2.0.2. **The European Parliament and the Council** have repeatedly been exercised by air transport issues. In the case of the Council the last occasion was 10 May 1984, when it gave a panel of senior civil servants the following mandate:

*"The Council -*

*HAVING REGARD to Commission Memorandum No. 2 on Civil Aviation,*

*WHEREAS the present system of intra-Community air transport based on bilateral relations between States and cooperation between airlines has ensured a very substantial development of this mode of transport,*

*WHEREAS, however, this system should be adapted to ensure greater flexibility and so increase economic and social efficiency, -*

*HAS THEREFORE DECIDED to entrust a working party composed of high-level representatives of the Member States and the Commission with the task of preparing a report to be placed before the Council before the end of 1984."*

2.0.3. A complete picture of the Community's past work in this field will be given first of all since otherwise it is not possible to judge the Commission memorandum in its proper context.

2.1. **Memorandum from the Commission to the Council on the applicability of the competition rules in the Treaty establishing the European Economic Community to transport and the interpretation of the Treaty's application to sea and air transport** (Doc. VII/S/05230 final of 12 November 1960).

2.1.1. The Commission took the view that, in the interest of the economy as a whole and in order to ensure the healthy development of sea and air transport, the Community institutions should see to it that these two modes are included in the measures taken in the field of transport in furtherance of the Treaty's objectives (point 29). Here the Commission's aim was clearly to activate Article 84(2) of the Treaty of Rome, which states:

*"The Council may, acting unanimously, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport"*.

## **2.2. Memorandum on the basic approach to be adopted in the common transport policy (Doc. VII/COM(61) 50 final of 10 April 1961)**

2.2.1. According to the Commission, the provisions of Articles 74 to 83 of Title IV (Transport) of the EEC Treaty do not apply to sea and air transport. The Treaty's general provisions, however, are applicable in principle to sea and air transport unless the Treaty explicitly declares otherwise. However, it is obvious that sea and air transport have characteristics of their own; for example, that they have much stronger ties with, and depend more heavily on, the world economy than inland transport. It is therefore in the Community's interest to take this special situation into consideration and not to interfere with these modes' competitiveness outside the ambit of the Treaty of Rome. Consequently, all the problems raised by sea and air transport within the Treaty's ambit should be examined, and the measures required to take their special situation into consideration should be adopted under Article 84(2). It might even prove expedient to suspend the application of certain general Treaty rules to sea and air transport for a period still to be determined until suitable provisions have been adopted for these modes.

2.2.2. The Committee's Opinion on the memorandum<sup>(7)</sup> did not comment specifically on the special aspects of air transport.

## **2.3. Action programme for a common transport policy (Communication from the Commission to the Council) (Doc. VII/COM(62) 88 final of 23 May 1962)**

2.3.1. The Commission confirmed the line taken by it in 1960 and 1961, but did not propose any concrete measures in the air transport sector. It merely stated that it was examining whether it is necessary to apply special rules to competition in the sea and air transport sectors (point 237).

2.3.2. In its Opinion of 2 July 1963<sup>(8)</sup> the Committee mainly referred to its earlier Opinion of 29 October 1962<sup>(9)</sup> (see point 2.4.).

## **2.4. Proposal for a Council Regulation regarding the temporary non-application of Articles 85 to 94 of the EEC Treaty to sea and air transport (Doc. VII/COM(62) 103 final of 16 July 1962)**

2.4.1. The "examination" announced by the Commission in its action programme of 23 May 1962 led the same year to the enactment of Regulation No. 141 of the Council of 26 November 1962 exempting transport from the application of Council Regulation No. 17<sup>(10)</sup> which applied the competition Articles 85 and 86 to all sectors of the economy.

2.4.2. In its Opinion (CES 260/62) the Committee proposed an exemption for aviation until 31 December 1965.

## **2.5. Commission statements at the Council meetings of 20 October 1964 and 4 June 1970**

2.5.1. In 1964 the Commission pointed out that if we are to have a fully-fledged European Economic Community, two sectors as important as sea and air transport cannot be left out of the integration process. It took the view that the current negotiations between member States' governments on a common air policy must be continued by the Community authorities themselves in accordance with the Treaty and any agreement reached should be underpinned by Council provisions pursuant to Article 84(2)<sup>(11)</sup>. However, all the Commission achieved was to get the Council to agree to brief it regularly about the Air Union negotiations then in progress. Thereafter the Commission did not make any more submissions to the Council until 1970.

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(7) CES 70/62 of 28 February 1962.

(8) OJ No. 189/63 of 29 December 1963, pp. 3013-3059

(9) CES 260/62.

(10) OJ No. 124/62 of 28 November 1962, p. 2751.

(11) Eighth General Report of the Commission of the European Economic Community on the Activities of the Community, 1 April 1964 - 31 March 1965, page 234, point 239.



2.5.2. At the Council meeting on 4 June 1970 the Commission once again referred to the urgent need for Community measures in the field of air transport and sketched out a number of objectives. The Commission also announced that it would shortly be presenting the Council with more concrete and more detailed proposals for the most urgent action<sup>(12)</sup>.

## 2.6. Draft Council Decision on the first measures of a common approach to air transport (COM(72) 695 of 21 June 1972)

2.6.1. In its Fifth General Report the Commission pointed out that the enlargement of the Community might make it necessary to make changes to the planned programme for a transport policy and that other steps would obviously have to be taken, particularly in sea and air transport and in policies on ports<sup>(13)</sup>.

2.6.2. The Commission presented the aforementioned Draft Decision<sup>(14)</sup> on 21 June 1972. However, this document did not contain any detailed proposals, but instead was merely an attempt by the Commission "to open the Article 84(2) door". Both the European Parliament<sup>(15)</sup> and the Economic and Social Committee gave their views on the document, Mr DE GRAVE being Rapporteur for the Committee Opinion, which was adopted on 27 September 1973.

2.6.3. The Committee Opinion, which was carried with 20 votes against and 14 abstentions, stated the following:

*"The Commission, in agreement with the Council and within a reasonable period of time, should, as part of the common transport policy, study and lay down an overall, coherent approach to an air transport policy to enable all the regular airlines:*

*a) to normalize their financial relations with the member States bearing in mind the constraints that could be imposed on them;*

*b) to change over smoothly to commercial and rational operation;*

*this being done **within the Community:***

*- by establishing a coherent and suitable intra-Community air network;*

*- by fixing rational timetables and frequencies of service corresponding to users' needs;*

*- by opening up developing regions and integrating them within the economic and social life of the Community;*

***and for intercontinental links:***

*- by improving the profitability of regular airlines;*

*- by encouraging cooperation which ought to be concerned mainly with technical and commercial matters and not necessarily mean that the number of airlines will remain at the present level.*

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(12) Fourth General Report on the Activities of the Communities 1970, page 253, point 302.

(13) Fifth General Report on the Activities of the Communities 1971, page 344, point 396.

(14) OJ No. C 110 of 18 October 1972, page 6.

(15) Report of 21 December 1972 (document 195/72 and Supplementary Report of 14 March 1973 (document 382/72), both by Mr NOE (Resolution OJ No. C 19 of 12 April 1973, page 52).

*To assist the achievement of these objectives, the approach in question should be based on:*

- regulation at Community level of the right to take up an occupation in the common air market;*
- harmonization of the provisions in force in the member States relating to technical control, overhaul and general work on aeronautical equipment;*
- freedom of choice for users;*
- neutrality of the member States regarding the competition on the market ....;*
- regulation at Community level of tariff problems;*
- establishment of a suitable airport infrastructure within the Community, justified by analysis of the costs and of the benefits to society ....;*
- prior consultation of public and private organizations as well as of the trade unions and professional organizations concerned<sup>(16)</sup>."*

2.6.4. A minority of the members did not share this view. They thought that the Opinion dealt with substantive issues, examination of which was premature in view of the very limited objective of the Draft Decision, which was to have the Commission carry out a study and report to the Council. The points raised in the Opinion should be discussed by the Committee as and when the Commission had studied them and submitted concrete proposals. In addition, these members agreed with the Commission that the policies for developing air links between the Community and third countries had to be coordinated and the legitimate interests of the aviation sector had to be preserved.

## **2.7. Report and Draft Decision of 1 October 1975 regarding an action programme for the European aeronautical sector<sup>(17)</sup>**

2.7.1. This proposal dealt mainly with the aircraft industry, but the general objectives of Community action in the air transport sector - creation of a Community air space, conclusion of agreements between the Community and third countries - were also spelt out. Both the European Parliament and the Economic and Social Committee<sup>(18)</sup> gave their approval.

## **2.8. The 1974 and 1978 judgements of the European Court of Justice**

2.8.1. Since the entry into force of the Rome Treaty, there has been a great deal of discussion about whether its general provisions are applicable to sea and air transport. These discussions soon lapsed into a legal controversy which went on for fifteen years. Most of the commentators were of the view that these two areas were exempt from the other Treaty provisions as long as the Council had not reached a unanimous decision under Article 84(2). Although the European Parliament attempted in the NOE Report (see point 2.6.2. above) to grant the Commission the right to submit proposals for these sectors under Article 235 of the EEC Treaty, this led nowhere, because the Commission considered that Article 84(2) and Article 235 were incompatible.

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(16) OJ No. C 100 of 22 November 1973, page 1.

(17) Supplement 11/75 to the Bulletin of the European Communities and OJ No. C 265 of 19 November 1975.

(18) OJ No. C 178 of 2 August 1976 and OJ No. C 131 of 12 June 1976

2.8.2. The futile legal quarrel and the de facto situation were transformed in the mid-seventies by three events:

- sea transport, in particular, was brought more into the limelight by the Community's initial enlargement;
- the world-wide shipping problems (flag discrimination) have been exacerbated since 1975;
- the European Court of Justice decided in two judgements<sup>(19)</sup> that sea and air transport do not come under the provisions of Articles 74 to 83 on inland transport but do come under "the general rules" of the EEC Treaty.

2.8.3. The first Council Decision concerning air transport on the basis of Article 84(2) was issued on 20 December 1979 and related to a consultation procedure at Community level (see 2.10. below).

## 2.9. Action taken by the Council in June 1977 and June 1978

2.9.1. In June 1977 the Council called on the Committee of Permanent Representatives to set up a special working party for air transport matters to examine the priorities for future work at Community level.

2.9.2. On 12 June 1978 the Council approved a nine-point list of priorities which covered technical, economic and social matters:

*"1. Common standards restricting the emission of nuisances due to aircraft;*

*2. Simplification of formalities (facilitation), particularly those relating to air freight;*

*3. Implementation of technical standards (JAR);*

*4. Provisions regarding aids and competition;*

*5. Mutual recognition of licences (aircrew and ground staff);*

*6. Working conditions (aircrew and ground staff);*

*7. Right of establishment;*

*8. Possible improvements to inter-regional services;*

*9. Search, rescue and recovery operations, and accident enquiries<sup>(20)</sup>."*

2.9.3. At this meeting the Council also underlined the advisability of the Community establishing ties with a number of international organizations, e.g. ICAO and ECAC.

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(19) Court of Justice judgements of 4 April 1974 (case 167/73) and 12 October 1978 (case 156/77).

(20) Memorandum of the Commission - Air Transport - a Community approach. Supplement 5/79. Bulletin of the European Communities. Annex I.

**2.10. Proposal for a Council Decision initiating a consultation procedure concerning international action in the field of air transport (COM(79) 329 final)**

2.10.1. On 21 November 1979 the ESC commented as follows in an unanimously adopted Opinion (Rapporteur: Mr ZÜNKLER) on this Commission document<sup>(21)</sup>, which was submitted together with the first memorandum (see 2.12.):

*"The Committee thinks that it would be useful for the member States and the Commission to exchange views on current international aviation issues of interest to the Community. However, a consultation procedure (involving an additional advisory committee) is considered to be neither necessary nor feasible. It is recommended that the exchange of views between the member States and the Commission should take place within the framework of the Council Working Party on Transport Questions.*

*The Committee thinks that the Commission should, as a matter of priority, give consideration to measures to promote air transport within the Community and free it of unnecessary constraints and burdens. (Cooperation on a common air traffic control system, improvement of air traffic control procedures, improvement of passenger and freight handling)<sup>(22)</sup>."*

2.10.2. On 20 December 1979<sup>(23)</sup> the Council issued the:

***Decision setting up a consultation procedure on relations between Member States and third countries in the field of air transport and on action relating to such matters within international organizations (80/50/EEC).***

2.10.3. This was the **first** Council Decision based on Article 84(2) of the EEC Treaty. The Council did not, however, accept the proposal that consultations should take place before the conclusion of bilateral agreements. It did, however, take account of the ESC's suggestion regarding the advisory body.

**2.11. Council Directive on the limitation of noise emissions from subsonic aircraft (COM(76) 57 final)**

2.11.1. On 20 December 1979 the Council also issued a Directive (80/51/EEC)<sup>(24)</sup> limiting the noise from aircraft registered in the EEC, on which the ESC had delivered a favourable Opinion on 28 October 1976 (Rapporteur: Mrs EVANS; voting: 44 votes for, 10 against and 8 abstentions)<sup>(25)</sup>.

**2.12. Air transport: a Community approach (memorandum of the Commission) of 4 July 1979**

2.12.1. In this first memorandum<sup>(26)</sup> the Commission drew attention to the high degree of interrelationship between Community air transport and the world system. The measures of the member States needed therefore to be better coordinated with those of international organizations and third countries.

2.12.2. This memorandum set out long, medium and short-term objectives for a Community air transport policy and listed a number of measures that in the Commission's view could be usefully initiated in order to improve the market structure within the framework of these objectives. The memorandum was designed to provoke a dialogue so that the way would be subsequently opened up for specific action.

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(21) OJ No. C 193 of 31 July 1979, p. 9.

(22) OJ No. C 72 of 24 March 1980, p. 13.

(23) OJ No. L 18 of 24 January 1980, p. 24.

(24) OJ No. L 18 of 24 January 1980, p. 24.

(25) OJ No. C 299 of 18 December 1976, p. 16.

(26) Supplement 5/79, Bulletin of the European Communities.

2.12.3. In this memorandum the Commission specified the following objectives for a common air transport policy:

*"1. a total network unhampered by national barriers with efficient services beneficial to the different user groups at prices as low as possible without discrimination;*

*2. financial soundness for the airlines, a diminution of their costs of operation and an increase in their productivity;*

*3. safeguarding the interests of airline workers in the general context of social progress including elimination of obstacles to free access to employment;*

*4. improvements in conditions of life for the general public and respect for the wider interests of our economies and societies<sup>(27)</sup>."*

2.12.4. The Commission envisaged a number of short and medium-term measures to pursue these four objectives:

***"Increased flexibility in market structure and procedures to benefit users and airlines"***.

*1. Wider application of cheap tariffs in the Community;*

*2. Improved possibilities for developing new scheduled services;*

*3. Extended scope for non-scheduled services;*

*4. Regulations applying the rules of competition in air transport;*

*5. Criteria for state subsidies;*

*6. Right of establishment;*

*7. Stabilizing exchange rates for tariff construction;*

*8. Compensation for passengers adversely affected by overbooking.*

***Measures directly to reduce operational costs of airlines***

*1. Simplification of formalities (facilitation);*

*2. Harmonization of technical standards for aircraft.*

***Action affecting staff***

*1. Working conditions of air crews and ground staff;*

*2. Mutual recognition of qualifications of air crews and ground staff.*

***Action affecting safety***

*The possibilities of growth in air transport are limited by capacity and safety problems of air traffic control. The Commission intends to examine these problems:*

***External relations***

*1. A consultation procedure (see 2.10.);*

*2. Improved relations with ICAO and ECAC<sup>(28)</sup>."*

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(27) Supplement 5/79, Bulletin of the European Communities, p. 3.

(28) idem p. 4/5.

2.12.5. On 3 July 1980 the ESC with 2 votes against and 5 abstentions adopted an Opinion <sup>(29)</sup> (Report by Mr ZÜNKLER) containing inter alia the following comments:

*"Although the Committee appreciates the analyses of the economic development of air transport, it deplores the fact that the Commission has not taken sufficient account of the social interests of workers. Here one sees the consequences of not involving the workers' organizations in the preparation of the memorandum. Furthermore the Committee thinks that an attempt should have been made to situate air transport in the context of general transport policy in order to balance the needs and contributions of the various sectors<sup>(30)</sup>."*

2.12.6. The ESC also took the view that it could contribute most meaningfully by adopting a pragmatic approach and putting forward proposals for direct and practicable improvements in the air transport situation in the Community, for the benefit of all concerned. Its comments concerned in the main the following:

1. Improvement of air traffic control services

- reviews of the capacity of the ATC system
- checking of the airways
- improvement of international cooperation
- harmonization of the training of ATC personnel

2. Facilitation of air transport

- simplification of controls and handling procedures
- passport checks
- baggage handling
- freight handling
- improvement of services
- compensation for overbooking
- improvement of services in the event of diversions
- facilities at airports

3. The economic framework

- experience with liberalization in the USA
- the situation in Europe
- conditions governing access to the market
- State aids
- improvement of market transparency
- improvement of tariff transparency
- rate formation criteria
- cost factors
- fares related to demand
- elimination of disadvantages due to monetary disparities
- clearer distinction between scheduled and charter traffic

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(29) OJ No. C 230 of 8 September 1980, p. 30.

(30) *idem*, p. 31/32.

#### 4. Expansion of air transport services

- demand for regional transport
- criteria for the introduction of regional services

2.12.7. As regards the **conditions of competition** and the closely related question of the economic efficiency of air transport, the Committee concluded from all experience to date that there would be **no short-term advantage** to the Community in changing the **present regulatory system** which had led to an extremely vigorous and continuous development of air transport. It pointed out that freer access to the market can shift services from thin to fat routes. Nevertheless the **long-term** aim should be the introduction of a **more competitive regime** in the interests of both the consumer and a healthy civil aviation industry. In line with the jurisprudence of the Court of Justice, the Committee considered that air transport must be brought within the ambit of Community legislation using the existing machinery, to provide a more flexible system of fares based on the present regulatory framework. Scheduled air transport services and **fares** had to be made more **transparent**. **Charges policy** should be revised and rate-setting measures should be checked. A study should be made of the possibility of improving **interregional air services**.

2.12.8. The ESC expressly reserved the right to make "an interim survey in due course of the progress made<sup>(31)</sup>."

#### 2.13. Council Directive of 16 December 1980 on future cooperation and mutual assistance between the Member States in the field of air accident investigation (80/1266/EEC)<sup>(32)</sup>

2.13.1. The Commission considered that this Directive would lead to better aircraft utilization and easier access to practical advice.

2.13.2. Curiously enough, the Council did not ask the ESC for an Opinion on this proposal, which was based on Article 84(2) of the EEC Treaty; the Council took the view that this Treaty provision formed a basis only for optional consultation.

#### 2.14. Proposal for a Council Regulation concerning the authorization of scheduled interregional air services for the transport of passengers, mail and cargo between Member States of 27 November 1980

2.14.1. In the course of the deliberations on the first memorandum the Council had asked the Commission to submit such a proposal. The Commission did **not** advocate completely **free access to the market**, but merely suggested that a certain precisely defined section be excluded from bilateral arrangements so that a larger number of airlines would have an opportunity to operate certain services outside the major routes.

2.14.2. This proposal was supported by ERA (European Regional Airlines Organization), consumers and ACE (Independent Air Carriers of the EC) as well as by the European Parliament. The representatives of the civil aviation organizations, the major airlines and CEEP (European Centre of Public Enterprises) either rejected the proposal or expressed certain reservations. In its unanimously adopted Opinion the ESC suggested that a Directive instead of a Regulation be issued (the Council adopted this suggestion) and called for a cautious opening-up of regional markets, maintenance of safety standards, regard for workers' interests, no open-skies policy along US lines, avoidance of negative effects on airlines (Opinion of 28 October 1981, Rapporteur: Mr KENNA)<sup>(33)</sup>.

2.14.3. In the course of the deliberations the proposal was heavily amended and was finally adopted by the Council as **Directive 83/416/EEC on 25 July 1983**<sup>(34)</sup>.

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(31) OJ No. C 230 of 8 September 1980, p. 34.

(32) OJ No. L 375 of 31 December 1980, p. 32.

(33) OJ No. C 343 of 31 December 1981, p. 13.

(34) OJ No. L 237 of 26 August 1983, p. 19.

2.14.4. It has not yet been possible to assess the practical impact of this Directive. A number of new regional services (for example, between Denmark and the UK) have, however, been introduced.

2.15. In 1980 the UK presented in the Council a **Draft Directive on the liberalization of the authorizations of Express Low Weight Cargo Air services**. The Council requested the Commission in July 1981 (Recommendation 81/560/EEC<sup>(35)</sup>) to study the proposal.

2.16. **Proposal for a Council Regulation applying Articles 85 and 86 of the Treaty (rules on competition applying to undertakings) to air transport of 31 July 1981 (COM(81) 396 final)<sup>(36)</sup>**

2.16.1. In its Opinion of 27 January 1983<sup>(37)</sup> (adopted by a majority in favour, with 6 votes against and 4 abstentions; Rapporteur: Mr BOS) the ESC reiterated its view (shared also by the European Parliament) that one should work towards application of the competition rules of the EEC Treaty to air transport with the necessary exceptions<sup>(38)</sup>.

2.16.2. The ESC made inter alia the following comments:

*"The Council should adopt a dual legal basis for its proposal, namely Articles 84(2) and 87, in view of the fact that rules applying Articles 85 and 86 to air transport are very important for this sector ..... **The Committee considers that a Commission proposal on competition should take special account of the specific problems of international commercial air transport.** The Committee notes with regret, however, that (a) there has so far been no common transport policy or common air transport policy, (b) the present proposal lays down more than mere procedural rules without formulating a coherent competition policy, and (c) there has so far been no common social policy for the employees of airlines and of airport operators. Any attempt to regulate sub-sectors is doomed to failure from the outset because there are no principles governing the areas in question. The Committee is therefore more than sceptical in its attitude to the present version of the Commission proposal. The Committee considers that it does not make sense either to regulate certain aspects of intra-Community air transport without reference to the international air transport organizations (ICAO, IATA, ECAC).*

*The Committee can support rules to ensure orderly competition in air transport only on the following conditions:*

- existing international agreements/agreements with third countries must be taken into account;*
- the aim of transport policy or competition policy measures should be to seek to balance out the interests of all concerned;*
- the measures must not be implemented at the expense of either air safety or the safeguarding of employment or the possible creation of new jobs;*
- air transport policy measures must take due account of problems in the areas of energy and environmental protection;*
- measures for increasing productivity and/or reducing tariffs which would have a negative effect on working conditions are to be rejected<sup>(39)</sup>."*

(35) OJ No. L 203 of 23 July 1981, p. 51.

(36) OJ N° C 291 of 12 November 1981, p. 4 and C 317 of 3 December 1981, p. 3.

(37) OJ No. C 77 of 21 March 1983, p. 20.

(38) OJ No. C 291 of 10 November 1980, p. 60

(39) See footnote 31, p. 21 and 22 (1.1.3. - 1.2.4.).



2.16.3. The proposal has been amended and now forms part of the second memorandum.

## **2.17. Report of 23 July 1981 on the level of scheduled passenger air fares and the procedures for fixing these fares**

2.17.1. In July 1980 the Council and the European Parliament had asked the Commission to submit a report on the level of scheduled air fares in the Community and on the procedures for fixing these fares. This report was issued on 23 July 1981<sup>(40)</sup>. In it the Commission concluded that neither the level of air fares nor airlines' profits were excessive in relation to costs. The procedures for fixing fares (monitoring by the State and fixing by the airlines) could, however, be improved.

## **2.18. Proposal for a Council Directive (EEC) on tariffs for scheduled air transport between Member States of 26 October 1981 (COM(81) 590 final)<sup>(41)</sup>**

2.18.1. The Commission proposed to the Council that uniform criteria and procedures be introduced for fixing intra-Community air passenger fares. "The main thrust should be to introduce more scope for airline innovation and consumer choice without leading to disruptive effects and endangering the viability of Community air lines and at the same time entailing unacceptable labour disturbances" (point 12 of the explanatory memorandum, page 7).

2.18.2. The ESC welcomed the objectives of the Commission's proposal in its Opinion adopted with one abstention on 27 January 1983<sup>(42)</sup> (Rapporteur: Mr KENNA), but it did not believe that these objectives would be achieved by the proposal in its present form. Extra layers of bureaucracy should be avoided. The proposed methods of ascertaining costs should be reviewed and public service obligations should be recognized. Services on regional routes should not be jeopardized. The Committee agreed with the Commission that multi-lateral tariffs coordination should continue, in the interests of consumers, airlines and employees.

## **2.19. Council Directive 83/206/EEC of 21 April 1983 amending Council Directive 80/51/EEC on the limitation of noise emissions from subsonic aircraft<sup>(43)</sup>**

2.19.1. In an Opinion adopted unanimously on 25 November 1981 (Rapporteur: Mr KENNA)<sup>(44)</sup>, the ESC approved the Commission's proposal for a Directive, which sought to place a ban on operations into the EEC by noisy aircraft registered outside the Community.

## **2.20. Other initiatives**

Still on the subject of noise, the Commission proposed (COM(81) 554 final) to **control the noise from helicopters**<sup>(45)</sup>. In 1979 the German Government proposed to the Council a Directive for **cooperation between member States with respect to search and rescue activities in member States' frontier zones in the case of actual or suspected air accidents**. Agreement could not be reached and the Council asked the Commission to study the matter further. On 16 December 1980 the Council approved its **Directive 80/1266/EEC concerning future cooperation and mutual assistance between Member States in the field of air accident investigation**<sup>(46)</sup>. It should also be recorded that the **Council Directive 83/643/EEC of 1 December 1983 on facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States**<sup>(47)</sup> is based on Article 84(2) of the Treaty (as well as other Articles).

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(40) COM(81) 398 final.

(41) OJ No. 78 of 30 March 1982, p. 6.

(42) OJ No. C 77 of 21 March 1983, p. 27.

(43) OJ No. L 117 of 4 May 1983, p. 15.

(44) OJ No. C 348 of 31 December 1983, p. 3.

(45) OJ No. C 275 of 27 October 1981, p. 2 (proposal); (OJ No. C 112 of 3 May 1982, (ESC Opinion).

(46) OJ No. L 375 of 31 December 1980, p. 32.

(47) OJ No. L 359 of 22 December 1983, p. 8.

### **3. New ideas of the Commission concerning a common air transport policy - summary of the second memorandum of 15 March 1984**

#### **3.1. Reactions to the first memorandum of 1979**

3.1.1. In two Resolutions<sup>(48)</sup> adopted in 1980 the **European Parliament** called upon the Commission to submit proposals for improving air transport through measures such as the phased implementation of the competition provisions at European level ("application of the provisions on competition in the EEC Treaty with the necessary derogations").

3.1.2. The Council took note of the memorandum without detailed discussion.

3.1.3. The **national airlines** considered the existing system to be basically serviceable and stipulated that any change (tariffs, competition, capacity, productivity) must be gradual.

3.1.4. The employee organizations basically rejected the first memorandum of 1979, fearing that a more flexible civil aviation policy could have consequences, the costs of which would ultimately have to be borne by taxpayers, users and airline employees. They therefore urged the setting-up of a joint committee for this sector.

3.1.5. Reservations were expressed by ICAO, which took the view that technical and operational problems could only be resolved within an international (ICAO) or a regional (ECAC) framework.

3.1.6. In contrast, the **independent airlines and user organizations** generally welcomed the Commission's initiatives. More competition, freer access to the market and changes in tariff-fixing procedures were considered to be urgently necessary.

3.1.7. In its Opinion of 3 July 1980<sup>(49)</sup> the ESC, like the European Parliament<sup>(50)</sup> subsequently, came out in favour of a common air policy with due regard for the following points:

- no short term advantages in changing the existing regulatory system;
- in the long term a more competitive regime should be introduced in the interests of both the consumer and a healthy civil aviation industry;
- Government imposed formalities and controls should be made more flexible;
- due account should be taken of the social aspects of future arrangements;
- the safety of air transport must not suffer under the pressure of increased competition.

#### **3.2. Economic developments in the air transport sector since the first memorandum as a starting point for further ideas**

3.2.1. In part 2 of its memorandum the Commission accepts a number of economic points:

- The major EEC scheduled airlines earn only about 40% of their revenue from operations within Europe (25% within the Community).
- The bulk (60%) of the revenue is earned in international and in particular in intercontinental traffic.
- The international scheduled services of the AEA/EEC airlines had operating ratios (before interest) of only 99.1% and 102.5% in 1981 and 1982 respectively.
- At least 108.1% would have been needed to enable the airlines to cover interest charges, dividends and renewal of their fleets. These figures are based on a minimum profit (before taxes) of 7.5% of revenue.

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(48) OJ No. C 291 of 10 November 1980, p. 60 and 65.

(49) OJ No. C 230 of 8 September 1980, p. 30.

(50) See footnote 37 (p. 60).

3.2.2. The Commission states that air fares in Europe (which are often criticized for being too high) admittedly sometimes compare unfavourably with fares in the USA and on North Atlantic routes but are in most cases reasonably related to the costs of the European airlines.

3.2.3. A study carried out at the Commission's request indicates also that there are major cost factors (fuel, ATC charges, airport charges) over which the airlines have little control. These are put at around 60% of costs, so that only about 40% can be influenced by the airlines.

3.2.4. In the Commission's view airlines' costs are nevertheless still too high: "But it is likely that the effect of the recession would have been less dramatic if airlines had been subject to a steady and continuing commercial pressure to control their operations and their costs. It is also likely that a more competitive environment would reduce the temptation on governments to expect their airlines to employ more staff than they really need and to use types of aircraft which are not necessarily those commercially most suitable."<sup>(51)</sup> (The national carriers point out that they have increased their productivity per employee by 55% over 10 years.)

### **3.3. Objectives of the second memorandum <sup>(52)</sup>**

#### **3.3.1. Balancing of interests without deregulation**

3.3.1.1. The Commission states that it is seeking with this memorandum to develop the objectives of its 1979 memorandum (see 2.12.3. and 2.12.4.) and to propose an overall framework for a common air transport policy in the interests of consumers, the airlines and their employees. This policy is aimed at improving the efficiency and the profitability of the air transport industry as well as the quality and the price of the services it offers, while at the same time maintaining the advantages of the present system.

3.3.1.2. The Commission takes the view that, given the differences between the Community and the USA there is no point in adopting for Europe the sort of deregulation implemented in the USA several years ago. These differences are:

- the US is a large unified market reserved to US carriers;
- the Government accepted the social and economic effects of deregulation, including the possible bankruptcy of any US carrier.

#### **3.3.2. Flexibility and more competition in the present regulatory system**

3.3.2.1. The Commission's approach is accordingly based in the main on the structure of the present regulatory system with its mix of bilateral agreements and arrangements between governments and cooperation between the airlines.

3.3.2.2. Changes are, however, called for to produce a more flexible system allowing competition greater play, with the aim of making the airlines more efficient; enabling efficient, innovatory airlines to make a profit; stimulating growth and thereby creating jobs; and finally, providing a service more in tune with passengers' requirements.

3.3.2.3. A safety net should be provided guaranteeing the airlines of each member State party to bilateral agreements at least 25% of the market with every other member State.

3.3.2.4. The Commission is convinced that a package of measures along these lines will gradually put civil aviation on a more efficient footing and enable it to get a tighter grip on its costs. The policy is built around action to relax the current system of State control combined with inter-airline agreements and to pass on the resultant savings to the passengers.

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(51) See memorandum, point 42, p. 23.

(52) See memorandum, part 3, point 44, p. 27/28.

### **3.3.3. Restriction to intra-Community air transport**

3.3.3.1. The Commission's proposals relate only to air transport between member States and do not cover services to third countries.

### **3.3.4. Other important guidelines for the common air transport policy**

- efficient and enterprising airlines should be able to make a sufficient profit;
- it should reduce the costs which lie outside airlines' control;
- it should take into account the public service obligations that some governments impose on their airlines;
- it should seek to control State aids to the air transport sector;
- it should not endanger the maintenance of high levels of safety;
- it should take into account the job prospects of those employed in the industry;
- it should include action in the field of research and aircraft noise.

## **3.4. Measures set out in the second memorandum <sup>(53)</sup>**

### **3.4.1. Policy proposals regarding competition**

#### **3.4.1.1. Bilateral agreements between member States**

The Commission proposes that the member States will no longer consider pooling - whether of capacity or of revenue - to be a sine qua non for the operations covered by bilateral agreements. To open the door to more competition, member States should not insist on a strict 50:50 share of the traffic.

At the same time the Commission plans safeguards to prevent any airline from being squeezed out of any market altogether. To prevent this, the Community rules should guarantee any one State 25% of the market at least.

#### **3.4.1.2. Amendments to the 1981 proposal on air tariffs**

The new proposal takes account of the Opinions issued by the European Parliament and by the Economic and Social Committee. It also reflects recent developments in the economy and in the relevant legislation, and in particular the agreements between the USA and some of the countries in the ECAC (European Civil Aviation Conference) establishing a number of reference tariffs and "zones of reasonableness" i.e. a pricing range within which the airlines can establish their tariffs freely without needing to seek government approval.

Under normal circumstances the fares proposed by the airlines will continue, as now, to require the approval of both the Governments concerned. The amendment is designed to eliminate the need for arbitration in the case of a dispute between Governments. If, after consultation, the dispute still persists, the country of origin of the disputed fare would have the ultimate decision, unless the other country then agreed to a "zones of flexibility" regime for the route in question. Criteria for such zones are included in the amendment.

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(53) See memorandum, part 3, points 45 et seq.

### **3.4.1.3. Inter-airline agreements**

Inter-airline agreements lay down the details of how airlines cooperate in practice and cover mainly schedules, capacity sharing, revenue sharing and tariffs.

#### **3.4.1.3.1. Capacity sharing**

The Commission feels that inter-airline capacity-sharing agreements should be allowed, provided these are optional and allow either party to withdraw at reasonably short notice.

#### **3.4.1.3.2. Revenue sharing**

Capacity-sharing agreements usually depend on sharing out the revenue earned by both partners. Sometimes the revenue is shared strictly in proportion to the capacity provided by each partner (open pool). More usually, there is a limit imposed on the transfer of revenue from the more successful to the less successful partner (limited pool).

The Commission feels that revenue pools should be permitted provided they satisfy certain criteria. For instance, open pools should not be exempted. On the other hand, limited pools are permissible provided the share-out of revenue improves the service on the route covered by the agreement.

#### **3.4.1.3.3. Joint operations**

The Commission feels that agreements of this type cannot be exempted *en bloc*. Nonetheless they could be exempted individually if, for example, there is only one airline in a position to operate a given route economically.

#### **3.4.1.3.4. Tariff consultations**

The Commission supports group exemptions for tariff consultations provided:

- airlines retain the effective right to act independently, i.e. both to propose and to apply tariffs independently of other airlines, subject only to the limited government control referred to above;
- the member States concerned and the Commission are authorised to sit in as observers at the tariff negotiations.

#### **3.4.1.3.5. Nature of exemptions**

Bearing in mind that more open competition should be encouraged but that the airlines must be allowed time to adjust to it, the Commission suggests that it would be wise to limit any exemptions to **seven years**, after which they would come up for review.

### **3.4.2. Action on State aids**

The Commission is well aware that the measures to relax the current system will not work unless State aids are controlled as well. Failure to apply the rules on State aid properly could lead to any added competition between the airlines merely being financed by State aid - in other words, to a subsidy race.

The Commission memorandum therefore lays down the guidelines which the Commission will follow in monitoring State aid to airlines, as required by the Treaty.

### **3.4.3. Measures to reduce airline costs**

#### **3.4.3.1. Infrastructure**

A recent Commission study on airport capacity and air traffic control concluded that there were serious inadequacies in the air route system in a number of countries or regions in Europe.

The Commission has no intention of becoming directly involved in air traffic control (ATC). Nonetheless it proposes to study the shortcomings of the present ATC system which, the Commission feels, unreasonably hampers the airlines. It hopes to lay down efficiency criteria for all airports and to lay down general principles governing charges at major airports, based on the rules for other modes of transport.

#### **3.4.3.2. Facilitation of air freight services**

In 1984 the Commission intended to submit a report on the problems facing intra-Community air freight services today. Some of these problems will in any case be solved by the recently-adopted Council Directive on the facilitation of formalities and inspections in respect of the carriage of goods between member States. The Commission plans to put a further proposal to the Council on this matter.

### **3.4.4. Other measures**

#### **3.4.4.1. Access to the market**

To follow up the important Directive on scheduled inter-regional air services, adopted by the Council in 1983, the Commission feels that the civil aviation industry would be given a boost and services to the passenger would improve if measures were taken to make it easier for smaller airlines to run scheduled services. Two types of measures are contemplated: (a) Many of the bilateral agreements between member States include the right to operate routes not served at the moment but which only airlines flying smaller better-suited aircraft could run profitably. In this way it should be possible to encourage small airlines to expand without seriously damaging the major lines - for example, if the Community rules stated that any airline in either of the two States concerned may be authorized to take up any unused rights granted in the bilateral agreements. The Commission understands that a system similar to this is working successfully in Scandinavia. (b) Another possibility is to abandon all restrictions (apart from the usual safety and professional competence regulations) on intra-Community services by Community operators using aircraft with, say, 25 seats or less.

#### **3.4.4.2. Non-scheduled services**

The Commission regards non-scheduled services as an important element in maintaining competition throughout the aviation sector. To a certain degree, they act as a check on and stimulus to scheduled services and the fares demanded for them.

The Commission proposes two changes:

- a) A small percentage (for example, 15%) of the seats on the non-scheduled flights should be sold on a "seat only" basis.
- b) Once authorised, non-scheduled passenger services should not be prevented from carrying cargo and mail.

#### **3.4.4.3. Social issues**

Social issues raised in the civil aviation sector, or for that matter in any other sector of the economy, should in the first place be settled within the broader framework of the Community's general social policy.

Civil aviation directly provides some 300,000 jobs in the Community, plus perhaps another 200,000 indirectly. The Commission is anxious that any schemes proposed should not only improve the productivity of the airlines but also stimulate activity and open up new opportunities for carriers. In this way the net long-term effect of these schemes should be to create jobs.

For some time the Commission has been studying the situation regarding mutual recognition of licences and the national regulations limiting crews' flying time. Once the findings are known the Commission will consider what further action, if any, should be taken.

#### **3.4.4.4. Research**

In pursuit of one of the objectives of the Commission's extensive research programme on the development of new technologies, the Commission is now working on a research programme for the air transport sector, similar to the programme for surface transport. It will be submitting the programme to the Council later in the year.

#### **3.4.4.5. Aircraft noise**

In this area the Commission is pursuing general Treaty objectives, which include protection and improvement of living conditions.

#### **3.4.4.6. General aviation**

Finally, the Commission has proposed a series of measures to improve conditions in the general aviation sector in the Community, including, for example, measures to speed up border crossings, mutual recognition of certificates of air worthiness and other action of this type.

#### **3.4.5. International relations**

The Commission recognises that the measures it envisages can have an impact on other countries. It takes the view that the Member States are obliged under Article 234 of the EEC Treaty to take steps to eliminate any incompatibilities with the Treaty. The Commission also envisages consultations with these countries (Article 229).

### **4. Comments on the Second Memorandum**

#### **4.1. Introduction**

4.1.1. In preparing the Report and Opinion on the Commission's Second Memorandum the Section decided to limit detailed examination to the substantive issues as contained in Part 3 of the Memorandum. This Part states the general guidelines for the development of a Common Air Transport Policy. A more detailed examination of the specific proposals as set down in Appendices I to VI follows on from the examination of Part 3 of the Memorandum.

4.1.2. As regards the reactions to the First Memorandum (in Part 1) and developments since the First Memorandum (in Part 2) the Report and the Opinion merely take note of what the Commission has stated.

4.1.3. Due to the complexity of the subject, as well as the scope of the specific proposals and the need to produce a concise Opinion, the Section decided to structure the Report by dealing with the topics discussed at the hearings in October 1984. These topics are regrouped to improve presentation.

#### **4.2. General Comments on the Commission's basic considerations concerning a Common Air Transport policy as contained in Part 3 of the Memorandum**

4.2.1. The general approach for the future development of an air transport policy for Europe can be stated simply as an attempt to introduce a greater measure of freedom and flexibility in the way in which air transport policy is decided and the way in which airlines and national governments should behave. It adds a Community dimension to what has been a cooperative structure based on bilateral agreements. Important examples of this are the proposal on tariff formulation and the application of the Rules of Competition. There is no attempt in the Commission's document to introduce so-called deregulation as in the United States. At the same time change is proposed.

4.2.2. The Section also notes that the High Level Working Group for Air Transport, established by the Council in May 1984 submitted its Report and draft guidelines to the Council in December 1984. It would appear that this Report deals with only a part of the Memorandum, and excludes the following questions: safety; social issues, general aviation (equivalence of licences and qualifications), border controls, search and rescue, cooperation, etc. Because the Report has not been published officially, the Section does not give its views on it even though it contains guidelines which may be implemented by the Council. In any event, the mandate of the Section is to comment on the Memorandum itself and no other document. It insists however, that the whole of the Commission Memorandum should be considered. Since the Memorandum was presented, the situation in the civil aviation market has markedly altered. The Commission and the Council must take account of these changes, particularly in the light of the Committee's Opinion.

4.2.3. Members of the Section have different views on the basic philosophy of the Commission as well as the means of reaching the objectives set down. The main differences may be summarized as follows:

4.2.3.1. Some members of the Section argue very strongly for a much more liberal approach than is proposed by the Commission. They suggest that approach should be based on the provisions of Article 2 of the Treaty. These provisions are comprehensive and do not exclude any commercial sector. They therefore include air transport. These members maintain that the objectives of the Community as set out in Article 2 must be implemented via a Common Air Transport Policy concurrently with the application of the Rules of Competition. In short the Treaty does not exempt air transport from the development of the Common Market. Article 84(2) simply provides a certain flexibility for the Council to determine the rules and the procedures for achieving the objective of Article 2 of the Treaty - that is the creation of a common internal air transport market. Concurrently with such rules and procedures, which are to be adopted within the framework of a common air transport policy, the general rules and provisions of the Treaty apply. Exemptions from the prohibitions of Article 85(1) can only be granted under the provisions of Article 85(3). In other words these members advocate the primary objective of free competition to create a common internal market based on Euro-style rather than US-style deregulation.

4.2.3.2. Other members take a different view. They suggest that the present system of bilateral agreements, albeit with some changes, is still the best for all, i.e. airlines, consumers, workers and Member States. They also believe that the present system provides for the maintenance of the public service obligations of scheduled air services.



They argue that the Community objective must be to provide an overall framework for a common air transport policy, which is not clearly stated in Memorandum No. 2. These members draw attention to the statement of the Committee in its Opinion of 27 January 1983 (application of competition rules to undertakings)<sup>(54)</sup> that any attempt to regulate sub-sectors of air transport cannot succeed until such time as the Community establishes, as a minimum, guiding principles to govern the areas in question, as a major step towards the establishment of a common air transport policy.

4.2.3.3. Even though the Section acknowledges, and this was also evident from the hearings, that Rules of Competition must apply to air transport, there is still a divergence of views on how this aspect can or should be applied within the framework of a Common Air Transport Policy. Nonetheless, the Section feels, particularly in view of the Committee's earlier Opinions on the First Memorandum<sup>(55)</sup> and the air tariffs<sup>(56)</sup>, that despite the difficulties a move towards a Common Air Transport Policy is a clear objective.

4.2.3.4. The Section is in general agreement on the need to take due account of the social aspects, particularly the future employment prospects and conditions of work for those employed in the industry. However, there are also different views as to how far Community legislation can go in this area. The Section notes in particular that the Memorandum does not deal with the social issues in sufficient detail, including the question of consultation of employees.

4.2.3.4.1. Some members doubt that the social aspects could be given due weight in a more liberal system (See also paragraph 4.4.).

4.2.4. These general views on the broad guidelines for a common air transport policy as set out in Part 3 of the Memorandum are also raised in the context of the Section's comments on the individual proposals contained in the Annexes. It is logical that the differences on broad policy should be reflected in the means of achieving this policy. The Section decided that the main thrust of the Committee's Opinion would be the examination of these specific proposals.

### **4.3. Specific comments on the Commission's proposals contained in the Annexes**

#### **4.3.1. Bilateral Agreements between Member States (Annex I)**

4.3.1.1. Some members believe that a guaranteed share of capacity for either State in excess of 30% would so limit the potential for competition as to make it inoperable. They also note that the Commission's proposal confuses the share of the total traffic, carried on all routes between two Member States, with the capacity which the airlines of each side would be allowed to provide on individual routes. The statistics required would be difficult to collect and validate and would place an unacceptable additional burden on both airlines and governments. Furthermore, if the situation arose where the safety net was to apply, a government would have to decide how to allocate the capacity between trunk and regional routes - perhaps to the disadvantage of the regions (although the Commission's proposal for 75% - 25% share-out excludes traffic under the Inter-regional Services Directive 83/416/EEC).

4.3.1.2. The Section agrees with the Commission that the Member States cannot demand of their airlines a **specific approach to capacity or revenue sharing** with another airline on the same route. Arrangements of this kind should, as a matter of principle, be the responsibility of the airlines.

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(54) See footnote 37.

(55) See footnote 29.

(56) See footnote 42.

4.3.1.2.1. The Section also accepts the principle (proposed by the Commission) that scheduled air traffic should not be shared between the airlines of two States on a rigid 50:50 basis, but that the shares can vary. This principle already applies in practice from two provisions in bilateral air services agreements between Member States viz.:

- the designated 3rd/4th freedom carriers of one party should be granted fair and equal opportunity to compete with the designated airline(s) of the other party;
- the airlines may offer a capacity corresponding to the prospective traffic demand.

4.3.1.2.2. Taking account of the above-mentioned principles, which are embodied in the majority of the bilateral agreements and which allow flexibility in the capacity offered, some members question whether a guarantee of traffic share is required at all. Others think the figure of 25% (to which the traffic share of the airlines of one side could drop before a Member State may intervene) is too low. This could create an incentive for building up excess capacity, with all its detrimental consequences for the economic situation of the airlines concerned, for the social circumstances of their employees and for energy consumption for the environment, for other carriers and for the taxpayer, without any direct or indirect benefits for consumers.

4.3.1.2.3. The effects of fixing any general percentage figure have not yet been properly investigated by the Commission or submitted for consideration. The Section therefore strongly recommends that, taking account of the above arguments, the Commission should carry out studies of market access and flexibility margins and submit them for consideration. It should clearly specify the criteria involved. In the absence of clearly defined criteria any change in current practice would entail incalculable risks for the existing system. In this connection, studies of the effects of deregulation in the United States could be very useful.

#### **4.3.2. Tariffs (Annex II)**

4.3.2.0. The second memorandum makes the following changes from its original draft for a fares directive :

- fares to be based on the cost of the applicant carrier;
- a reasonable amount of cross-subsidization between routes to be allowed;
- the concept of zones of flexibility is introduced.

4.3.2.1. For some members freedom to compete for a greater share of traffic depends not only on reducing capacity limitations, but also on the ability of airlines to compete on price. Without sufficient flexibility in the control of fares there can be no incentive for airlines to seek to gain a larger share of capacity and to fill that capacity with profitable traffic. The members also doubt the value of tariff zones because zones will limit any liberalization measures to the narrow span of fares within the zones.

4.3.2.1.1. The effect of the Commission's proposals for zones could be very complex. Their effect could be to permit governments to resist change to the present system of double approval. Only where one or both governments concerned in a route wished to liberalize would the Commission's proposals have any relevance.

4.3.2.1.2. The Commission proposes that fares within the zones would normally be free of government approval unless the governments concerned agreed to operate a system of double disapproval or country of origin approval. These proposals have to be taken in conjunction with the proposals for exemptions from the Competition Rules (Annexes IIIB and IIIC). If airlines were to remain free to agree fares between themselves and also to be free of any government approval they would be able to raise fares to the top of any zone e.g. 15% above the economy fare level. Double disapproval would mean that any government resisting an increase in fares, which were already considered to be too high, would lose the power to prevent such increases (it has the power under the present system of double approval) if the other government approved the increase. These members feel that an increase in fares could follow on some routes.

4.3.2.1.3. They conclude that instead of zones a country of origin approval scheme should apply. But of course, approval would have to be tied to Community agreed criteria to which ALL fares would have to conform before they could be approved and against which they could be tested in case of dispute. The Commission's proposed criteria appear to be ineffective and difficult to enforce. The Council has already adopted the appropriate criteria in the inter Regional Air Services Directive - Article 7, which came into force on 1 October 1984. These criteria are that a fare must be commercially related, without subsidy, to the cost of the individual airline's operations on the route concerned. The Inter-Regional Air Services Directive provides for governments' double approval on this basis. Subject to such appropriate and enforceable criteria, double approval is an acceptable system. In that specific circumstance it would be appropriate for the Commission to have a formal arbitration and enforcement rule.

4.3.2.1.4. The Commission's proposals would permit cross subsidization of fares. However, this must not result in predatory pricing with the possibility of driving competitors off a route.

4.3.2.2. Other members reiterate the Committee's support in earlier Opinions for the fundamental objectives of the Commission proposal, while repeating the Committee's reservations on certain important individual proposals. They note that some of these reservations were taken into account in the present Memorandum.

4.3.2.2.1. While agreeing with the basic objectives, these members have reservations as to whether a zone system would speed up the fares approval process. They agree that zones as proposed by the Commission will be introduced only where governments so desire. They point to the experience on the North Atlantic as an indication that zones imply greater involvement of governments and a weakening of the interline system. They note the efforts of the airlines in AEA and IATA to study tariff zone concepts and look forward to the results of this study when available.

4.3.2.2.2. These members see the crux of the tariffs problem as being a speedy and equitable resolution of dispute between governments. In this context they reiterate the concern expressed in a previous Opinion from the Committee about the one-sided fixing of tariffs. They advocate that in the case of a dispute either government should be free to refer the matter to an arbitration tribunal.

4.3.2.2.3. These members accept the suggestion of the Commission that an individual air carrier, too, should have the right - without having to consult other airlines first - to initiate new tariffs. However, there are advantages in allowing consultation before filing a tariff. These members note that such consultation is sanctioned in the Memorandum.

4.3.2.2.4. Referring to the comments in paragraph 4.3.2.1.4., members are opposed to any procedure which makes it possible for an individual Member State to authorize its airline to apply predatory or dumping tariffs. Such tariffs are not in the interest of the industry and its employees or in the longer-term interest of the consumer. Consistent and cumulative application of the tariff-fixing criteria proposed by the Commission - if necessary reviewed in an arbitration procedure as suggested by the Committee - will, in several members' view prevent predatory and dumping practices.

4.3.2.2.5. The Section notes the Tariff Reference Action Package (TRAPAG) recently introduced by IATA. This package responds to current aeropolitical and regulatory evolution in Europe. It will give IATA Fares Conferences flexibility to deal with market realities and increase participation by the public and by governments :

- increased flexibility in the pricing process so as to evolve in line with market needs,
- promote simplification of tariffs,
- facilitation of tariff disputes,
- conferences to be open to consumers and governments.

### 4.3.3. Competition (Annex III)

4.3.3.1.1. The Commission's proposals (Annex IIIA) for a procedural Competition Regulation for air transport follow the lines of Regulations 17 (concerning the non-transport sector) and 1017 (concerning transport other than sea and air). For some members it is an appropriate and desirable measure.

4.3.3.1.2. Annex IIIB is an enabling regulation which empowers the Commission to exercise the application of Article 85(3) of the Competition Rules. This again follows the precedents of Regulations 17 and 1017. These same members also agree with these proposals.

4.3.3.1.3. Annex IIIC has been provided by the Commission for information about the block exemptions from the Competition Rules of the Treaty which it would be favourably disposed to give if the Council adopted the proposals which the Commission has put forward in the other Annexes to the Memorandum. These same members consider the exemptions excessive. They note the IATA and AEA statement at the hearings that fares agreements and standard fares are not essential for the continuation of the worldwide interlining system and that revenue pools are not necessary for inter-airline scheduling agreements.

4.3.3.1.4. Other members point out, however, that the reality is that the interline facility is dependent on fares agreements and standard fares. The Section notes that IATA clarified its situation in writing so as to reaffirm this latter point of view.

4.3.3.1.5. Other members point out that airlines maintain that the consumer benefits of interlining come under severe stress where specific fares are not known and accepted in advance by all airlines. These members also suggest that revenue pools are usually an integral part of the scheduling agreement.

4.3.3.1.6. Some members consider that the Commission's proposals under Article 84(2) fall short of constituting a Community air transport policy sufficient to permit the successful implementation of a common air transport market. The proposals would have little practical effect to that end even if no exemptions from the Competition Rules were granted. With the block exemptions little, if any, change would arise; the Community would still not have an air transport market; consumers would derive little if any benefit.

4.3.3.2. Other members have a different view. They regret that the Commission ignored the suggestion made in the Committee's Opinion of 27 January 1983 that the proposal be based on Article 84(2) of the Treaty as well as Article 87. They note that the Commission, in accordance with the suggestion of the Committee, has now announced an additional Regulation concerning pooling and tariff agreements. They repeat the other suggestions regarding the Commission proposal made in the Committee's Opinion of 27 January 1983.

4.3.3.2.1. These members believe that the enabling Regulation implementing Article 85(3) of the Treaty is inadmissible on both legal and de facto grounds. Pursuant to Article 87(1) and (2)(b) of the Treaty, only the Council is authorized to issue Regulations under Articles 85 and 86. In contrast, the Commission has a monitoring and investigatory role which emerges quite clearly from Article 89 of the Treaty.

4.3.3.2.2. These members claim that it is not possible for the Council, which is the legislator provided for in the Treaty, to delegate completely to the Commission the implementation of provisions and the definition of their material content. The separation of legislative, executive and judicial powers would be violated. They therefore suggest that in order to speed up procedures, the enabling Regulation be abandoned and the exempting Regulation be issued directly. This would be in keeping with procedure in other transport modes.

4.3.3.2.3. These members consider that regulation of certain aspects of intra-Community air transport without taking account of supranational forms of organization and world-wide practices could be detrimental.

4.3.3.2.4. These members suggest that joint operations should be included in group exemptions because they improve the service to users especially on routes where only one airline can operate economically.

4.3.3.2.5. These members hold the view that pooling and tariff agreements have significant advantages for consumers, air carriers and the infrastructure. Accordingly there should be no time limit on the planned exempting Regulation.

4.3.3.2.6. These same members see that although a maximum of 1% for the transfer of pooling revenue will meet most individual cases, at the lower limit airlines are less likely to cooperate in their own and users' interest. Therefore an increase of the transfer limit seems desirable in order to maintain the advantages in pooling agreements.

4.3.3.2.7. With regard to international relations with non-EEC countries, some members note that the Regulation on competition, which originally was intended to apply to international air transport from or to one or more Community airports (including flights to or from non-EEC countries) has now been amended to apply only between Community airports. This still leaves open the legal status of operations between airports in the EEC and airports outside the EEC. They point out that, if the EEC competition rules are considered to apply outside the Community, there are likely to be legal uncertainties and conflicts with non-EEC governments. At the same time, the Section is concerned about the granting of group exemptions for flights within the Community while excluding those to and from the Community. This could be very disruptive to international relations, both at government and airline level. The Commission has acknowledged that there is interaction between Community air transport and world-wide air transport. Apart from any other consideration, intra-Community routes are often operated as extensions of long-haul routes to third countries.

#### **4.3.4. State Aids (Annex IV)**

4.3.4.1. The Section feels that effective control of subsidies is essential for competition. In general it endorses the Commission's guidelines on State aids.

#### **Airports**

4.3.4.2. The only tangible competition between airports in Europe is that between the major airports in respect of long-distance intercontinental services (i.e. basically between London, Paris, Frankfurt and Amsterdam) and between airports situated close to each other on either side of an international frontier (i.e. basically between Switzerland and France/Italy). Airports no longer receive State aids but recoup their costs by means of landing charges and passenger charges on the airlines and by concessions, primarily duty-free shops. It is noted that ICAO and IATA have consistently stated that airport and ATC facilities should not be allocated or charged for in a discriminatory manner, while recognizing that purely domestic operations are a special category. In the context of proposals for a European infrastructure policy, the development of airport and other aviation facilities could be included.

## **Airlines**

4.3.4.3. With regard to airlines, members believe that unless distortions of competition through direct or indirect State aids are eliminated progress in opening up the European air transport market does not seem possible. There is a risk of a subsidy race unless the problem of State aids is solved simultaneously with the first liberalization steps.

4.3.4.4. The Section feels that the Commission should submit precise proposals on State aids. These should contain clear definitions and criteria to determine whether the State aid is compatible with the Treaty.

### **4.3.5. Non-discrimination and Standstill Clause (Annex V)**

4.3.5.1. The Section agrees that the Commission is correct in proposing a standstill and non-discrimination measure. Failure to act quickly could lead to an even more rigid regulatory system before a Community air transport policy is adopted.

## **4.4. Specific Comments to other measures**

### **4.4.1. Social issues**

4.4.1.1. As already noted in paragraph 4.2.3.4. the Section agrees that the Memorandum does not fully cover the interests of employees. Some members point out that proposals regarding competition could have a negative effect on employment prospects. They also express concern that commercial pressure could affect working conditions and employment prospects and they call for greater consultation with employees on the future development of European air transport. They argue that increased competition should not be detrimental to flight safety standards. In addition these members feel that the need to guarantee fair competition and to secure economic and social progress and economic development cannot be interpreted exclusively to the advantage of one interest group. An industry which is dependent on so many varied factors should not be regulated solely by market forces. Members also note that the Commission's Memorandum makes no reference to productivity gains already achieved in the industry or the introduction of modern technologies and its effect on employment. These members also call for speedy implementation of the promise in the Memorandum to produce proposals regarding the mutual recognition of licences and the limits on flight crew duty in order to harmonize the conditions of competition.

4.4.1.2. While accepting the need to take due account of social aspects, other members point out that the general policy of social legislation for the Community will in any event apply to the air transport sector. They also point out that the efficient economic development of the European Air Transport System would create employment opportunities through increases in the volume of traffic carried, particularly on scheduled services. These aspects must also be borne in mind in the evolution of a common air transport policy. These members are also in full support of the principle of free movement of workers and believe that air transport workers are already freely mobile. They suggest that EEC Regulations on the mutual recognition of licences should not inhibit - or increase the cost of - such freedom. Similarly, they see little need for the harmonization of statutory flying crew duty limits, which, being based on ICAO recommendations, are broadly similar throughout Europe. Where unfair competition arises from an abuse, the local statutory authority should deal with it. There are dangers in a broad-based harmonization, including the choice of the "lowest common demoninator" level; confusion between statutory limits and industrial limits; and no consideration of the conditions associated with the hourly limits, thereby harming flexibility and efficiency.

#### **4.4.2. Economic, social and industrial importance of general aviation**

4.4.2.1. General aviation is generally understood to mean any form of civil aviation by fixed-wing or rotary-wing aircraft apart from the services provided by the major airlines. This definition covers a large number of activities ranging from executive travel, crop spraying, air taxis and pilot training, to pleasure trips and sporting activities.

4.4.2.2. Most flights take the form of basic and advanced training, business trips and other activities such as publicity, aerial photography and cartography, mountain rescue, air- ambulance work and a whole host of economic and social activities which may have a positive influence on the aerodrome's immediate surroundings.

4.4.2.3. In many countries, light aircraft are used to monitor road traffic, smuggling, forest fires, watercourses and possible pollution, overhead lines, etc.

4.4.2.4. General aviation accounts for 96% of the total number of civil aircraft in the western world (75% falling into the category of executive travel), 96% of pilots, 80% of all civil aviation flying hours (50 million), and more than 50% of the world's air passenger traffic. The sector cannot therefore be ignored when it comes to drawing up a European policy. Its 300,000 aircraft consume less than 7% of the fuel consumed by civil aviation. General aviation makes an effective contribution to the economic activity of individual countries by providing them with a flexible means of transport (even in regions away from main traffic flows) and by supporting a relatively high-tech industry employing a skilled labour force. General aviation constitutes the biggest and most rapidly expanding market. It operates internationally and three years ago was still selling more than 18,000 new aircraft a year. It provides an outlet for many European constructors and sub-contractors and offers a source of employment for pilots, mechanics, etc.

4.4.2.5. It ought to be possible to remove some of the main obstacles to the development of general aviation in Europe. The European Community could play a decisive role in this respect by taking measures designed to guarantee the promotion of general aviation within the framework of regional development policy and in the interests of the aeronautics industry.

4.4.2.6. The aeronautics industry would gain immensely from a better integrated and more rationally-organized aviation market. Such a situation could be brought about by Community action. It will be necessary to carry out detailed studies with the help and active support of the industry concerned before medium-term initiatives are taken.

#### **4.4.3. Search and rescue cooperation (point 25, page 14 of the Memorandum)**

4.4.3.1. The Section would refer to three earlier Opinions<sup>(57)</sup> dealing with the free movement of rescue and emergency equipment (especially by air) and the development of high technology (and possibly multi-purpose) equipment in the field of civil defence (sea rescue, fire-fighting, combatting oil pollution, etc.).

4.4.3.2. The Section endorses point 25 of the Memorandum although it would underline that such cooperation already exists in the air above the seas.

#### **4.4.4. Accident investigation (point 26, page 15 of the Memorandum)**

4.4.4.1. Many countries publish accident reports from which lessons can be learnt. Such reports are published either in shortened form or in extenso. Such practices should be encouraged - as should any publications likely to lead to improved safety.

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(57) Opinion on the proposal for a Council Regulation establishing a Community scheme to provide forests in the Community with increased protection against fire and acid rain (OJ No. C 248 of 17/9/84, p. 1); Opinion on the Proposal for a Council Directive on the drawing up of contingency plans to combat accidental oil spills at sea (OJ No. C 248 of 17/9/84, p. 20); Opinion on the Commission Communication to the Council on the protection of the environment in the Mediterranean basin (OJ No. C 160 of 1/7/85, p. 2).

#### **4.4.5. Protection of consumers in the case of overbooking**

4.4.5.1. The many rigid practices which cause passengers to suffer should be abolished. Thus, for example, when flights to a given destination are full, and especially when airlines have sold more tickets than the number of seats available and so are unable to fulfil their commitments, passengers should be able to fly in planes of airlines operating on the same routes but not allowed to pick up passengers.

#### **4.4.6. Airworthiness certificates**

4.4.6.1. A single market should be established in the following areas:

- airworthiness criteria
- validation of certificates
- modification of original certificate.

4.4.6.2. As a first step towards standardization, the Community could, on the basis of work already carried out by specialist organizations, establish common criteria for airworthiness and for the renewal and modification of airworthiness certificates.

4.4.6.3. Under current practice, any changes (for example, alteration of the registration or installation of an additional new fuel tank) mean that the aircraft and its equipment have to be checked by different authorities, resulting in an unnecessary - and often expensive - duplication of work.

4.4.6.4. The standardization of procedures and criteria would simplify current practice and lead to considerable savings for users. This would provide a solid basis for subsequently introducing Community airworthiness certificates to replace the present national certificates.

#### **4.4.7. Special airworthiness certificates** (Airworthiness criteria for experimental aircraft, non-industrially built aircraft, "ultra-light" aircraft)

4.4.7.1. This is a relatively new field, and most countries are still in the process of drawing up criteria. Proposals should therefore be submitted to ensure that the above types of aircraft are also covered by the common standards.

#### **4.4.8. Equipment criteria** (Instruments and avionics required for VFR and IFR approved aircraft)

4.4.8.1. The term "common standards of airworthiness" should be extended to cover all the equipment (instruments and avionics) installed in aircraft.

4.4.8.2. General aviation is, almost by definition, international; all aircraft, whatever their registration, use the air space and facilities of a great many countries under identical conditions. Member States should therefore require that aircraft performing the same activity be equipped with the same instruments and avionics. The equipment criteria for VFR approved aircraft would then be identical throughout the Community, as would the separate set of criteria governing the equipment of IFR approved aircraft. Measures of this kind would further contribute to simplifying administrative procedures and providing consumers and manufacturers alike with the benefits of a "large market".

#### **4.4.9. Customs formalities** - **simplified customs clearance procedures in Community airports**

4.4.9.1. Unlike intra-Community road and rail users, civil aviation crews and passengers are subject to full customs formalities both on departure and on arrival. This means that international flights can only take place between airports with customs facilities, which severely restricts the flexibility of general aviation traffic.



4.4.9.2. The Community could improve the situation by, for example, abolishing the customs formalities at either the point of arrival or departure of intra-Community flights and by introducing a system of spot checks, as is the case with the other modes of transport (international flights are all subject to flight schedules and are therefore easily identifiable).

4.4.9.3. Requests for customs clearance can take longer to process in some Member States and at certain airports than in an Eastern bloc country.

Brussels, 23 September 1985.

The Rapporteur  
of the Section for  
Transport and Communications

**John KENNA**

The Chairman  
of the Section for  
Transport and Communications

**Alfred DELOURME**

The Secretary-General  
of the Economic and Social Committee

**Roger LOUET**

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*Colm CULLETON, Rapporteur's expert, John KENNA, René BONETY and Kurt PLANK*

*Diarmid McLAUGHLIN, Ecosoc Director with Jürgen ERDMENGER, Commission Director, Henrik BAASCH, Expert and Helmut MÜLLERS, Secretary of Transport Section*



# **A P P E N D I X 1**

to the

## **R E P O R T**

of the Section for Transport and Communications

on the

Civil Aviation - Memorandum No. 2

Progress towards the Development of a Community Air Transport Policy  
(COM (84) 72 final)

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### **SUMMARY MINUTES OF THE HEARING**

of European Organizations,  
held on 10/11 October 1984  
at ESC headquarters, Brussels

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## **I. PARTICIPANTS PRESENT AT THE HEARING**

### **Economic and Social Committee Members**

Mr BONETY (Assistant : Mrs LE THI MAI)  
Mr BOS  
Mr CARROLL (Assistant : Mr GRIFFIN)  
Mr CREMER (Assistant : Mr WHEELER)  
Mr FORTUYN (Assistant : Mr GÄRTNER)  
Mr KAMIZOLAS  
Mr KENNA  
Mr LAW (Assistant : Mr LODER)  
Mr MASPRONE (Assistant : Mr CARMINATI)  
Mr MERAUIGLIA  
Mr MORSELLI  
Mr PLANK (Assistant : Mr SCHULTE-STRATHAUS)  
Mr ROUZIER  
Mr SCHNEIDER (Assistant : Mrs CARMICHAEL)  
Mr STORIE-PUGH (Assistant : Mr SLIGHT)  
Mr VAN DER MENSBRUGGHE (Assistant : Mr DE RADIGUEZ)

### **Experts**

Mr CULLETON (for the Rapporteur)  
Mr BEYERTT (for Group II)  
Mr REHM (for Group III)

### **Commission of the European Communities**

Mr STEELE (Director-General) DG VII Transport  
Mr ERDMENGER (Director) DG VII Transport  
Mr BOURGIN, DG VII Transport  
Mrs LOUGHRAN, DG IV Competition  
Mr REES, DG VII Transport  
Mr SØRENSEN, DG VII Transport  
Mr VANISTENDAEL, DG V Social Affairs  
Mr VAN TYGHEM, DG VII Transport

### **Council of the European Communities**

Mr BRODERICK, Irish Presidency  
Mrs DALCO

### **General Secretariat of the Council of the European Communities**

Mrs HEIKEN  
Mr TURNS

## **Organizations which attended**

**ACE** (Independent Air Carriers of the EC)

Mr HOLUBOWICZ

**AEA** (Association of European Airlines)

Mr NEUMEISTER

Mr VEENSTRA

**CEEP** (European Centre of Public Enterprises)

Mr LE BLOND

Mr TAGAND

**CLECAT** (European Freight Forwarders)

Mr PARASIE

Mr VAN HUFFEL

**CSTCE** (Committee of Transport Workers' Unions in the EC)

Mr BUONACCORSI

Mr IDDON

Mr TOSO

**EBAA** (European Business Aviation Association)

Mr McFARLAINE

**FATUREC** (Federation of Air Transport User Representatives in the EC)

Lt. General DONNET

Mr SABOURIN

**IATA** (International Air Transport Association)

Mr HAMMARSKJÖLD

Mrs BARNABO

Mr LIPMANN

**IAOPA** (International Council of Aircraft Owner and Pilot Associations)

Mr DE WEERDT

**ICC** (International Chamber of Commerce)

Mr KATZ

**ICAA** (International Civil Airports Association)

Mr ROUAUD

Mr DILLMANN

## **Economic and Social Committee Secretariat**

Mr McLAUGHLIN

Mr MULLERS

Mr ALEXOPOULOS

Mr DIAS

## II. INTRODUCTORY DEBATE

1. The Chairman of the Study Group, **Mr BONETY**, and the Rapporteur, **Mr KENNA**, welcomed the delegates from the various organizations and explained that the hearing played an important part in the preparation of the Section and Committee Opinions on the Commission Memorandum. It was a unique opportunity for members of the Economic and Social Committee to hear at first hand the views of the most authoritative European and international air transport organizations on crucial issues affecting the sector.

2. The delegates introduced their organizations and gave a brief account of their views of the Commission paper. Particular importance was attached to the following points :

**Mr HOLUBOWICZ**, acting Secretary-General of **ACE**, said that the application of competition rules to air transport was not just a possibility - it was indispensable. The reason why they were not already in force lay in action taken by Member States. He added that all airlines should observe competition rules.

The **AEA** Secretary-General, **Mr NEUMEISTER**, spoke amongst other things of the need to increase regulatory flexibility whilst maintaining cooperation with airlines and multilateral coordination on tariff questions. He shared the Commission's view that the American system of deregulation would not work in Europe.

The **CEEP** representatives, **Mr LE BLOND** and **Mr TAGAND**, explained that they represented airlines and airports, both of which were public enterprises. So they broadly supported the Commission memorandum in its aim to provide the best possible services at the lowest possible cost. They mentioned a number of features peculiar to the sector, including the fact that the application of competition rules to airports presented extreme difficulties.

The **CTSCE** representative, **Mr TOSO**, felt that the Commission ignored the social implications, an approach which was totally condemned by his organization. He thought the proposed measures were likely to have a negative effect on jobs and working conditions in the air transport sector. For this reason, he warned against excessive liberalization ("open skies" policy). He proceeded to outline the main union demands, which included preserving jobs and harmonizing working conditions in the Member States.

After describing the background and aims of **EBAA**, its representative, **Mr McFARLAINE**, went on to define and distinguish between "scheduled" and "non-scheduled" air services. He thought the subject had been insufficiently discussed in the Commission memorandum.

**Lt. General DONNET**, representing **FATUREC**, approved the Commission's aim of making the present air transport system more flexible and competitive. Such a change would be in the interest of Community air transport users. However, the Commission memorandum was only a first tentative step in this direction - others had to follow immediately.

The Director-General of **IATA**, **Mr HAMMARSKJÖLD**, considered that the Commission document provided a solid foundation upon which to build a common air transport policy. Like other speakers before him he approved of the Commission's attempt to make the existing system more flexible. He stressed, however, that it would be a mistake to introduce the American system of deregulation in Europe. Member States would be required to keep a check on three main areas : market access, carrier capacity and fares.

The **ICAA** representatives, **Mr ROUAUD** and **Mr DILLMANN**, broadly endorsed the memorandum. They emphasized that the application of competition rules to air transport was both feasible and necessary. They pointed out that airlines often distorted competition by agreeing on practices amongst themselves.

3. The Chairman, **Mr BONETY**, thanked representatives and opened the second part of the hearing, the discussion on the various points contained in the Commission memorandum based on the Rapporteur's questionnaire<sup>(1)</sup> and written answers received.

### III. ANNEX I - BILATERAL AGREEMENTS

#### 1. *Capacity and revenue sharing between airlines*

(**Commission proposal** : the Governments shall not require airlines to have such agreements.)

**AEA** member airlines supported this proposal.

**CEEP** shared the Commission's view that pool agreements should be authorized but not compulsory.

**ICAA** considered that recourse to bilateral agreements should not be systematic.

Other participants considered that the Commission's proposals did not go far enough. Thus, **ACE** considered "with the majority of EEC airlines" that pooling conducted under the auspices of **IATA** and in the framework of a restrictive bilateral agreement system constitutes a violation of the Treaty of Rome, is unlawful and should be proscribed.

**Mr MASPRONE**, ESC member, wondered why the alleged violations of the Treaty of Rome had not been brought before the European Court of Justice.

**FATUREC** considered the proposal insufficient since it does not prohibit airlines from entering into such agreements. **EBAA** representatives made similar remarks.

Other bodies felt the Commission proposals went too far. Thus **CSTCE** was in favour of the present practice introduced by the ICAO Convention of Chicago in 1944 - confirmed by the Bermuda clausulae - and since properly used. In a similar vein **IATA** feared regulatory change within the EEC would have a far-reaching impact on IATA Members' overall business and the worldwide aviation system based on the Chicago Convention of 1944. Major changes affecting that scheme for European States would in turn affect the way in which airlines developed and marketed their products. IATA Members would wish to ensure that any Community Air Transport Policy help to sustain the public benefits of their worldwide integrated systems. IATA stated i.a. that its overall comments had been developed in coordination with the AEA position (July 1984) particularly in tariff matters. (Reflecting the nature of its activities IATA focussed mainly on tariffs, competition policy aspects and infrastructure costs.).

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(1) Arab numerals in the text refer to points in the Rapporteur's questionnaire.



## **2. *Limit of 25% guarantee of traffic to each Member State (Commission proposal)***

**FATUREC** accepted this guarantee as a transitional measure, to pave the way for abolition of agreements.

**ACE** was against : this proposal amounted to meddling in an area (economic performance) where nothing can and nothing should be guaranteed.

For **AEA** 25% was an arbitrary figure, possibly leading to surplus capacity. The aim was not to replace the existing system but to make it more flexible in the direction of fair and equal opportunity.

For **CSTCE**, the proposals complicated the system and would confuse the consumer.

The **IATA** representative defended the existence of pool agreements which best fulfil consumer needs (e.g. time-table coordination and inter-lining system).

For **ICAA**, an immediate reduction to 25% was not possible. The present system should be developed progressively while guaranteeing each State a minimum share of traffic. A precise percentage only had any bearing if all the conditions were met, for example, those relating to State aids.

**CEEP** suggested that the principle of capacity sharing should be implemented in a flexible and reasonable manner, the aim being to encourage traffic while avoiding excessively restrictive agreements.

## **IV. ANNEX II - FARES**

### **3. *Optional zones of flexibility for the establishment of tariffs (Commission proposal)***

For **ACE**, the concept deserved experimentation in the context of intra-European air fares.

For **CEEP** airports, the zone of flexibility would mean that the range of prices could be widened and better adapted to a variety of circumstances and also that the access of new airlines to the market would be promoted.

For **ICAA**, zones of flexibility seemed appropriate in order to obtain a rapid application of fares and to better adapt them to consumers' needs.

For **FATUREC**, if airlines were subject to normal commercial conditions (no State aids), there was no reason to avoid price competition. In this situation zones of flexibility would be superfluous.

**AEA** considered the Commission's proposal difficult to assess because the text in its present form leaves room for different interpretations. Nonetheless it might jeopardize existing commonality in the system, make tariff negotiations more complex and costly as Government intervention would increase, and undermine the interlining system.

**IATA** believed that increased flexibility and competitiveness could be achieved without such shortcomings through its recent action to increase flexibility in pricing on European routes providing, inter alia, for easier introduction of new prices and products, simplification of tariff structures, closer contacts with consumer groups and establishment of new procedures for resolving carrier disputes.

**4. One Member State may in certain circumstances approve a tariff within the bilateral agreement (Commission proposal)**

**ACE** supported this concept.

**FATUREC** thought country of origin approval should be the general rule.

**ICAA** found the proposal acceptable, providing all the competition requirements were met.

**AEA** thought there must be an arbitration tribunal (earlier proposal of the European Parliament).

**CSTCE** was opposed to unilateral approval of certain tariffs as it would create cut-throat competition between EC member State airlines.

**CEEP** found it risky to allow one member State only to give approval in the last resort, unless the airline's position was the result of fare coordination. An arbitration solution must be found.

For **IATA**, the Commission proposal could well undermine the interlining system. The Commission's dispute settlement proposals might lead to disruption of the multilateral system based on consensus between sovereign States.

**5. Definition of scheduled air service (non-scheduled air service) in the Commission Document**

**AEA** and **IATA** considered that the definition was in conformity with ICAO's definition developed in 1952 and reconfirmed in 1980.

**CEEP** noted that the definition of scheduled services was not the same in Articles 1 and 2 (i) and wondered which definition is to be accepted.

For **EBAA**, "Scheduled air-service" as generally understood was better defined in the old text : the new text excluded scheduled/time-tabled operations within a Member State.

For **CSTCE**, air transport must be clearly defined into "scheduled" and "non-scheduled" services to avoid scheduled services by charter airlines.

**FATUREC** thought many charter services could be interpreted as scheduled services under this definition. The definition needed to be re-examined to take into consideration the characteristics of European air transport.

For **ICAA**, it was regrettable that the definition of scheduled services in Article 1 does not include freight and mail transport. The definition of "scheduled air services" in Article 2 (i) was not precise enough.

**6. Airlines to be allowed to file a tariff without consulting other airlines involved (Commission proposal)**

**ACE** thought consultation unnecessary, though it should not be forbidden.

**FATUREC** and **ICAA** were in favour as a contribution to increased competition.

For **CEEP**, unilateral filing of tariffs was acceptable but prior consultation was to be encouraged since it had advantages.

**AEA** and **IATA** considered that tariff coordination between airlines, preferably on a multilateral basis, should be freely permitted and actively encouraged. However, if no agreement were reached, individual filings should be permitted, subject to approval by Governments in accordance with the bilateral agreements.

**7. *Is it sufficient to consider only the costs of the applicant airline ?***

**ACE** was in favour, unless a high-cost applicant airline attempted to justify high tariffs on a particular route by virtue of its overall cost structure, in which case regard must be had for the costs of an efficient airline.

For **FATUREC**, only the direct operation costs of an efficient Community-based carrier on the route in question with the addition of sufficient margin to provide for the ongoing financial viability of the airline should be considered. However, promotional fares should be allowed.

For **ICAA**, States should make sure only that all user categories were provided with a suitable product, but ensure strict control of safety.

For **AEA** and **IATA**, the emphasis on third/fourth freedom carriers implied that the Commission considers air fares between two Member States to be a matter of specific concern to the airlines of both of these two States. This view was not consistent with the Commission-proposed relationship between air fares and the costs of the applicant carrier only.

**CEEP** pointed out that fares are fixed not only on the basis of cost but also of certain factors pertaining to the public interest. The Member States concerned should ensure not only that the fares cover a minimum level of service but also that guarantees are provided, especially where safety is concerned.

**CSTCE** was against the proposal since public service obligations are not taken into consideration.

**V. ANNEX III A - COMPETITION**

**8. *Legality of application of rules of competition to air transport***

For **ACE**, the Court of Justice had ruled on the issue twice. The Treaty's competition rules remained unapplied to air transport purely for lack of political will, due to the vested interests of European Governments in the airline business.

**FATUREC** shared the **ACE** position, unless Council were to adopt exemptions under Article 85 (3).

**AEA**, on the other hand, thought all policy and implementation measures under the EEC Treaty concerning competition in air transport should be decided by the Council within the framework of its responsibility for a Community air transport policy. Part of such Council action should be to provide for the appropriate exemptions, not limited in time, under the competition rules of the EEC Treaty, with respect to all airline cooperative activities including tariff coordination, which the Council finds to be in the public interest.

**IATA** Member Airlines shared the views of the Commission that "any action on competition needs to be seen in the context of overall aviation objectives". The fact that the Commission rejects US style deregulation for the European markets showed its awareness that competition policy for scheduled air transport must be closely related to the specific regulatory and market conditions of that industry. The specificity of air transport industry should be fully taken into account. **IATA** believed that this question needs to be evaluated also within the context of worldwide international aviation realities : Chicago Convention agreed by some 150 States; States' sovereignty over their airspace; more than 2000 bilateral Government agreements regulating the air transport market, determining entry, capacity and prices; airline ownership ranging from 100% public to 100% private with many shades in between; competitors also cooperating between themselves in the public interest. Therefore Treaty obligations, international commitments and particularly the specific characteristics of the International Air Transport Industry must be considered together. This view was also shared by **CSTCE**.

**CEEP** regretted that a policy relating specially to air transport had not been devised pursuant to Article 84 (2) of the Treaty. In the absence of such a policy, the **CEEP airports** considered that the Court of Justice has approved the general application of the rules on competition, but the **CEEP airlines** formally denied this. The competition rules had necessarily to be applied selectively and with considerable caution.

For **ICAA**, it would have been preferable for air transport to dispose of a special policy in keeping with the terms of Article 84 (2) of the Treaty. In the meantime, **ICAA** approved the general application of the rules of competition provided that the main characteristics of the sector were taken into account (i.e. the very high proportion of flag carriers' extra-Community activity and public service obligation) and provided that competition rules applied equally to all partners in the sector.

The Rapporteur, **Mr KENNA**, said there was no doubt that competition rules would be applied. The question was how and when they would be applied, and with what scope and results.

**Mr SCHNEIDER** and **Mr BEYERTT** considered the Commission was failing to consider the social implications. They thought certain statements, such as those contained in paragraphs 42 and 44, antagonistic to unions.

For **Mr LAW** and **Mr LODER**, the Commission deserved support in its aim to increase liberalization and abolish cartels in the air transport sector. IATA was also a cartel.

The **AEA** and **IATA** representatives replied that this sometimes appeared to outsiders to be the case where tariffs were concerned (although this was not so), but it was clearly not so in the case of market access and carrier capacity. In the final analysis, airlines belonging to IATA and AEA were no more a cartel than were car manufacturers or hotels.

**Mr DE RADIGUEZ** and **Mr SLIGHT** spoke in the same vein.

The Chairman, **Mr BONETY**, reminded those present that the ESC had already studied the issue of the application of competition rules to air transport in previous Opinions.

#### **9. *Restriction of the regulation to intra-Community flights including 5th freedom flights by third country airlines***

For **ACE** and **CEEP**, the fact that non-EEC 5th freedom airlines should now be compelled to comply with EEC legislation was only right and fitting.

**EBA** considered unfair competition for carriage between Community airports, whose areas overlap, and non-Community airports should be guarded against, as well as even more disruptive competitive operations between air carriers, resulting from indirectly State subsidized cost factors.

**ICAA** agreed, but thought application should not be too strict since information concerning government aids to non-member countries was insufficient.

For **AEA**, the specific interaction between adjacent markets in Europe implied that a significantly different regulatory regime for air transport within the EEC part of Europe is likely to have an impact on other European countries and airlines. There was a "prima facie" need for policies seeking major changes in the regulatory system to be developed on an overall ECAC<sup>(2)</sup> rather than EEC basis. The development of a European policy within ECAC ought to be actively promoted. The Commission's proposal was likely to have an undue effect on the worldwide system : legal uncertainties and possible conflicts on the issue of extra-territoriality would arise. The application of Community policies to the 5th freedom operations of non-EEC airlines on intra-Community routes might unduly affect bilateral relations between individual EEC and non-EEC countries.

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(2) 22 European countries including all EEC and EFTA States.

**IATA** and **CSTCE** believed that the exemptions should not be limited in time. They must be clear, unequivocal (commercial cooperation), including tariff coordination, which benefits the public. Such exemptions should be incorporated by the Council of Ministers as a feature of its policy and subject to amendment only by similar decision of the Council.

**FATUREC** saw restriction of the regulation to intra-Community flights as a severe limitation (legal uncertainty for services from EEC to non-EEC airports).

## **VI. ANNEX III B - COMPETITION**

### **10. *Role of the Commission in authorizing cooperation for pools - Should there be criteria laid down in the proposal ?***

For **CEEP**, if such powers were assumed by the Commission, it would be necessary to predetermine objective criteria of exemption for these agreements.

**ICAA** was in favour provided the criteria were clearly defined.

The **ACE** airlines maintained that, far from playing a role in "authorizing" these restrictive (IATA) trade practices, the EC Commission should instead begin the task of instituting legal proceedings against Treaty offenders in this context.

**AEA** feared the introduction of cumbersome and bureaucratic new regulatory controls, too much independence for the Commission, and the risk of legal uncertainties.

For **FATUREC**, revenue and capacity pools should not be permitted. If they were not prohibited entirely, the proposal should include criteria for authorizing such pools. There must also be criteria for tariff coordination.

## **VII. ANNEX III C - COMPETITION**

### **11. *1% limit on transfer of revenue within the pool agreements***

**ACE** attributed this to the fact that the dozen or so EEC airlines (a minority of EEC airlines) which indulge in this restrictive trade practice pretend that little actual transfer of monies takes place in pooling.

**FATUREC** found the proposal acceptable for a short period of time if the intention was to smooth the change to abolition of pools.

**AEA** found such a limit as a precondition for a group exemption highly questionable, since it may in practice prevent airlines from offering the best possible product, contrary to the interest of the public and their own economic requirements. Compensation for possible differences in marketing opportunities is reasonable.

**CEEP airlines** thought that this limit fails to take account of the economic conditions under which the airlines are run and that it would make pool agreements impossible. It was better to leave airlines to fix the limit themselves.

**CEEP airports** had no definite opinion concerning the percentage of revenue transfer. They believed, however, that a fairer allocation of operating conditions to national airlines would show less need for revenue pooling agreements.

For **ICAA**, this provision could have anti-competitive effects or lead to maintaining public service routes whose financial compensation normally should be met by the State.

**12. Consultation between airlines (fares) open to observation by Member States and the Commission**

**FATUREC** thought the proposal should be supported.

For **ACE**, other airline organizations should also be allowed to attend as observers.

**CEEP airports** took the view that, on a more commercial market, tariff consultations should also be open to observation for the main air transport partners, while **ICAA** added airport authorities also.

**IATA, AEA** and **CEEP airlines** called for attendance of Regional Civil Aviation Bodies (ECAC in Europe) as Conference observers.

**VIII. ANNEX IV - STATE AIDS**

**13. Criteria for Community involvement in controlling State Aids**

**14. Disclosure and control of equity and loan guarantees**

**15. Disclosure and control of any kind of subventions**

In support of these proposals, **ACE** pointed out that criteria are contained in Articles 92 - 94 inclusive of the Treaty of Rome.

**CEEP airports** supported the Commission's desire to apply the Treaty in a spirit of discernment, taking account of the specific features of air transport.

**FATUREC** was in favour of aids for regional development, approved by the Commission, but also of designation of carriers that can offer the service for the lowest subsidy (question 13).

**FATUREC** also maintained disclosure is necessary, and that equity and loan guarantees should only be allowed if the State was behaving as a private investor (question 14).

On subventions, for **FATUREC** Article 92 applies and aids must be approved by the Commission (question 15).

For **AEA**, any step towards increased competition should be accompanied by an effective control of State aids. But before any action was taken there should be careful consideration of the special relationship between an airline and its Government and of basic regulatory principles prevailing in international air transport. Care was needed not to put Community airlines at a competitive disadvantage vis-à-vis subsidized non-Community airlines. The Council should set the specific parameters within which State aids to airlines were to be considered compatible with the Treaty. Any Community action should be based on both Articles 84 (2) and 87 of the Treaty.

**CEEP airlines** considered that this was essentially a matter for government authority, which could not be dealt with in isolation and should be an integral part of a common air transport policy, based on Article 84 (2).

**ICAA** was in favour. However, with regard to both airlines and airports such aids should be examined with caution as it was often impossible to distinguish the aids concerning a specific Community-related activity.

**EBAA** was very hesitant about the proposals.

**16. Non-commercial public service obligations**

**AEA, CEEP, CSTCE, IATA** and **ICAA** were all in favour. **FATUREC** referred back to its position on question 13 above.

**ACE** urged development for Europe of the "Essential Air Service model" of the US Civil Aeronautics Board. It would have the advantage of furthering transparency in the area of State aids to air transport, and also between the State and public undertakings.

## IX. ANNEX V - NON-DISCRIMINATION AND STANDSTILL PROVISIONS

### 17. *Non-discrimination between airlines of Member States*

ACE, EBAA and FATUREC supported the Commission.

CEEP airports approved the proposals since they derive naturally from the Treaty provisions.

ICAA wished for application to non-scheduled or inter- regional services as well.

For AEA and IATA, such an approach was without precedent and at variance with the procedure followed by the Community in other sectors. The provisions contained in the Commission's proposals had an undefined scope of application.

CEEP airlines considered that the proposal did not give rise to any problems from a legal standpoint, but posed the political problem of State sovereignty. ALITALIA believed that such a proposal would cause major difficulties between member States and third countries whose relations are governed by bilateral agreements based on reciprocal advantages.

### 18. *Standstill procedure*

ACE, CEEP airports, EBAA and FATUREC all supported the Commission.

For ICAA, the proposal should be interpreted as a minima and should not prevent States from allowing airlines that so desire to progress towards liberalization.

AEA, IATA and CEEP airlines repeated reservations expressed under question 17 above.

## X. GENERAL

### 19. *Additional comments on the above-mentioned subjects*

#### *— Users' and consumers' requirements (memorandum part 2, para 38)*

IATA members shared the Commission's concern to ensure that consumer requirements are met and pointed to the considerable improvements in productivity and cost reduction achieved by the airlines in recent years. At the same time IATA submitted that elimination of government imposed red-tape with respect to passenger, cargo and mail is of paramount importance to consumer satisfaction. IATA urged that the Commission treat these problems as priority issues and suggested concrete steps which should be taken urgently within the EEC to improve customs and police/immigration clearance procedures.

#### *— Basic Considerations concerning a Common Air Transport Policy (memorandum paras 39-44)*

ACE joined the Commission in rejecting IATA's and AEA's argument that it would be impossible to modify intra- Community air transportation without detrimental repercussions in a worldwide context.

FATUREC saw the proposals as a first step to more liberalization and a truly multilateral European air transport market.

#### *— Inter-regional air services (memorandum para 27)*

CEEP airports welcomed the fact that the Directive on inter-regional air services is to be reviewed since it is too restrictive and has achieved virtually nothing. It should be amended to encourage growth of intra-Community traffic.

ICAA airports also regretted the almost non-existent impact of the Directive. The text should be rapidly revised; in any case, routes 1-3 should be liberalized.

**CEEP airlines** regarded liberalization of access to the market as excessive and likely to lead to abuse, even if applied only to 25-seater planes.

- **Measures designed to reduce airline costs (memorandum paras 67-72)**
- **Infrastructure**
- **Facilitation of air freight transport**

**AEA** noted that the Commission identifies a number of infrastructural problems and deficiencies (route system, air traffic control, airport congestion and airport charges). Cost of infrastructural services and facilities in Europe are among the highest in the world. The airlines need a concerted and concrete governmental plan of action to reduce the infrastructure costs.

**CEEP** was not convinced that the principles governing surface transport should be applied to air transport infrastructures. **CEEP airports** took the view that it would be preferable for the costs of existing infrastructure to be borne by the users alone. Investment in new air transport infrastructure called for special financing endeavours and Community funding. The **airports** further pointed out, that the airlines' cost components, as described by the Commission are open to considerable question. The Commission's criteria for airport efficiency are also open to discussion.

**ICAA** regretted the absence of new proposals concerning facilitations for passengers. It also doubted that surface transport financing principles can apply to air transport. Community financing should not be restricted.

**ICAA** regretted that the Commission indicates the airports as responsible for charges when this is not the case (figures and calculation method highly questionable; same for efficiency criteria).

**ICAA airports** were also surprised to see their activity considered as a constraint when they are one of the essential elements of air transport and thus, by their very existence and capacity, condition in a concrete way the application of the rules proposed by the Commission.

**IATA** regretted that the Commission does not suggest any solution to the serious problems posed by airport, en-route and terminal navigation charges which limit the airlines' ability to cut costs significantly. Cost allocation studies should be undertaken.

## **20. Comments on "Other measures" (paras 73 to 94 of the memorandum)**

### — **Access to the market (paras 73-75)**

**ACE** backed the proposal that EEC charter-mode ("non-scheduled") air service airlines should be permitted to sell up to 15% of available seats on a seat-only basis, and also permitted to carry cargo and mail. **ACE** hoped the Commission will attach greater priority to the key questions of market access and route entry.

**FATUREC** considered that liberalization of services would lead to an increase in demand and thus more total employment.

**AEA** considered that there was no good reason to apply market access criteria to undefined smaller airlines and arbitrarily defined smaller aircraft which differ from the criteria applied to other airlines / aircraft. Within the existing regulatory system Governments should be free to decide which licensing policies best serve their own transport objectives. The Commission's proposal would unduly restrict this freedom.



— ***Non-scheduled services (paras 76-82)***

**ACE and CEEP airports** viewed this aspect favourably.

**ICAA** approved the Commission's proposal but considered the development of non-scheduled services too unevenly distributed within the Community.

**NTAA** considered that non-scheduled services should not be handicapped by rules and tariffs favouring scheduled services. These operators play a major role in reducing fares and costs to competitive levels and in attracting many more people to air transport. Tariffs should be kept simple and low.

For **AEA**, the large volume of charter operations meant the proposed measures of liberalization would on various routes have a significant economic impact on scheduled services. The proposal of the Commission should be reviewed in a broader perspective which included resolution of the various options presently under consideration for tariff and capacity regulation in scheduled air transport.

**CEEP airlines** were of the opinion that the already extremely large share (+ 50%) taken by charters in intra-Community traffic is quite adequate. There was no need to increase it by throwing the nature of the services into confusion.

— ***Social matters (paras 83-86)***

**CSTCE** considered that the following Union demands had been disregarded by the Commission :

- Joint committee for employer/workers;
- Recognition of licences;
- Union involvement in decision-making at Community level;
- Publication of study findings;
- Uniform training standards;
- Orderly competition;
- Harmonization of working conditions;
- Common air transport policy which bears workers' interest in mind;
- Studies into workers' conditions in the Civil Aviation Sector; etc.

## **XI. STATEMENT BY THE COUNCIL REPRESENTATIVE**

**Mr BRODERICK**, representative of the Chairman of the Working Party of high-level Council representatives for air transport, expressed satisfaction at the opportunity which the hearing had presented for obtaining direct and objective information on the views of the various organizations. Those views were often divergent, for example as regarded the extent of liberalization in air transport and the extent to which the social implications should be taken into consideration. He said he would be pleased to inform the Working Party at its next meeting of the views expressed at the hearing.

The Chairman, **Mr BONETY**, closed the two-day hearing by thanking those who had attended for their invaluable contribution to the task of preparing the Section and Committee Opinions on the Commission memorandum.



# **A P P E N D I X 2**

to the

## **R E P O R T**

of the Section for Transport and Communications

on the

Civil Aviation - Memorandum No. 2

Progress Towards the Development of a Community Air Transport Policy

(COM (84) 72 final)

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### **Statistics and Definitions**

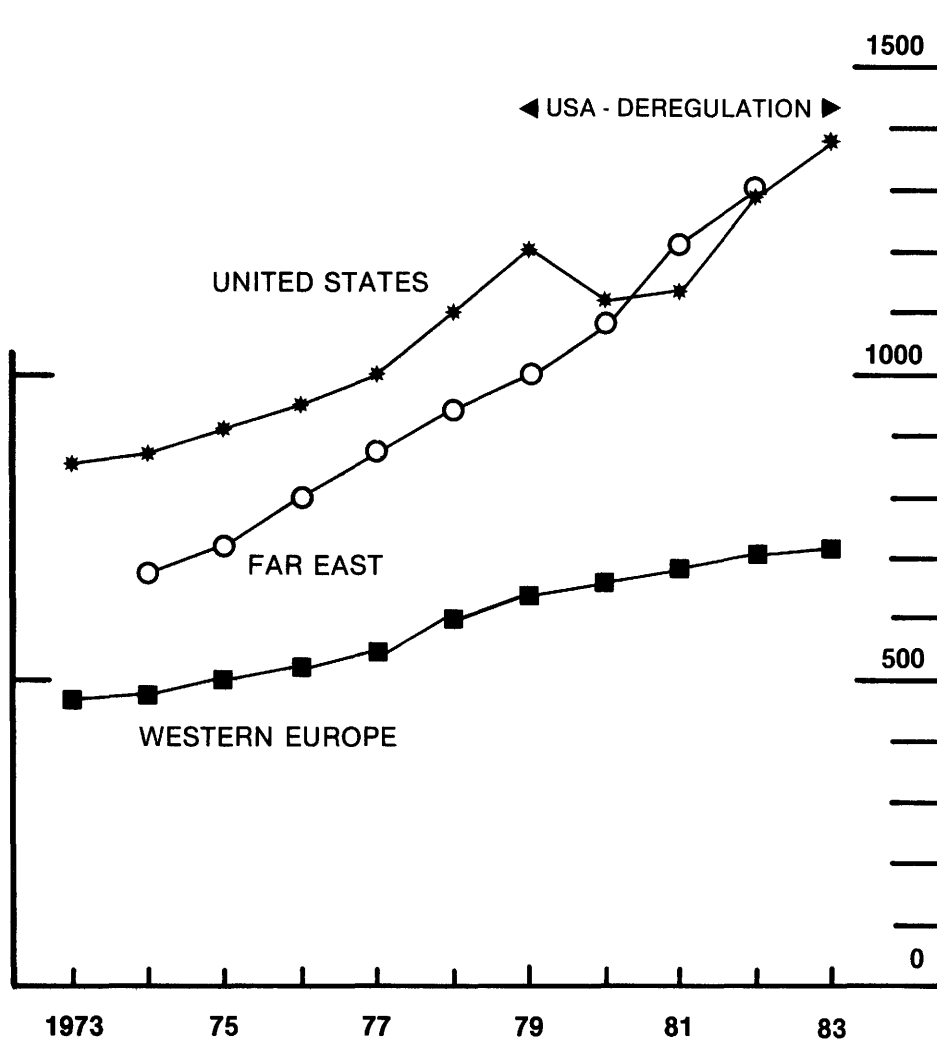
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TABLE I

**DISTRIBUTION OF SCHEDULED AIR TRAFFIC PRODUCTIVITY  
PER EMPLOYEE BY ECONOMIC REGIONS, 1973 - 1983**

*(Total revenue passenger-kilometres per employee performed  
in international and domestic operations  
by scheduled services of airlines registered in each region)*



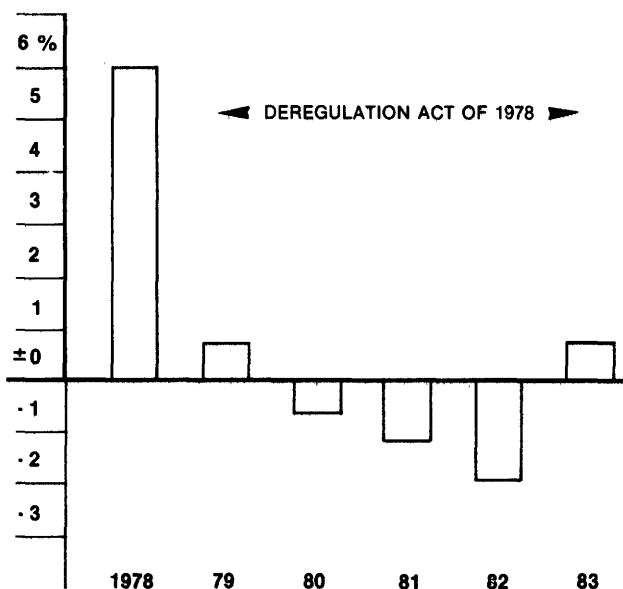
UNITS : THOUSAND REVENUE PASSENGER-KM PER EMPLOYEE  
 SOURCES : EUROSTAT, IATA, AEA, ACE, ICAO  
 REVENUE PASSENGER : PASSENGER PAYING 25% OR MORE OF THE NORMAL APPLICABLE FARE.

**TABLE II**

**DEVELOPMENT OF OPERATING PROFIT AS PERCENTAGE OF OPERATING REVENUE, 1978 - 1983**

*(International, domestic, scheduled and non-scheduled operations combined)*

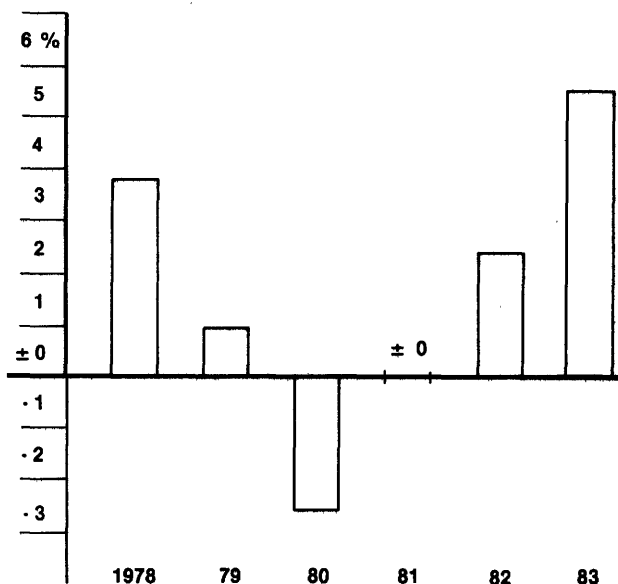
**UNITED STATES SCHEDULED AIRLINES**



OPERATING REVENUES :	
Scheduled Services	Passenger
	Freight
	Mail
Total Scheduled Services	
Non-Scheduled Services & Incidental Revenues	
<b>Total Operating Revenues</b>	

OPERATING EXPENSES :	
Flight Operations	Maintenance and Overhaul
	Depreciation and Amortisation
	Station and Ground
	Passenger Services
	Ticketing, Sales and Promotion
	General and Administrative
	Other Operating Expenses
<b>Total Operating Expenses</b>	

**WESTERN EUROPE SCHEDULED AIRLINES**

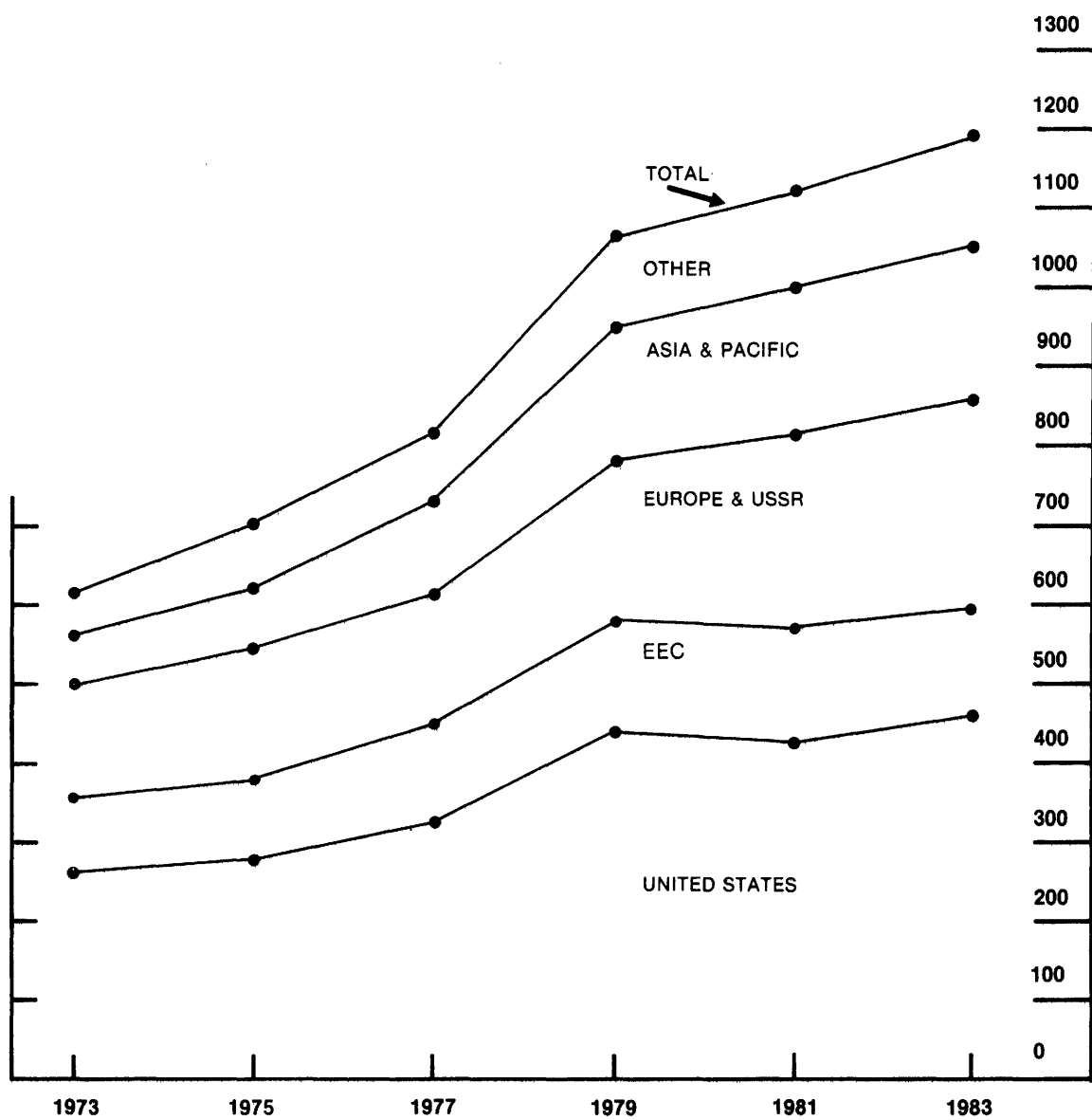


UNITS : %  
SOURCE : IATA, AEA, ICAO

TABLE III

DISTRIBUTION OF SCHEDULED AIR TRAFFIC RENEVUE PASSENGER-KILOMETRES  
BY ECONOMIC REGIONS, 1973 - 1983

*(Total revenue passenger-kilometres performed in international and domestic operations  
by scheduled services of airlines registered in each region)*



UNITS ; BILLIONS REVENUE PASSENGER-KM

SOURCE : IATA, ICAO, AEA

## COMMENTS ON THE TABLES I - III

### TABLES I AND III

- Over ten years Western Europe's airlines' productivity rose by 51% compared with a 60% increase in the United States' over the same period. The increase in productivity in the United States over the period of deregulation showed a 19% improvement in productivity over three years, while in Western Europe productivity in 1983 was 18% greater than in 1978.
- In 1973 United States' airlines employed about 312,000 people for 260 billions revenue passenger-kilometres. The year before deregulation started (1978) United States' airlines employed 329,000 people for 380 billions revenue passenger-kilometres and in 1983, 328,500 employees for 450 billions revenue passenger-kilometres. America's airlines' production therefore rose by 73% within ten years, while Western Europe's output in 1983 was about 67% greater than in 1973 (190 billions passenger-kilometres in 1983 and 113.5 billions in 1973).
- In 1983 United States' airlines' international and domestic scheduled revenue passenger air traffic accounted for 37.8% of the world's total passenger air traffic. In the same year European airlines' international and domestic scheduled passenger air traffic accounted for 33.6% of the world's total and Western Europe's share for 16%.

### TABLE II

In 1978 United States' airlines' recorded collectively operating profits of \$1.38 billion, 6% of the operating revenue (\$23 billion), while in Western Europe airlines operating profits accounted collectively for 3.8% of the operating revenue.

In 1979 and 1980 Western European airlines did not adjust in time their capacity to the zero-growth in the traffic caused by the recession and this fact was the main cause of losses rising to 2.5% of Western European operating revenue in 1980. In subsequent years Western European airlines introduced strict capacity control, which improved the deficit situation.

In the United States the profit situation worsened considerably after the fuel price increase and following the Airline Deregulation Act of 1978, when airlines cut fares to attract passengers. Therefore in the United States the operating profit of 1978 turned into losses of \$222 million in 1980, of \$438 million in 1981 and \$750 million in 1982. This situation was considerably worsened by the economic crisis during this period. Only in 1983 did United States' airlines collectively move back to operating profits of \$371 million.

## TABLE IV

### DISTRIBUTION OF SCHEDULED AIR TRAFFIC BY ECONOMIC REGIONS, 1974 and 1983

ECONOMIC REGION	ALL SERVICES		INTERNATIONAL		DOMESTIC	
	1974	1983	1974	1983	1974	1983
NORTH AMERICA	44.1	37.8	24.4	19.4	67.8	56.6
EUROPE	36.4	33.6	44.3	37.8	22.3	29.4
ASIA and PACIFIC	10.7	17.3	16.4	26.5	5.8	7.8
LATIN AMERICA and CARIBBEAN	4.4	4.9	6.3	5.8	3	4
MIDDLE EAST	2.1	3.5	4.4	5.9	3	1.1
AFRICA	2.3	2.9	4.2	4.6	8	1.1
WORLD	100	100	100	100	100	100

UNITS :      % OF TOTAL TONNE-KILOMETRES PERFORMED BY AIRLINES REGISTERED IN EACH REGION

SOURCES : ICAO, IATA, AEA



**TABLE V**  
**DISTRIBUTION OF REVENUE PASSENGER-KILOMETRES (RPK),**  
**AVAILABLE SEAT-KILOMETRES (ASK) AND LOAD FACTORS**

	1973			1974			1975		
	RPK	ASK	I-fact.	RPK	ASK	I-fact.	RPK	ASK	I-fact.
DEUTSCHLAND	11106	20031	55.44	12473	23130	53.93	13634	24595	55.43
FRANCE	19737	33270	59.32	21904	36709	59.67	23542	39401	59.75
ITALIA	11087	20358	54.46	11376	20430	55.68	10799	18551	58.21
NEDERLAND	9071	16805	53.98	9252	17689	52.30	10077	18896	53.33
BELGIE-BELGIQUE	3710	6589	56.31	3975	6898	57.63	3796	6986	54.34
LUXEMBOURG	—	—	—	—	—	—	—	—	—
UNITED KINGDOM	25167	43868	57.37	24913	43350	57.47	27029	44956	60.12
DANMARK	7469	14234	52.47	7526	14056	53.54	7955	14931	53.28
IRELAND	1756	2673	65.69	1648	2629	62.69	—	—	—
HELLAS	—	—	—	—	—	—	—	—	—
ESPANA	—	—	—	—	—	—	—	—	—
PORTUGAL	—	—	—	—	—	—	—	—	—
EUR 6	54711	97053	56.37	58980	104856	56.25	61848	108429	57.04
EUR 9	89103	157828	56.46	93067	164891	56.44	96832	168316	57.53
EUR 10	—	—	—	—	—	—	—	—	—
EUR 12	—	—	—	—	—	—	—	—	—

	1976			1977			1978		
	RPK	ASK	I-fact.	RPK	ASK	I-fact.	RPK	ASK	I-fact.
DEUTSCHLAND	14982	25242	59.35	15905	27079	58.74	17572	29718	59.13
FRANCE	25324	41728	60.69	24603	39639	62.07	27239	42593	63.95
ITALIA	10779	19577	55.06	11571	19228	60.18	12194	19995	60.99
NEDERLAND	10313	18688	55.19	11356	19513	58.20	12295	20700	59.40
BELGIE-BELGIQUE	—	—	—	4049	7262	55.76	4497	7779	57.81
LUXEMBOURG	—	—	—	1061	1798	59.01	250	370	67.57
UNITED KINGDOM	30459	50496	60.32	37334	59171	63.10	38095	60396	63.08
DANMARK	8691	16247	53.49	2566	4577	56.06	2833	4919	57.59
IRELAND	—	—	—	1558	2483	62.75	1836	2004	67.90
HELLAS	—	—	—	—	—	—	4629	7194	64.35
ESPANA	—	—	—	—	—	—	—	—	—
PORTUGAL	—	—	—	—	—	—	—	—	—
EUR 6	61398	105235	58.34	68545	114519	59.85	74047	121155	61.12
EUR 9	100548	171978	58.47	110003	180750	60.86	116811	189174	61.75
EUR 10	—	—	—	—	—	—	—	—	—
EUR 12	—	—	—	—	—	—	—	—	—

UNITS : MILLIONS AND %  
SOURCE ICAO, IATA, LUXAIR AND AEA

**TABLE VI**  
**DISTRIBUTION OF REVENUE PASSENGER-KILOMETRES (RPK),**  
**AVAILABLE SEAT-KILOMETRES (ASK) AND LOAD FACTORS**

	1979			1980			1981		
	RPK	ASK	I-fact.	RPK	ASK	I-fact.	RPK	ASK	I-fact.
DEUTSCHLAND	19844	31737	62.53	21056	35610	59.13	21635	36173	59.81
FRANCE	29497	45710	64.53	30071	48244	62.33	31867	49138	64.85
ITALIA	11507	19248	59.78	12876	21973	58.60	12044	20348	59.19
NEDERLAND	13907	22324	62.30	14058	24320	57.80	15168	24001	63.20
BELGIE-BELGIQUE	4819	8036	59.97	4852	8168	59.40	5202	8121	64.06
LUXEMBOURG	290	416	69.71	27	57	47.37	271	406	66.75
UNITED KINGDOM	44056	66698	66.05	43984	71659	61.38	43789	67905	64.49
DANMARK	3057	5090	60.06	3043	5053	60.22	2970	4816	61.67
IRELAND	2212	3259	67.87	2049	3063	66.90	2166	3068	70.60
HELLAS	5132	7588	67.63	5062	7894	64.12	5197	7895	65.83
ESPANA	—	—	—	—	—	—	—	—	—
PORTUGAL	—	—	—	—	—	—	—	—	—
EUR 6	79864	127471	62.65	82940	138372	59.94	86187	138187	62.37
EUR 9	129189	202518	63.79	132016	218147	60.52	135112	213976	63.14
EUR 10	134321	210106	63.93	137078	226041	60.64	140309	221871	63.24
EUR 12	—	—	—	—	—	—	—	—	—

	1982			1983			1984		
	RPK	ASK	I-fact.	RPK	ASK	I-fact.	RPK	ASK	I-fact.
DEUTSCHLAND	21625	36262	59.64	22704	37862	59.97			
FRANCE	32595	50526	64.51	32839	50104	65.54			
ITALIA	12579	20660	60.89	12616	20520	61.48			
NEDERLAND	15761	25207	62.53	15928	25353	62.82			
BELGIE-BELGIQUE	5277	8224	64.17	5296	8106	65.33			
LUXEMBOURG	92	187	49.20	100	195	51.28			
UNITED KINGDOM	42775	64821	65.99	40360	62939	64.13			
DANMARK	2939	4596	63.95	3004	4549	66.04			
IRELAND	2343	3349	69.96	2121	3106	68.29			
HELLAS	4924	7984	61.67	5327	8198	64.98			
ESPANA	—	—	—	—	—	—			
PORTUGAL	—	—	—	—	—	—			
EUR 6	87929	141066	62.33	89483	142140	62.95			
EUR 9	135986	213832	63.59	134968	212734	63.44			
EUR 10	140910	221816	63.53	140295	220932	63.50			
EUR 12	—	—	—	—	—	—			

UNITS : MILLIONS AND %  
SOURCE : ICAO, IATA, LUXAIR AND AEA

## DEFINITIONS

### Scheduled services

Flights scheduled and performed according to a published time-table, or so regular or frequent as to constitute recognisably systematic services which are open to use by the public on an individually ticketed basis; extra flights occasioned by overflow traffic from scheduled flights; and preparatory revenue flights on planned air services.

### Revenues

- On pool services, revenue corresponds to the pool operator's actual operations and not to its share in the pool arrangement.
- Passenger revenues derive from all transportation revenues including excess baggage revenue obtained in the carriage of passengers defined below and also of passengers paying less than 25% of normal applicable fares.

### Revenue passengers

All passengers counted on a point-to-point basis, as carried at 25% or more of the normal applicable fare for the trip.

### Revenue freight

All mail counted on a point-to-point basis including letters, printed matter, parcels and troop mail for which remuneration is received.

### Revenue passengers-kilometres (RPK)

One fare-paying passenger transported one kilometre. Revenue passenger-kilometres are computed by multiplying the number of revenue passengers by the kilometres they are flown.

### Revenue tonne-kilometres (RTK)

One tonne of revenue traffic transported one kilometre. Revenue tonne-kilometres are computed by multiplying metric tonnes of revenue traffic (passenger, freight and mail) by the kilometres which this traffic is flown. Passenger tonne-kilometres are calculated on a standard basis of 90 kgs., average weight, including free and excess baggage.

### Capacity

- **Available seat-kilometres (ASK)** : The total number of seats available for the transportation of revenue passengers multiplied by the number of kilometres which those seats are flown.
- **Available tonne-kilometres (ATK)** : The total number of metric tonnes available for the transportation of passengers, freight and mail multiplied by the number of kilometres which this capacity is flown.

**Revenue passenger load factor**

The percentage of seating capacity which is actually sold and utilized, computed by dividing revenue passenger- kilometres flown by available seat-kilometres flown on revenue passenger services.

**Revenue load factor**

The percentage of total capacity available for passengers, freight and mail which is actually sold and utilized, computed by dividing total revenue tonne-kilometres actually flown by total available tonne-kilometres.

**Yield**

The average amount of revenue received per revenue tonne-kilometre.

**Unit cost**

The average operating cost incurred per available tonne-kilometre.

**Operating ratio**

The relationship between operating revenues and operating expenses, computed by dividing revenues by operating expenses.

**Breakeven load factor .**

The relationship between yield and unit cost, computed by dividing yield by unit cost.

**Domestic traffic**

Routes commencing and terminating within the national frontiers of the reporting carrier's country of registration. Routes between a State and territories belonging to it, as well as routes between two such territories.

**International traffic**

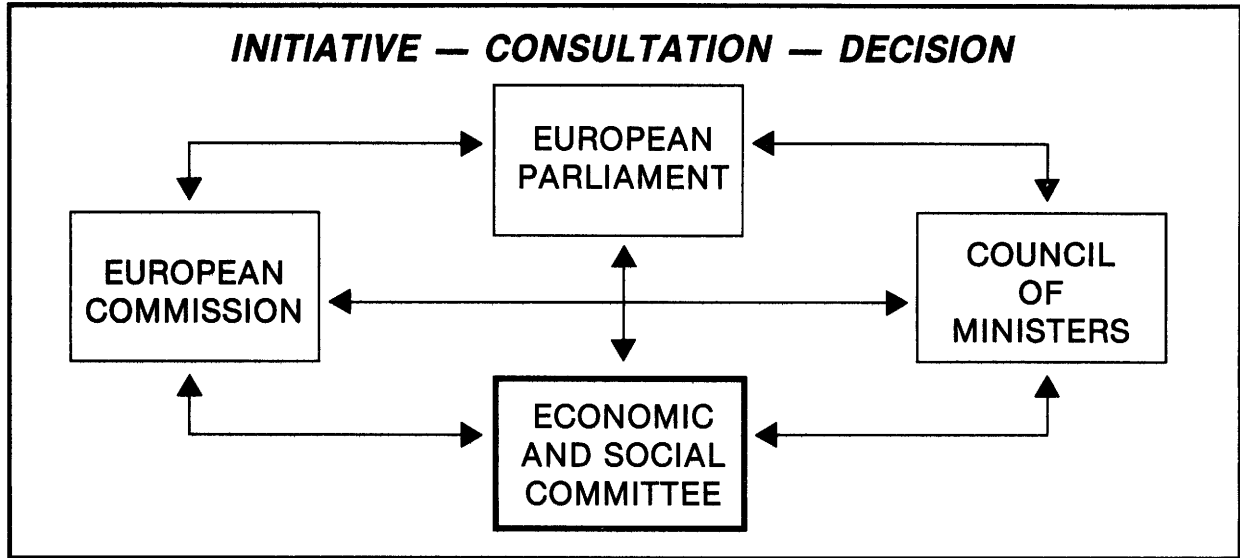
The sum of intra-European and total intercontinental traffic.

**Total scheduled air traffic**

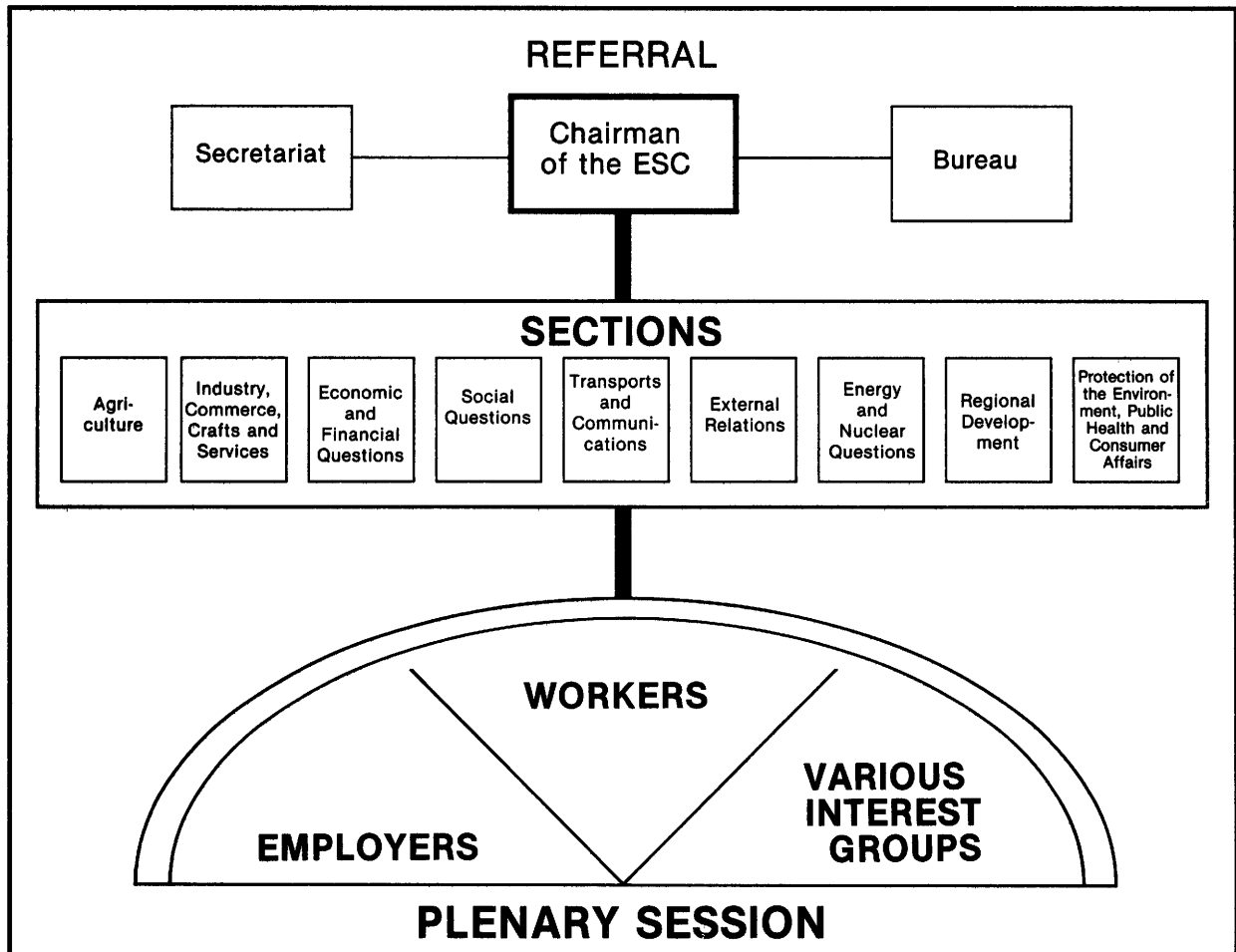
The sum of domestic and international traffic.

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## THE POSITION OF THE ECONOMIC AND SOCIAL COMMITTEE AMONG THE INSTITUTIONS



## THE ECONOMIC AND SOCIAL COMMITTEE — STRUCTURE



"Civil Aviation - Memorandum No. 2 - Progress of work on a Community Policy for Air Transport"

Opinion of the Economic and Social Committee

Brussels : General Secretariat of the Economic and Social Committee

1985 - 72 pages

DE,EN,FR,IT.

In general the Committee welcomes the initiative taken by the Commission as a step towards the creation of a common air transport policy.

The Committee is pleased that USA-style deregulation is not proposed in the memorandum. However, it also agrees that some changes in the present regulatory framework are possible with a view to the continued development of a more comprehensive and efficient air transport system for Europe. To the extent that such changes result in increased demand for international air transport services there will be greater opportunities for job creation in air transport and ancillary services. In addition a larger air transport market will also benefit other economic sectors such as tourism, hotels and industry. The Committee therefore suggests that policy should encourage and more commercial freedom in European air transport.

# ERRATA

page 12 : read "LE THI MAI" in place of "Le THE MAI"

page 17 : read "BAASCH, Danish **Shippers'** Council" in place of "Danish Ship-owners' Council"

page 24 : point 2.10.3. first sentence should read as follows : "This was the first Council Decision based on Article 84(2) of the EEC Treaty **concerning air transport**".

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