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AIR TRANSPORT RELATIONS
WITH
THIRD COUNTRIES

	Page
INTRODUCTION	3
I. Description of the Existing Situation	
Existing Economic Situation	4
Bilateral Agreements	5
Bilateral Agreements and Community Law	6
Existing Community Relations with Third Countries	8
II. Development of a Community Policy	
Community and national interest	10
The aims of a Community Policy	13
Requirements of the Single Market and Implementation of Treaty principles	17
III. Establishment of Procedures	
Responsibility for Negotiations	21
Negotiations at Community Level	23
Negotiations at Member State Level	24
Coordination	24
Negotiating directives	26
The Allocation Procedure	26
Continuity	28
Confidentiality	28
Documentation	28
IV. Decisions	29
Annex I Proposal from the Commission	30
Annex II The procedure step by step	46
Annex III Statistical Tabulations - General	49
Annex IV The EC/US Market - A statistical overview	56
Annex V Agreement on Air transport	84

AIR TRANSPORT RELATIONS WITH THIRD COUNTRIES

INTRODUCTION

1. In February 1990 the Commission put forward a proposal for a Council Decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries⁽¹⁾ which until now has not been discussed by the Council. The main consideration for putting forward this proposal was that with the gradual development of the internal market, the Community will also externally have to act as one. Furthermore, it is necessary to take account of the special characteristics of the aviation sector: considerable government influence, very frequent negotiations, protectionism, State-ownership of air carriers, etc.

2. The Council of Ministers adopted the third and final air transport policy package at its meeting of 22 and 23 June 1992⁽²⁾, and consequently the single market for aviation will be a reality as from 1 January 1993. The fact that some fundamental Community principles are endangered by the present situation forces the Community to consider relations with third countries without delay. The establishment of the single market is likely to improve the competitive position of Community air carriers in relation to some of the very efficient carriers of third countries. It will be necessary, however, to complement the internal market with a Community policy for the relations with third countries to allow them to make full use of the new commercial opportunities. In order to facilitate the discussions in the Council and after consultations with experts in this area, the Commission has decided to put forward an additional communication which sets out in some detail how an external aviation policy can be developed.

3. The following three areas are addressed in this Communication and appropriate proposals for Council decisions are made:
 - I. Description of the existing situation
 - II. Development of a Community policy
 - III. Establishment of transitional procedures

(1) 5080/90 AER 16 COM(90) 17 final

(2) OJ No L 240, 24.8.1992, p. 1.

1. DESCRIPTION OF THE EXISTING SITUATION

Existing economic situation

4. For the majority of Community air carriers, operations to non-European countries account for more than 50% of their total operations. Table A and Table E of Annex III detail for the main EC flag carriers the relative importance of different geographical markets in number of passengers and in revenue passenger kilometer respectively (RPK). Not surprisingly these tables also demonstrate that the North Atlantic is the most significant of the markets in terms of traffic, a fact also reflected in Table B which additionally shows the major significance of traffic with the EFTA States. For US airlines, domestic air services account for some 70% of their total operations, while in the case of the AEA airlines their intra-Community services represent less than 30% of their total operations. This demonstrates the relative importance of non-EC markets to EC carriers.
5. To a large extent the same picture emerges from the ICAO statistics which include all Community air carriers. However, the EC and EFTA gain in importance because the additional Community air carriers are mainly domestic or short haul. From table B it would seem that it is in particular France, Germany, Italy, Netherlands, Spain and the UK which have more than 20% of international activity going beyond Europe. However, in case RPK is taken into account, the importance of the international sector increases considerably (Table E).
6. It is also interesting when looking at table C that while the North Atlantic market is important for all Member States (except maybe Luxembourg) other international markets vary in importance for individual Member States. South America is important for Spain and Portugal, the Middle East for France and Italy, the Far East for quite a few Member States while Australia etc is important for Greece and UK.
7. Table D summarises traffic growth by long-haul market since 1980 as well as forecasting traffic to the year 2000. This table shows that the North Atlantic market will continue to be important with a high growth rate, while Asia will grow in significance. In view of the influence of the North Atlantic market on the total operations of Community air carriers a separate analysis of the US/EC situation is attached (Annex IV) which shows imbalances in opportunities for the respective carriers, but also highlights the relative success that EC carriers have had until now in spite of the imbalances.

8. In order to see whether this encouraging situation will continue the Commission commissioned an economic study on the competitiveness of the Community airline industry⁽¹⁾. The study indicates increasing competitive pressure from third country air carriers on markets of prime interest to the Community (North Atlantic and Asia). The analysis of the technical, economic, financial and market strength-related performance of a sample of 40 European, North-American and Asian air carriers led to the following key results:
- European air carriers do relatively well in the area of technical operating efficiency, but many of them have a low performance in relation to labour efficiency
 - European air carriers have relatively high yields compared to their US competitors
 - There is room for improving the overall cost efficiency of the Community's airline industry
 - The financial stability of the Community's airline industry is, on average, better than that of US competitors.
9. From the study it can be concluded that the high yield performance of the Community's airline industry has - despite some obvious problems in the area of operating costs - until recently ensured a reasonable degree of financial and economic stability. However, it is also indicated by the study that basic changes in the competitive situation are underway in the form of liberalization and globalization of the industry, which will reshape the market structure on the North-Atlantic and on other markets. In this regard, according to AVMARK, a fundamental reorientation of the international regulatory framework may be needed and it will have to be analysed carefully what new measures are needed to meet the changing environment in civil aviation.

Bilateral agreements

10. On the basis of the Chicago convention (1944) the worldwide regulatory framework for civil aviation has developed by bilateral Air Services Agreements (ASA's). These agreements regulate the market conditions under which Community air carriers are able to operate services to third countries. At present each Member State has a considerable number of ASA's with third countries. On average there are some 60-70 per Member State. These agreements do not differ fundamentally in form. Their main body contains the general principles, whereas one or more annexes spell out the detailed provisions i.a. the routes which may be operated, the capacity which can be used and the fifth freedom rights that are available.

(1) AVMARK Inc "The Competitiveness of the European Community's air transport industry", 28 February 1992.

Often there are (Confidential) Memoranda of Understanding (MOU's) or exchanges of letters which deal with such matters as compensations, the obligation for carriers to conclude cooperation agreements, marketing provisions, etc. Some ASA's remain unchanged for years, but often changes in the market force airlines to adjust their operating schedules, which means that the annexes or MOU's may have to be renegotiated frequently. In fact some Member States have quite a large number of negotiations per year.

11. Due to the level of detail in which bilateral agreements regulate the market, these agreements determine to a large extent the commercial opportunities of airlines. Depending on the policy of the governments in question, there are very liberal and flexible agreements, but there are also very restrictive agreements which limit the air carriers in their operations and in fact eliminate competition on particular routes nearly completely. An example of a recently concluded traditional ASA is shown in Annex V. It is also clear that Member States do not follow the same policy regarding individual third countries. As an example an overview of the agreements with the United States is shown in Table I⁽¹⁾.
12. The most recent agreement between the United Kingdom and the United States is interesting in this respect. In this agreement the UK has anticipated the completion of the internal market by introducing possibilities for UK air carriers to operate from other Member States to the US (7th freedom). This is probably a novelty in ASA's. However, these traffic rights can only be exercised with the agreement of the other Member State or when Community rules have been established.

Bilateral Agreements and Community Law

13. The majority of existing ASA's contain elements which are not compatible with or potentially infringe Community law, for example as seen below with respect to the competition rules, the right of establishment and computer reservation systems.

Competition rules

14. Many of the existing bilateral agreements contain provisions which are not in line with the competition rules of the Treaty. They encourage or require carriers to agree on pricing, schedules, capacity and revenue sharing. Member States participating in ASAs with such provisions would violate their duties under Articles 5 and 85 of the EEC Treaty⁽²⁾.

(1) The table reflects the situation as it existed in 1991. Developments that have taken place since are not inserted (e.g. the "open skies" agreement NL-US).

(2) Court of Justice, Judgment of 11 April 1989 in case 66/86 (Ahmed Saeed).

TABLE I US/EUROPE BILATERALS

Country	Pricing	Designation (Maximum No of carriers)		Capacity	Agreed gateways for		Beyond rights		Other items
		US	Europe		US carriers in Europe	European in US	US	European	
France	Country of origin	8	5	Temporarily restricted*	5	10	20+ (from Paris, Nice, Lyon)	1	
Germany	Country of origin	8	1	Open	Open	12 (plus 2 outside bilateral)	Open	Open	
Italy	Country of origin	5	1	Frequency limited to daily.	3	12	18	-	Cargo is single designation
Netherlands	Double Disapproval	Unlimited	Unlimited	Open	Open	8 (plus 3 outside bilateral)	Open	-	
Scandinavia	Double approval	4	1	Open	5	6	Open	1 (from Anchorage)	No change of gauge language for US fifth freedom rights to Scandinavia
Spain	Double approval	6	1	Open	4	10	23 (from Madrid, Barcelona)	17 (from San Juan, Miami)	
United Kingdom	Double approval	7 (limited route by route)	2 (limited route by route)	Restricted route by route	16 (incl. territories)	25	27	7+	London access limited by airport: only 2 US carriers allowed at Heathrow.

*Temporarily restricted for additional designation on specific routes for US carriers until November 1992.
Source : Mainly Airline Business - November 1991

Nationality clauses

15. According to traditional bilateral agreements a Contracting Party has the right to refuse to accept the designation of an airline or airlines from the other Contracting Party in any case where it is not satisfied that the airline or airlines are "substantially owned and effectively controlled" by nationals of that Contracting Party. However, the Treaty rules on right of establishment create the right for Community citizens to establish themselves anywhere in the Community while otherwise respecting the rules of the Member States in question. This principle has specifically been confirmed in the third package⁽¹⁾ of the Community's air transport policy. This means that a Community air carrier may well be controlled by another nationality than that of the Member State in which the air carrier is registered. Such an air carrier has to be treated as any other air carrier established in that Member State for which the majority of shares are owned by its citizens and cannot be lawfully excluded from having the possibility to operate to third countries. These clauses in the ASAs are therefore contrary to Community law, since they discriminate on the basis of nationality and undermine effectively the right of establishment. Although these illegalities have not created any apparent problems so far, it is clear that with the third package which specifically envisages the creation of non-national air carriers, the situation may change. Indications already exist that these rights will be used.

Computer Reservation Systems

16. There are Member States that have accepted clauses in their bilateral agreements with the United States concerning non-discrimination within CRS displays and discrimination among CRS suppliers. Member States are not competent bilaterally to accept obligations which furthermore may infringe on Community law. In fact some of the clauses concerned are not compatible with the code of conduct on CRSs and thus create a serious legal problem especially if discrimination has been accepted.

Existing Community relations with third countries

17. Already today there are agreements and negotiations between the Community and third countries for the aviation sector:
- The Community has concluded an agreement on civil aviation with Norway and Sweden⁽²⁾. This agreement extends the scope of the Community air transport legislation to these countries, including the competition rules.

(1) Article 4 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on Licencing of Air Carriers (OJ No L 240, 24.7.1992).

(2) OJ No L 200/20, 22.6.1992.

- The draft agreement between the Community and the EFTA States, the European Economic Area agreement (EEA), includes aviation. When the agreement enters into force on 1-1-1993, as envisaged, the Community legislation concerning civil aviation will also apply in the EFTA countries. This will make the separate agreement with Norway and Sweden obsolete.
- The "European agreements" concluded between the Community and Poland, Hungary and Czechoslovakia envisage the conclusion of agreements concerning the conditions of access to markets and the supply of services in conformity with the Community's common transport policy, with a view to assuring a coordinated development of transport between the Parties adapted to their reciprocal commercial needs.
- The development of the annex on air transport in the framework of the General Agreement on Trade in Services (GATS) has resulted in a Community approach to the aviation sector through the 113 Committee. However, the proposed air annex to date excludes traffic rights and associated matters from the scope of GATS for at least five years.

II. DEVELOPMENT OF A COMMUNITY POLICY

Community and national interest

18. In the development of a Community policy due account has to be given to the potential conflict between on the one hand the interests of the Community as a whole and on the other hand the national interests of Member States. The creation of the internal market gives new opportunities to Community air carriers, but their competitive position could be even further enhanced if, with regard to third countries, the Community would take full advantage of its changed position and instead of being divided, would speak with one voice. It cannot be denied and it has been experienced in other economic areas that the Community, as one of the most important trading blocks in the world, effectively creates additional opportunities to those created by a national approach. It would be a serious mistake if for whatever reasons common action is delayed and the competition from third countries is given a chance to take further advantage of the present divided situation.

19. As a consequence of the very large influence of governments on the commercial opportunities of air carriers, Community Member States are in direct competition with each other in their struggle to get better access to markets for their air carriers. This can lead to situations where Member States may forget the broader perspective of Community interest and agreements are concluded which sometimes only meet the short-term interests of an individual Member State or of its carriers, irrespective of the costs for the Community as a whole. The "laissez-faire" approach of the US for example may be tempting to certain individual States but if taken up in an uncoordinated manner the results may not be in the common interest.

20. The following data demonstrate the equilibrium between the economic importance of the relevant markets (Europe, U.S.) on the one side and the disequilibrium in relation to traffic rights actually obtained on the basis of the fragmented negotiating approach of Member States on the other side.

EC/US MARKET COMPARISON - August 1991

A. Traffic Data (actual scheduled services)

	E.C. carriers	U.S. carriers
American gateways (in total 55)	22	54
E.C. gateways (in total 28)	27	22
Cabotage rights in the U.S. vs 5th freedom traffic rights within the E.C.	-	20
5th freedom rights (excluding intra-E.C. operations)	10	33
Number of routes operated between the U.S. and the E.C.	97	139*

(*) 276 advertised operations with 122 city pairs served under one flight number but with an aircraft charge.

Source : AEA

B. Airline Performance Data (1990)

	E.C. carriers	U.S. carriers
Total Number of air carriers operating jet aircraft	76	24
Passengers carried (1,000) (Intra-E.C./U.S. domestic)(1)	95,611	373,478
RPKs (billion) (2)	417.2	759.8
RPKs for Intra-European and US domestic traffic (billion) (3)	66.9	499.0
Financial profit/loss (billion U.S.\$) (1)	(0.8)	(1.7)
Net profit/loss (1)	(2.1)	(1.3)

(1) AEA carriers

(2) All EC carriers including charters and regional airlines

(3) E.C. AEA-member carriers

C. Economic Data

	E.C.	U.S.
Population	327,136,500	246,329,000
GDP at current prices and current exchange rates (billion ECU)	4,406.9	4,658.0
GDP at market prices per capita (ECU)	13,421	18,910
Imports from U.S.	84	-
Imports from E.C.	-	78

Source : Eurostat - 28th Edition 1991

21. It is worth noting that in recent months it has become clear that the development of the internal market has given a stimulus to new negotiations since many third countries are interested in obtaining improved access to the Community before 1993. In return they are prepared to grant additional rights to Member States' air carriers. This may lead to a selling-off of traffic rights valuable to the Community as a whole. For this reason it is necessary and urgent that a framework for Community coordination and negotiation is established quickly so that the balance of interests can be ensured.

The aims of a Community policy

22. Each bilateral relationship is different depending on the competitive situation of the air carriers concerned and on the policies and legislations in force in the third country. Therefore a detailed examination of individual relationships - in close cooperation with Member States and with interested parties - must be the basis for developing specific objectives, priorities and directives for actual negotiations. What is required without delay is the development of adequate procedures for determining Community priorities for the negotiations, which take account of the specificities of the relationships concerned.
23. Some components of a general Community policy can already be identified. Clearly such a policy will have to be in line with the objectives of the Treaty of Rome. This will imply ensuring the proper functioning of the internal market and implement fully the principles of the right of establishment and the free provision of services, taking into account the need to avoid predatory behaviour (para 36-49). The main legal concerns as seen in the following paragraphs exist in respect of the following areas :
- Competition rules
 - Nationality clauses and ownership
 - Non-Discriminatory allocation of traffic rights.
24. The general economic policy objectives which were set out in the explanatory memorandum to the proposals for the third phase⁽¹⁾ are relevant as well as the aims to:
- A. promote the interests of Community air carriers and their workers;
 - B. promote the interests of consumers;
 - C. promote the interests of airports (regions);

(1) COM(91) 275 final of 18 September 1991.

25. Of course Community policy cannot develop in isolation, as third countries have their policies and legislation which will have to be taken into account. Reciprocity has always been a leading principle in aviation negotiations and the Community will usually have to negotiate on that basis.

A. The interests of Community air carriers

26. The establishment of the common internal aviation market should improve the situation for Community air carriers because they can take advantage of the benefits of a large home-market, they can freely schedule their services, adjust capacity and offer tariffs in the market according to their own commercial judgement. Furthermore, they will be able to establish themselves anywhere in the Community according to harmonised licencing criteria. This new flexibility will stimulate competition, improve cost efficiency and yield management and should eventually make Community air carriers more competitive vis-a-vis third country competitors.

27. However, air carriers will need some time to optimise their networks and the structure of the industry needs to adjust to the new situation. After this initial phase they should be able to operate on a more competitive basis. Operational barriers, which are created by agreements with third countries, would then be a hindrance to this development. These restrictions should accordingly, be reconsidered as their elimination would be in the interest of the Community. A cautious and gradual approach should ensure that the restructuring of the market can take place in a balanced way.

28. It is worth noting that the bilateral agreements between Member States and third countries are not the only factors which determine the competitive situation. Strong worldwide competition exists for example between EC and US air carriers. The fact that the bilateral agreement between e.g. the US and Japan is less restrictive than the agreements between Member States and Japan means that the US carriers can develop a much better position in Japan and thereby in the global competition. As a consequence Community carriers become less attractive for a number of business passengers.

29. This example shows that it is important for Community air carriers engaged in global competition to be able to operate under the best possible regulatory regime. In fact, if other governments, due to their strong negotiating position, are able to secure a better more flexible regime, Community carriers may lose market share. In order to be competitive Community air carriers should therefore benefit from at least as flexible agreements as their competitors have.

30. Most bilateral agreements limit the number of carriers to be designated, the number of frequencies to be operated, the number of seats, etc. The more efficient air carriers from the Community or third countries are punished for their efficiency by obligatory "commercial agreements" to be concluded between the air carriers of both parties. Whenever a new air carrier wants to enter the market or if air carriers want more frequencies or to introduce different fare levels, this will have to be negotiated. In such agreements not market demand and consumer interest, but often the specific, possibly weak competitive position of the air carrier of one party is decisive for the number, sort and quality of operations. These practices are often against the interests of Community carriers as they make it difficult for them to use their full economic potential on a world-wide scale.
31. When 5th Freedom opportunities are granted to third countries careful consideration should be given to the effects this may have on other Member States or air carriers. An analysis of 5th freedom opportunities available to Japan is detailed below which demonstrates the opportunities available through European points for Japanese carriers. This quite clearly affects the actual and potential operations of Community air carriers on these routes.

TABLE 2 : FIFTH FREEDOM RIGHTS FOR JAPANESE AIR CARRIERS IN THE EC(*)

Pursuant to bilateral agreement between Japan and	<u>Rights granted</u>
U.K. (London)	Paris, Copenhagen plus 3 unspecified points
France (Paris)	London, points in Germany and Scandinavia, Amsterdam, plus one unspecified point
Germany (Frankfurt) (Düsseldorf)	Paris, Amsterdam plus 3 unspecified points
Denmark (Copenhagen)	London, Paris, Frankfurt, Düsseldorf, Amsterdam, Rome, Madrid
The Netherlands (Amsterdam)	London, Paris, points in Germany, Copenhagen, Rome, Madrid
Italy (Rome)	3 unspecified points
Spain (Madrid)	London, Paris, Frankfurt Copenhagen, Amsterdam, Rome

(*) Situation 1991

32. Many Community air carriers have relatively small networks. In order, for them, to be able to compete and offer the services requested by customers they require good and efficient interline facilities. This allows them to issue tickets to destinations they do not serve and it gives passengers the possibilities to reroute or change flights without extra costs. The existing interline system, therefore, should be maintained within the limits set by the competition rules.
33. A Community policy for relations with third countries should take account of the interests of all Community carriers. In principle, this means that whenever commercially possible all interested Community carriers shall be allowed to operate. Undue limitations in routings, capacity, designation and fares should be avoided and in cases where a selection has to be made procedures must be strictly non-discriminatory (see paragraphs 43-47 and 65-71).

B. The interests of air transport users

34. Air transport users are generally interested in safe, reliable and frequent high quality air services at a reasonable price from an airport in the vicinity of where they live to an airport close to their destination. It is normally of less interest to them whether the air carrier offering the service is established in their own country or in another as long as their requirements are met. User interests are best served in a reasonably liberal and competitive environment with safeguards to ensure the proper functioning of the market. Air carriers should have the necessary flexibility to respond to changes in market demand and should not be hampered by regulations which aim to protect less competitive air carriers. In particular business travellers have emphasized that interlining is imperative.

C. The interests of airports (regions)

35. The economic development of a region depends often on access to air transport. Many regions and their airports consider that traditionally the interests of air carriers and in particular of "national carriers" have dominated negotiations on traffic rights. This has led to a situation where traffic has been concentrated on relatively few gateways leading to congestion and environmental problems at those airports and regions while other regions suffer from a lack of adequate air links. The regions and airports are therefore looking for a more liberal market access policy with greater opportunities directly to regional airports. That does not mean that the differences in market strength between air carriers should be ignored, because that might not be in the long term interest of the travelling public and of airports. A balanced but liberal policy is advocated by these parties.

Requirements of the Single market and Implementation of Treaty principles

36. One of the fundamental principles for the single market is that Member States should not deliberately or inadvertently act against the interests of the Community or each other. It is important to note that negotiations by one Member State will practically always affect the interests of one or more other Member States. Additional opportunities for one carrier may directly influence the market and consequently the opportunities for carriers from other Member States operating in the same or neighbouring markets. Implementation of the basic principle that Member States should not harm each other's interests unduly requires therefore a careful coordination at Community level to identify and balance the different interests involved.

Competition rules

37. An external aviation policy must clearly include the external aspects of the competition rules. At present the Commission has not been enabled to implement Community competition policy in respect of routes to and from third countries⁽¹⁾. Certain forms of cooperation between air carriers may restrict competition but bring considerable benefits to airlines and air transport users alike. This has prompted the Commission to give an exemption under Article 85(3) of the Treaty to e.g. schedule coordination, joint operations, tariff coordination, slot allocation and joint computer reservation systems in respect of intra-Community transport under the conditions laid down in the applicable regulations. However, the Commission is not in a position to grant an exemption to these practices in respect of transport to third countries. Such common worldwide practices as e.g. IATA tariff coordination and slot allocation are consequently vulnerable to challenge under the EEC competition rules. Member States approving tariffs arising from tariff coordination also violate their obligations under Article 5 of the EEC Treaty. The Commission likewise cannot exempt under Article 85(3) joint operations, revenue pools, schedule coordination etc. which fall within Article 85.

Proper enforcement of the competition rules in respect of air transport to third countries is therefore urgently required. The Commission has made proposals to give it the normal powers of fact-finding, exemption of useful cooperation and termination of infringements which it has in other fields. The Council is requested to give these proposals urgent consideration. In order to remove legal uncertainty and to ensure the benefit of the application of the competition rules, the Commission would have no alternative, in the absence of proper enforcement powers, but to make use of its residual powers under Article 89 of the EEC Treaty.

(1) Court of Justice, Judgment of 11 April 1989 in Case 66/86 (Ahmed Saad).

Nationality clauses and ownership

38. A subject that also requires attention is the nationality clauses in bilateral agreements. It has already been indicated in para 15 that most bilateral agreements contain discriminatory designation clauses.
39. The Commission has already informed Member States that nationality clauses in bilateral agreements with third countries will have to be changed. It should be recognised, however, that an immediate request for changing or deleting nationality clauses in existing ASA's may not be readily granted in an individual negotiation. In the light of such problems the method will have to be decided after careful consultation.
40. In order to ensure a harmonious and gradual introduction of a new framework, it will be necessary to develop an acceptable transitional approach similar to article 234 of the Treaty whereby the Commission and the Member States will temporarily tolerate existing bilateral agreements. However, Member States are under an obligation to take all appropriate steps to eliminate the incompatibilities, such as the nationality clauses, established in agreements with third countries concluded before the entry into force of the Treaty.
41. It may only be possible to tolerate agreements concluded after 1958 when Member States agree on an appropriate consultation and authorization procedure whereby on a case by case basis steps are developed to remedy the situation, either individually or by the adoption of a common attitude. The Commission recognizes that in some cases it might be impossible under reasonable conditions to make the necessary amendments to the nationality clauses and other provisions contrary to Community law. During a reasonable period of time, the Commission will accept such cases as unavoidable in a transitional situation.
42. As to future agreements, it may be necessary to go beyond nationality clauses as referred to in paragraph 15 and to reconsider existing ownership limitations. The air transport industry is becoming more and more global in nature. It is therefore important for air carriers to be able to respond appropriately to competitive challenges and/or changes in the market. In a worldwide competition it might not be sufficient to look only for direct market access possibilities but it could be more effective to invest in local expertise. Several examples of this already exist. Risk capital might also be more readily available abroad than in the local market. For these reasons it might well be useful to examine the possibilities in the longer term of opening up for such investment opportunities.

In fact the Community already proposed more flexibility in this area in the context of the General Agreements on Trade in Services (GATS) but unfortunately not many countries were sufficiently interested. Individual Member States are bound by the obligation⁽¹⁾ only to license air carriers which are owned and controlled by Community persons. However, a provision has been included in the same article of the third package which expressly foresees the possibility of Community agreements in this respect.

Non discriminatory allocation of traffic rights

43. The problem of non discriminatory allocation of traffic rights arises when the number of Community carriers to be designated is limited and more carriers are interested to operate on the route, or when the capacity is limited and insufficient to meet the requirements of interested Community carriers.
44. Already today some Member States which have more than one carrier established in their territory have procedures for the allocation of acquired rights. Other Member States and the Community will very soon have to develop non-discriminatory procedures because with the entry into force of the third package the rights can no longer be allocated automatically to the "national carrier", but will have to be allocated among Community carriers.
45. It has been suggested that in such cases the routes should be sold to the highest bidder. This solution does not seem to meet the aims of Community policy because it leads to higher costs for air carriers and consequently for passengers and it increases barriers for new entrants.
46. Another solution, which is practiced in the Community in other economic sectors, is the establishment of a quota system. New routes would be allocated to Community carriers on the basis of a simple quota based on eg. their present market share. This would lead to a rigid system with very little possibilities for newly established air carriers to secure a reasonable market share and it would basically be against the freedom to provide services. The best way forward would seem to be a qualitative selection procedure because this allows the decision making body to take account of a range of criteria and creates the necessary flexibility to consider each situation on its merits. An absolute requirement is that non-discrimination is ensured. Such a procedure is further outlined in paragraphs 65-71.

(1) See footnote (2) on page 6.

47. Any selection procedure will inevitably lead to problems for one or more air carriers. Bilateral agreements which are based on liberal principles will therefore be preferable as long as fair competition is ensured. However, there is no doubt that designation possibilities will be limited in a number of bilateral relationships and therefore a mechanism for the allocation of traffic rights has to be developed.

48. When considering the development of a Community policy, it will also be important to look at the interests non-Community carriers have in operating services to Europe. For an air carrier offering long-haul international services Europe is a very important market, not only for point-to-point journeys, but in the context of its total network.

49. The interest of air carriers from other hemispheres would probably be to hub in Europe and to be able to use their own services to get people to their final destinations or between the main cities of Europe. As there has been no common external policy regarding third country air carriers flying into the European market, third states have gained considerable fifth-freedom rights through bilateral negotiations at national level. Consequently, they can carry their own passengers between European points and at the same time compete with European air carriers for other passengers on those routes. Many have also obtained stop-over rights with change of gauge which allows them to use more efficient aircraft on thinner routes by combining two destinations. Some third country air carriers have even been able to develop hub and spoke networks in the Community. Unfortunately adequate reciprocity is sometimes lacking. This is one of the reasons why the Commission has always emphasized the fifth freedom aspects of bilateral negotiations (see Para 31).

III. ESTABLISHMENT OF PROCEDURES

Responsibility for negotiations

50. On the basis of the Treaty and of the case law of the Court of Justice the Community has in any case exclusive competence for concluding bilateral air services agreements dealing in particular with market access, capacity, tariffs and related matters.
51. The Commission submitted in 1990 to the Council a proposal for a procedure to deal with aviation relations with third countries. This proposal is based on and would replace as far as aviation is concerned Council Decision 69/494/EEC. This Decision establishes a notification and consultation procedure at Community level and provides for Community negotiations. As long as Council Decision 69/494/EEC has not been replaced by a Decision on external aviation relations, it should be applied. Member States have been reminded of their obligations under Community law by letters of 1/3/90 and 2/7/90.
52. The procedures in Decision 69/494/EEC have not been respected by Member States. Several new bilateral agreements also including fifth freedom rights have been concluded, or existing agreements thoroughly modified, without any consultation or coordination at Community level. The Commission has so far refrained from starting infringement proceedings, in order to allow for open discussions on the development of a commonly agreed approach to the aviation relations with third countries. However, in case that no progress can be made in this area by the end of 1992 the Commission will be obliged to take up its responsibilities without further delay.
53. The starting point for the development of transitional procedures should be that the Community is a priori responsible for the formulation of an external aviation relations policy and there can be no negotiations with third countries on these matters without Community involvement. However, the Commission recognises that under certain circumstances within the limits of the policy developed by the Community and having considered compatibility with Community law in many instances satisfactory results may be achieved during a transitional period when Member States are authorized by the Council to negotiate bilateral agreements with third countries.

54. In the light of the considerations in chapter II and the above paragraphs a framework which is in line with the requirements of the Treaty must be established. Within such a framework the Community should in principle take responsibility for all agreements but then in a number of instances authorize the Member State concerned to negotiate on condition that Community coordination will take place in order to safeguard the interests of other Member States and of the Community as a whole. In this context, the Commission recognizes that its proposal of 1990 needs to be modified. A proposal for amendments is therefore annexed to this document. The procedures which are proposed permit :

- Community negotiations or
- Individual Member State negotiation.

Such procedures are set out in detail in annex II. The key question is to decide which facts are necessary for the Commission to propose and the Council to decide on the option which may lead to the best possible result.

55. Negotiations will be conducted at Community level or, normally on a case by case basis a Member State may be authorized by the Council to conduct the negotiations. Factors which would have to be considered are whether the third country asks for a Community negotiation, whether special problems of Community interests exist (CRS, foreign ownership, tariffs, competition rules etc.), or whether there are other pertinent factors. Such situations will have to be handled in a pragmatic way.

56. A framework which includes the possibility for Member States to negotiate individually will have to avoid legal uncertainty regarding existing rights and the allocation of responsibility in the Community. Already today many third countries are concerned that the creation of the internal market may affect their traffic rights to, from and within the Community and there is uncertainty about the respective competences of the Community and of Member States. It is important that the exercise of Community competence either by the Community or by Member States guarantees the stability of the international regulatory system. It will be necessary, therefore, to create a clear and unambiguous framework for all aviation relations with third countries which will take effect on January 1993. Agreements concluded between Member States and third countries before that date will be respected by the Community, provided they are in line with the requirements of Community policy.

Negotiations at Community level

57. Several areas can be identified where the Community should assume its responsibilities without delay.
- a. Action at Community level is necessary in situations where negotiations on Community level would give better economic results than negotiations at Member State level. It will, of course, be difficult to make this judgement beforehand but the strength of the negotiating partner, the existing balance of traffic rights, the size of the market and the overall trade relationship of the Community with that partner can be used as indicators for the analysis. In this respect the fact that some Member States, in order to obtain even a small benefit for their air carriers, negotiate away traffic rights which directly affect the competitive position of other Community air carriers is an argument in favour of negotiations on Community level. The United States and possibly Japan are the main examples of third countries which fall within this category.
 - b. Action at Community level is necessary where the insistence on acceptance of Community principles such as non-discrimination on the grounds of nationality would place an individual Member State in an unacceptable situation.
 - c. The Community is developing close relations with countries in Eastern Europe. For the development of these relations it is important that an effective air transport system is established which can meet the expected increase in market demand. To ensure a fair balance of opportunities in the European air transport market and to avoid a widening gap between the Community and the rest of Europe which limits the opportunities of the airlines to develop the European market, a common regulatory framework for the whole of Europe should be pursued. An extension of the Community regulatory framework which has been established with the EFTA countries, should also be considered as a follow up to the association agreements with the countries in Eastern Europe.
 - d. In relation to the successor States of the Soviet Union and Slovenia, Croatia and Bosnia-Herzegovina the Community is looking for a close relationship. The fact that in many cases new bilateral air transport agreements will have to be concluded with these countries offers a unique opportunity to establish the relationship in a Community-wide agreement which respects Community law and takes into account the specific circumstances that exist.

- e. Air transport is becoming more and more global in nature. Consequently, it is in the joint interest of air carriers and consumers to reconsider the principles of the worldwide regulatory framework of aviation. The Community has the necessary weight to play a leading role in developments towards liberal multilateral agreements, possibly between groupings of countries.
- f. Not only in Europe, but also elsewhere in the world trading blocks are being developed. In cases where third countries negotiate as a block also the Community should negotiate as one.
- g. Even if due account should be given to the existing role, function and structure of international organizations and of the role Member States therein the Community, represented by the Commission, will have to assume progressively its responsibilities in ICAO, ECAC, etc. to ensure Community coordination, to express common positions and to defend Community interests as a whole.

Negotiations at Member State level

- 58. In other cases, where Member States have been authorized to negotiate, there will be a need for coordination in order to ensure that the interests of other Member States and of the Community as a whole are taken into account and balanced against the interests of the Member State authorized to negotiate. The Council, therefore, when authorizing a Member State to negotiate shall where necessary specify directives for the negotiations to ensure that the Member State concerned acts within Community law and policy. The Commission should be able to attend. When there is cause for concern the Commission or another Member State can request a discussion in the Council, for example in an Aviation Committee as discussed below (Para 60).
- 59. The result of the negotiations by a Member State should be communicated to the Commission within a certain time before its signature in order for the Commission to check the conformity with Community Law and possible Council directives. The results will also be submitted to the Council for information.

Coordination

- 60. As from 1 January 1993 the Community would need to take up its responsibility for all negotiations with third countries. This means that as from that date all requests for negotiations coming from either the Member States or from third countries will be channelled

through the Community. As this will involve, of course, considerable extra work for the Commission and the Council adequate provisions will have to be made. In order to facilitate this work the Council could consider to establish an ad-hoc Aviation Committee to assist the Commission within the framework of such directives as the Council may issue to it. To ensure confidentiality the size of this Committee could be limited to one expert per Member State plus one "back-up" member.

61. The Committee could i.a. be active in :

-assisting the Council in defining the policy for external aviation relations of the Community on the basis of proposals made by the Commission

-preparing decisions of the Council on proposals of the Commission on whether a negotiation with a third country should be dealt with at Community level, or at Member State level or both.

-preparing decisions by the Council on the recommendation of directives for negotiations in case of negotiations at Community level. The Committee shall further assist the Commission in the conduct of these negotiations.

-preparing Council decisions and guidelines on Commission proposal for negotiations at Member State level to ensure a coordinated approach. Deviations from such guidelines will have to be proposed by the Commission to the Council.

-discussing the negotiating results and, when necessary, prepare Council decision to approve the agreement reached.

62. It will, of course, be necessary to develop procedures to obtain the advice of interested parties and in particular of organizations of air carriers, airports and consumers. It will be important, therefore, that these organizations and in particularly the air carrier organizations really represent the industry.

63. Close contact of industry representatives will be ensured on the occasion of the negotiations. In addition to the existing consultation processes on national and Community level, additional arrangements may be necessary.

Negotiating directives

64. Before any negotiation at Community level can take place it is normally necessary to develop directives for negotiations which give the negotiators the necessary policy guidance, without, however, limiting their ability to negotiate. To this end the Aviation Committee, on a proposal from the Commission which will, if need be, have consulted interested parties will have to balance the different interests of Member States, air carriers, airports, consumers, etc. It is the Council who decides on the directives for negotiations, but it may decide to authorise the Aviation Committee to act on its behalf in respect of detailed negotiation briefs.

The Parliament will have to be associated in an appropriate manner and procedures need to be developed with the Parliament which ensures insight but maintains confidentiality.

The allocation procedure

65. The allocation problem is closely related to the outcome of the negotiations. It arises i.a. when the number of air carriers to be designated is limited by the agreement, or when the capacity is limited or both.
66. In para 47 the need for a selection procedure which ensures the non-discriminatory treatment of air carriers for the allocation of traffic rights has been set out. The best solution would seem to be a system of qualitative criteria which should normally be applied only to the allocation of additional rights while taking into account the existing situation.
67. First it has to be established that the proposals are bonafide. In order to carry out this assessment the carriers will have to submit fairly detailed information to support their request: the long term objectives of the carrier, market forecast for the route in question, the technical ability to operate the route, etc. In order to ensure that the information provided by the airlines is realistic and does not give an over optimistic picture, the information should be carefully checked.

The selection among bonafide proposals should be based on which carrier can best make use of the traffic rights according to a range of criteria

- in terms of service to the public
- in terms of competition in the relevant market
- in terms of the use of scarce resources
- in terms of established Community policy
(e.g. slot allocation, public service obligation).

It has to be recognised that these criteria are general in nature and therefore difficult to apply. Therefore, depending on the route in question, additional selection criteria can be added to meet special circumstances (the operators strategy, sales and promotional plans, etc.). It might be possible that a designation would have to be withdrawn when the results of the operation do not meet reasonable expectations and better candidates are interested in operating the route.

68. Obviously not all considerations in the analysis leading to a decision on the initial allocation of traffic rights are quantifiable and objective it will be necessary, therefore, to ensure that the procedures leading to a decision are non-discriminatory, transparent and that an effective appeal procedure exists which is easy to apply.
69. This means that in a case where a Member State has negotiated the agreement, decisions on the allocation of rights should be taken by the competent authority of that Member State. It is necessary that an appropriate speedy appeal procedure exists or is created.
70. Where the Community has negotiated the agreement, the allocation of traffic rights requires a specific procedure at Community level. Treaty rules on the allocation of implementation tasks as laid down in Article 145 will have to apply. Accordingly the decisions shall be taken in line with rules laid down in the Council Decision No. 87/373/EEC of 13 July 1987 ("procedure II"). The Commission shall in its task be assisted by a Committee ("Management Committee for Air Transport") composed of representatives of the Member States and chaired by the Commission. Within this Committee the votes of Member States shall be weighted in accordance with Article 148(2) of the Treaty. The Commission in its decision has to balance out potential economic conflicts in a way which ensures neutrality and compatibility with Single Market requirements.
71. The following general procedures should be applied both when a Member State and the Commission will have to carry out the allocation :
 - there has to be a published notice in the official Journal calling for submissions of interest.
 - parties must send written submissions.
 - these submissions should be publicly available, except for confidential information.
 - there should be a public hearing where parties can present their case.
 - the decision should be published, together with the reasons and considerations which have led to the decision.

Continuity

72. The Commission intends to take the necessary measures in order to ensure that there will be sufficient staff (including recourse to national expertise) dealing with external aviation relations. The use of national expertise will ensure continuation and coordination.

Confidentiality

73. One of the most difficult aspects of the procedures to be developed is the necessary confidentiality of the directives for negotiations. Such directives will be prepared by the Commission in close collaboration with the interested parties and with Member States. Experiences so far have demonstrated that it will only be possible to avoid public knowledge of the mandates if the details are known to only a few people. It is necessary that the Council approves general directives for negotiations because the detailed negotiation briefs should only be discussed in the aviation committee, where confidentiality can be safeguarded.

Documentation

74. In order to be able to carry out its duties it will be necessary for the Commission to develop a data bank where all the ASA's, their annexes and all additional memoranda of understanding, exchanges of letters etc. concluded between Member States and third countries are stored. Where necessary this information will be kept confidential and will be accessible only for the Commission and members of the Aviation Committee. Together with the industry and with Member States, the Commission will have to develop statistical information related to the air services to, from and within the Community, on traffic, schedules and yield performance in order to prepare and facilitate decisions on the level of the negotiations and on the directives for negotiations. The assistance of Member States in the development of this data bank is indispensable.

IV. DECISIONS

75. The Council is therefore asked to :

- endorse of the basic elements of this communication and the development of procedures in accordance with it, including the establishment of an Aviation Committee to create an efficient forum for coordination and decision;

- adopt the proposal for a Council Decision on a consultation and authorization procedure for agreements concerning commercial aviation relations between Member States and third countries (COM (90) 17 final of 23 February 1990 as amended by the proposal in the Annex I);

- adopt the proposal for a Council Regulation (EEC) on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (COM(89) 417 final - OJ No C 248, 29.9.1989);

- adopt the proposal for a Council Regulation (EEC) amending Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (COM(89) 417 final - OJ No C 248, 29.9.1989).

Proposal from the Commission

Proposal for a
COUNCIL DECISION

on a consultation and
authorization procedure for
agreements concerning commercial
aviation relations between
Member States and third countries

Proposal from the Commission

to amend the proposal for a
Council Decision on a consultation
and authorization procedure for
agreements concerning commercial
aviation relations between
Member States and third countries
COM(90) 17 final of 23 February 1990

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing
the European Economic Community, and in
particular Article 113 thereof,

Having regard to the proposal from the
Commission,

Whereas the Council Decision 69/494/EEC
of 16 December 1969 on the progressive
standardization of agreements concerning
commercial relations between Member
States and third countries and on the
negotiations of Community agreements⁽¹⁾
provides a consultation and authorization
procedure for all commercial agreements
with third countries;

Whereas it is necessary that commercial
relation with third countries in the
field of civil aviation are governed by
special provisions replacing the
provision of Decision 69/494/EEC;

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Whereas it is necessary that commercial
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field of civil aviation are governed by
special provisions replacing the
provision of Decision 69/494/EEC;

(1) OJ No L 326, 29.12.1969, p. 39.

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Whereas commercial aviation relations are regulated by bilateral air services agreements, their annexes and amendments thereto, and other bilateral and multilateral arrangements containing provisions on market access, capacity, tariff arrangements or related provisions;

Whereas a procedure must be established to ensure that the replacement of national agreements by Community agreements is carried out progressively;

Whereas, while all negotiations with a view to conclusion of new treaties, agreements, or arrangements, or to amendment of those already existing, must be conducted in accordance with a Community procedure, it is never the less permissible for existing bilateral air services agreements, their annexes and any amendments thereto, and any other commercial bilateral or multilateral arrangement concerning aviation relations with third countries to be provisionally extended, expressly or tacitly, provided that their extension does not hinder the implementation of the common commercial aviation policy;

Whereas commercial aviation relations ; regulated by bilateral air services agreements, their annexes and amendments thereto, and other bilateral and multilateral arrangements containing provisions on market access, capacity, tariff arrangements or related provisions;

Whereas a regulatory framework for negotiations with third countries and a transitional period should be provided for;

Whereas the transitional period should go beyond 31 December 1992 to allow for a gradual introduction of Community negotiations;

Whereas the transitional provisions need to be provided for 6 years, with the possibility of a further extension on a yearly basis;

Whereas it is necessary to provide for authorization for provisions in the air transport services agreements and additional arrangements concluded before 1 January 1993 between Member States and third countries to remain in force, in order to avoid interrupting their commercial relations with the third countries concerned; whereas such

as, in order to ascertain whether condition is met, prior consultation and take place at Community level between the Member States and the Commission;

as, however, in certain exceptional cases, where negotiation by the Community is not yet possible and an interruption of relations based on agreement might compromise the development of commercial relations with the third country in question to the detriment of the Community and the Member States, a decision should be made, as a temporary measure and for a limited period, for the negotiation by Member States;

as, in order to prevent such situations hindering the implementation of the common commercial aviation policy, it may be conducted by Member States in the framework of guidelines agreed upon in advance and in accordance with a Community decision and covering the basic terms of an agreement to be negotiated;

authorization does not absolve the Member States from the obligation to take all appropriate steps to eliminate any incompatibility between such agreements and the provisions of Community law;

Whereas most of the matters covered by these agreements will in future be governed by Community agreements; whereas the provisions of the agreements which are to remain in force must not constitute an obstacle for the implementation of the common external aviation policy; whereas Member States may have to adapt, or, if necessary, terminate those agreements where their remaining in force hinders the implementation of the common external aviation policy;

Whereas during the transitional period the Council should have the possibility to authorize Member States to conduct bilateral negotiations with third countries;

Whereas in cases where it is decided that Member States can conduct negotiations with third countries the Council may issue directives for such negotiations;

Whereas Article 113 of the Treaty not only provides for the procedure for negotiations by the Community, but also for the establishment of a special committee appointed by the Council to assist the Commission in its task;

Whereas, in cases where the Community negotiates with third countries, procedures for the allocation of negotiating results should ensure neutrality and compatibility with Community legislation;

Whereas, before an agreement is signed, the results of the negotiations must be checked to ensure that they conform with the Joint conclusions;

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HAS ADOPTED THIS DECISION:

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TITLE I

TITLE I

Express or tacit extension of
agreements already existing

Express or tacit extension of
agreements already existing

Article 1

Article 1

Member States shall communicate to the Commission all bilateral air services agreements, their annexes and any amendments thereto, or any other commercial bilateral or multilateral arrangements with third countries concerning aviation relations within the meaning of Article 113 of the Treaty, at the latest one year after adoption of this Decision.

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However, such agreements or arrangements the extension of which, whether express or tacit, is proposed shall be notified to the Commission not later than three months before the date of express extension or of the expiry of the period during which notice of termination of the agreement or arrangement in question may be given.

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The Commission shall communicate the text of the notified agreements and arrangements to the other Member States within two weeks following the notification.

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Article 2

After the notification has been received, prior consultation shall take place at the request of a Member State or on the initiative of the Commission. Such a request for consultation shall be filed with the Commission by the Member State concerned within four weeks after the notification to it of the agreement or arrangement by the Commission.

Consultation shall begin within three weeks following the receipt by the Commission of the notification referred to in the second paragraph of Article 1 or of the request from a Member State.

The main purpose of the consultation shall be to establish whether a Community negotiation should be initiated or, if not, whether the agreements to be extended expressly or tacitly contain provisions relating to the common commercial aviation policy within the meaning of Article 113. If such is the case, it shall be established whether such provisions could constitute an obstacle to that policy. The consultation shall also cover all instruments currently in force between the other Member States and the third country concerned.

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Consultation shall begin within three weeks following the receipt by the Commission of the notification referred to in the second paragraph of Article 1 or of the request from a Member State.

The main purpose of the consultation shall be to establish whether a Community negotiation should be initiated or, if not, whether the agreements to be extended expressly or tacitly contain provisions relating to the common commercial aviation policy. If such is the case, it shall be established whether such provisions could constitute an obstacle to that policy. The consultation shall also cover all instruments currently in force between the other Member States and the third country concerned.

Article 3

If the Commission establishes, either after consultation or on its own initiative, that even though certain provisions in the instruments to be extended expressly or tacitly come within the scope of the common commercial aviation policy within the meaning of Article 113 those provisions would not, during the period of extension envisaged, constitute an obstacle to implementation of the common commercial aviation policy, it may authorize Member States to extend, expressly or tacitly, for a period to be specified, the provisions in question of the instruments which were the subject of the consultation. This period shall not exceed one year.

If, however, the instruments in question contain either a Community reservation clause or a clause providing for annual notice of termination, express or tacit extension may be authorized by the Commission for a longer period.

Article 4

If the Commission establishes, either after consultation or on its own initiative, that provisions in the instrument to be extended expressly or

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If, however, the instruments in question contain either a Community reservation clause or a clause providing for annual notice of termination, express or tacit extension may be authorized by the Commission for a longer period.

Article 4

If the Commission establishes, either after consultation or on its own initiative, that provisions in the instrument to be extended expressly or

tacitly could, during the period of extension envisaged, constitute an obstacle to the implementation of the common commercial aviation policy, in particular by reason of divergencies between the policies of Member States, it shall submit a detailed report to the Council. This report shall be accompanied by the necessary proposals and, where appropriate, by recommendations requesting that the Commission be authorized to open Community negotiations with the third countries in question.

tacitly could, during the period of extension envisaged, constitute an obstacle to the implementation of the common commercial aviation policy, in particular by reason of divergencies between the policies of Member States, it shall submit a detailed report to the Council. This report shall be accompanied by the necessary proposals and, where appropriate, by recommendations requesting that the Commission be authorized to open Community negotiations with the third countries in question.

Article 5

The provisions governing matters covered by the common external aviation policy within the meaning of Article 113 of the Treaty and contained in air transport services agreements and additional agreements concluded before 1 January 1993 between Member States and third countries may be maintained in force by the Commission until 31 December 1998 as regards those areas not covered by agreements between the Community and the third countries concerned and in so far as their provisions are not contrary to the Community policy.

To the extent that such agreements are not compatible with the Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other in accordance with the procedures provided for in this Decision.

TITLE II

Transitional provisions

Article 5

1. Without prejudice to Article 113 of the Treaty and until 31 December 1992, the Council acting on a proposal from the Commission and after the required prior consultation may, by way of exception, authorize bilateral negotiations between Member States and certain third countries in cases where Community negotiations prove to be not yet possible as a result of compelling circumstances of an administrative or technical nature.

TITLE II

Transitional provisions

Article 6

1. Until 31 December 1998, the Council acting by qualified majority on a proposal from the Commission, after the required prior consultation, may authorize Member States to conduct bilateral negotiations with third countries concerning the conclusion, modification and/or application of bilateral air services agreements, the annexes thereto or any other commercial bilateral or multilateral arrangements with third countries in cases where Community negotiations prove to be not yet possible. Directives and conditions may be attached to the authorization.

2. The provisions of this Article shall apply where, for any special reason, a Member State considers that, in order to avoid any interruption in commercial relations based on agreements, negotiations must be undertaken with some third country.

2. The provisions of this Article shall apply where, for any special reason, a Member State considers that, in order to avoid any interruption in commercial relations based on agreements, negotiations must be undertaken with some third country.

3. In derogation of paragraph 1, the Commission may, until 31 December 1992, authorize Member States to enter into bilateral negotiations with third countries concerning modification and/or application of annexes of existing agreements in respect of exercise of traffic rights, designation of airlines, approval of air fares and scheduling;

3. By way of derogation from paragraph 1, the Commission may, until 31 December 1998, authorize Member States to enter into bilateral negotiations with third countries concerning the modification and/or application of the annexes to existing agreements in respect of the exercise of traffic rights, the designation of airlines, the approval of air fares and scheduling.

Article 6

Article 7

Consultation conducted in accordance with Article 5 shall be ensured by the Commission and

Consultation conducted in accordance with Article 6 shall be ensured by the Commission and

(1) shall involve such co-ordination as will ensure the proper functioning and the strengthening of the internal market, as will take account of the legitimate interests of the Member States, as regards

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safeguarding and extending their commercial aviation relations with third countries and as will contribute towards the establishment of uniform principles of common commercial aviation policy in relation to the country in question;

(II) shall be resumed during negotiations if developments in the latter so require and particularly if the Member State concerned intends to digress from the guidelines adopted at the time of consultation;

(III) shall -as regards point (I) and (II)- lead to conclusions which will serve as guidelines for the Commission or for the Member State during the negotiations.

Article 7

At the end of negotiations the Member State concerned shall communicate to the Commission the results of such negotiations and shall inform the other Member States thereof.

safeguarding and extending their commercial aviation relations with third countries and as will contribute towards the establishment of uniform principles of common commercial aviation policy in relation to the country in question;

(II) shall be resumed during negotiations if developments in the latter so require and particularly if the Member State concerned intends to digress from the guidelines adopted at the time of consultation;

(III) shall -as regards points (I) and (II)- lead to conclusions which will serve as guidelines for the Commission or for the Member State during the negotiations.

Article 8

At the end of negotiations the Member State concerned shall communicate to the Commission the results of such negotiations and shall inform the other Member States thereof.

If within five working days after communication to the Commission no Member State has raised any objection with the Commission to the proposed agreement or communicated any such objection to the Member State concerned, the Commission shall forthwith inform the Council and the other Member States of that fact, unless, for its part, the Commission has any objection to raise.

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Upon receipt of this information the agreement in question may be concluded.

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In all other cases, the agreement may be concluded only after authorization by the Council, acting by a qualified majority on a proposal from the Commission.

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TITLE III

TITLE III

Final provisions

Final provisions

Article 8

Article 9

The information and consultations provided for in this Decision shall be covered by professional secrecy and shall, in particular, not involve the disclosure by the Commission on information provided by a Member State under this Decision and certified by that State as being commercially sensitive, except for the purposes of Article 1.

The information and consultations provided for in this Decision shall be covered by professional secrecy and shall, in particular, not involve the disclosure by the Commission of information provided by a Member State under this Decision and certified by that State as being commercially sensitive, except for the purposes of Article 1.

Article 10

The consultation and coordination provided for in this Decision shall take place within the framework of a special committee appointed by the Council and as provided for in Article 113 of the Treaty.

Article 11

1. The Council having concluded an agreement between the Community and a third country or countries and established criteria inter alia for the allocation of traffic rights, the Commission shall take the necessary measures for its implementation.

2. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The

opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

Article 9

The following Article 15a is inserted in Decision 69/494/EEC;

"Article 15a

This decision does not apply to agreements and arrangements concerning aviation matters."

Article 12

The following Article 15a is hereby inserted in Decision 69/494/EEC:

"Article 15a

This Decision does not apply to agreements and arrangements concerning aviation matters."

Article 13

The Council may extend, on the basis of a Commission proposal, the transitional periods of Articles 5 and 6 for one or more periods of one year. The Commission's proposal shall be submitted at the latest 6 months before the expiry of the relevant transitional periods.

Article 10

This Decision is addressed to the Member States.

Article 14

This Decision is addressed to the Member States.

Done at Brussels, For the Council

Done at Brussels, For the Council
The President

The procedure step by step

The procedure step by step

Step I Request for negotiations:

One or more Member States request negotiations with a particular third country or group of third countries, or the Community decides to initiate negotiations.

A third country or group of third countries requests negotiations with a particular Member State or with the Community as a whole.

Action: These requests are all submitted to the Commission

Step II Preparation of a proposal

The Commission considers the request and prepares, after consultations with interested parties, a proposal indicating if the negotiations should be carried out on Member State level or on Community level, in which case it also proposes draft directives for negotiations.

Action: The proposal is submitted to the Council for examination in the ad hoc Aviation Committee.

Step III Decision of the Council

The Aviation Committee prepares the decisions of the Council on the proposal of the Commission to authorize the Commission to open the negotiations, or the Member States to negotiate individually. According to normal procedures the Council can decide non-controversial issues as an A point. In other cases the Council may have to decide after a debate.

Consultation of interested parties.

The proceedings of the Aviation Committee will be strictly confidential. Detailed directives for negotiations will be kept secret.

Action: Decision by the Council.

Step IV Negotiations

Depending on the decision the negotiations are carried out on Member State level or on Community level.

On Member State level: the negotiations are carried out by the Member State; the Commission can participate as observer. The Member State will negotiate within the framework agreed upon by the Aviation Committee or the Council and subject to directives or conditions imposed by them.

On Community level: the negotiations are carried out by the Commission, within the directives for negotiations agreed upon by the Council; the normal procedures for Community negotiations shall apply; close contact with industry representatives will be insured on the occasion of the negotiations.

Action: After initialling of the agreement the texts shall be submitted to the Aviation Committee and to the Commission.

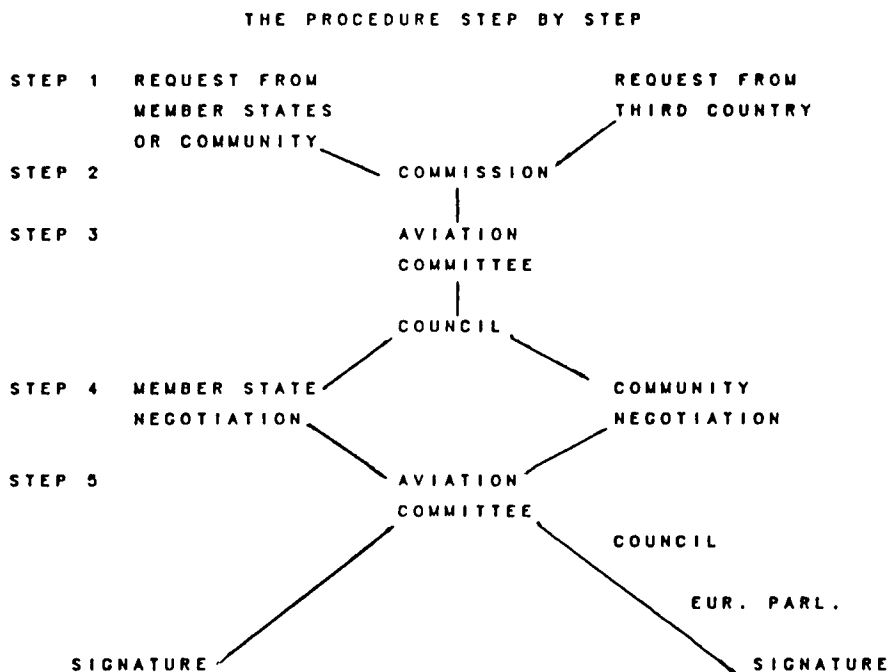
Step V Conclusion

An agreement negotiated at Member State level can be signed by that Member State two weeks after its referral to the Aviation Committee and the Commission, unless one of these parties raises objections against the result of the negotiations. In such cases the matter will be discussed by the Aviation Committee and when no agreement can be reached the Council shall take the necessary decisions. This procedure is without prejudice to the general competences of the Commission.

An agreement negotiated at Community level shall, after discussion in the Aviation Committee, be referred to the Council for conclusion.

The European Parliament will be informed in line with existing procedures.

Action: Signature of the agreement



Statistical Tabulations - General

TERMS AND DEFINITIONS

Geographical Europe :

Includes all international routes originating and terminating within Europe (including Turkey and USSR up to 55°E), Azores, Canary Islands, Madeira and Cyprus.

Europe-North Africa :

Services between Europe and Algeria, Egypt, Libya, Morocco, Sudan and Tunisia.

Europe-Middle East :

Terminating services between Europe and Bahrain, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen and the Democratic Republic of Yemen.

North Atlantic :

Routes between Europe and Canada / USA

Other Long haul than North Atlantic :

The sum of Mid and South Atlantic, Sub Saharan Africa, Far East/Australasia and other routes.

Total International :

The sum of int-short/medium haul and total long haul

Domestic :

Routes commencing and terminating within the natural frontiers (metropolitan area) 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.

Revenue passengers :

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

Revenue Passenger-Kilometres - RPK :

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

TABLE A

INTERNATIONAL SCHEDULED PASSENGER TRAFFIC BY REGION - EC CARRIERS

	<u>EI</u>	<u>AF</u>	<u>AZ</u>	<u>BA</u>	<u>IB</u>	<u>KL</u>	<u>LH</u>	<u>LG</u>	<u>OA</u>	<u>SN</u>	<u>SK</u>	<u>TP</u>	<u>AVERAGE</u>
Share of geographical Eur. in total traffic (domestic + intl)	78.2	49.5	43.4	49.3	37.4	50.7	44.6	100	26.0	67.4	48.8	53.4	50.7
Share of geographical Eur. in total intl traffic	86.9	62.5	71.5	63.1	77.8	51.0	68.4	100.0	72.6	67.4	87.6	71.9	73.4
Share of North Atl. traffic in total Intl traffic	13.1	8.8	11.0	19.2	7.3	22.4	15.2	-	9.3	13.6	7.7	12.1	11.6
Share of Europe-North Afr traffic in total intl traffic	-	12.8	4.9	0.4	2.5	2.2	1.7	-	5.1	2.6	0.2	0.5	2.7
Share of Europe-Middle East Traffic in total intl trffc	-	2.1	2.4	1.3	0.5	2.1	2.2	-	5.2	1.8	0.6	-	1.5
Share of other long haul traffic in total intl traffic	-	13.7	10.3	16.0	12.0	22.3	12.4	-	7.8	14.6	4.0	15.6	10.7
Total	100	100	100	100	100	100	100	100	100	100	100	100	100
Share of domestic traffic in total traffic	10.1	20.9	39.3	21.8	52.0	0.7	36.0	-	64.1	-	44.3	25.7	26.3
Share of intl traffic in total traffic	89.9	79.1	60.7	78.2	48.0	99.3	64.0	100	35.8	100	55.7	74.3	73.7

SOURCE : AEA - Statistical Appendices to Yearbook, May 1991

NOTE: Totals may not sum due to rounding

TABLE B

INTRA-EC AND OTHER INTERNATIONAL TRAFFIC BY MEMBER STATE AND BY GEOGRAPHICAL MARKET (Passengers - 1990)

	Belgium	Denmark	France	Germany	Greece	Ireland	Italy	Luxembourg	Netherlands	Portugal	Spain	UK
Intra-EC (e)	1958920	1368366	6495859	6217714	1219582	1713291	4520909	12033	2877818	1157967	3569997	10550407
%	70.8	46.2	54.7	49.7	58.6	95.0	66.3	97.2	59.6	71.5	71.8	53.8
EFTA	331973	1056897	1076163	1874924	190331	-	519945	-	537926	154929	375749	1944913
%	12.0	35.7	9.1	15.0	9.1	-	7.6	-	11.9	9.6	7.6	9.9
Europe (part from EC & EFTA)	71277	148297	528793	828407	256910	-	214987	-	211315	-	15025	630654
%	2.6	5.0	4.5	6.6	12.3	-	3.2	-	4.4	-	0.3	3.2
Total % Europe	85.4	85.9	68.3	71.3	80.0	95.0	77.1	97.2	75.9	81.1	79.7	66.9
North Atlantic	302990	198270	1406094	1932321	163242	91531	715253	-	605679	170483	394688	4158345
%	11.0	6.7	11.8	15.5	7.8	5.0	10.5	-	12.5	10.5	7.9	21.2
South America	-	24603	226659	166356	-	-	157493	-	63087	123063	454760	120044
%	-	0.8	1.9	1.3	-	-	2.3	-	1.3	7.6	9.1	0.6
Middle East & Africa	85360	11526	1484454	466555	146119	-	418519	345	126957	11586	99985	652724
%	3.1	0.4	12.5	3.7	7.0	-	6.1	2.8	2.6	0.7	2.0	3.3
Far East	16810	153733	657751	962934	63043	-	233365	-	390526	-	60174	1329369
%	0.6	5.2	5.5	7.7	3.0	-	3.4	-	8.1	-	1.2	6.7
Australia & New Zealand	-	-	-	57710	43896	-	36684	-	18268	-	-	231950
%	-	-	-	0.5	2.1	-	0.5	-	0.4	-	-	1.2
Total	2768330	2961692	11875773	12506924	2033123	1804822	6817155	12378	4831576	1617646	4970376	19618405

* Totals may not sum due to rounding

Source : ICAO Digest of Statistics N° 384

(e) Excluding domestic traffic

TABLE C

INTERNATIONAL TRAFFIC (EXCLUDING INTRA - EC TRAFFIC) BY MEMBER STATE AND BY GEOGRAPHICAL MARKET (1990)

	Belgium	Denmark	France	Germany	Greece	Ireland	Italy	Luxembourg	Netherlands	Portugal	Spain	UK
Europe (excluding EC & EFTA) %	8.8	9.3	9.8	13.2	29.8	-	9.4	-	10.8	-	1.1	7.0
EFTA %	41.0	66.3	20.0	29.8	22.0	-	22.8	-	27.5	33.7	26.8	21.4
North Atlantic %	37.4	12.4	28.1	30.7	18.9	100	31.1	-	31.0	37.1	28.2	45.9
South America %	-	1.5	4.2	2.7	-	-	6.8	-	3.2	26.8	32.5	1.3
Middle East %	10.7	0.7	27.6	7.4	16.9	-	18.2	100	6.5	2.5	7.1	7.2
Far East %	2.1	9.7	12.2	15.3	7.3	-	10.2	-	20.0	-	4.3	14.7
Australia & New Zealand %	-	-	-	0.9	5.1	-	1.6	-	0.9	-	-	2.6

* Totals may not sum due to rounding

Source : ICAO Digest of Statistics N° 384

Table D

Historical and Forecast growth rates in European long haul travel by destination region, 1980 - 2000 (% per annum; arrivals basis)

Destination region	1980-1985	1985-1989	1989-2000
North America	- 2.7	17.9	9.8
Caribbean	- 2.3	21.5	8.1
Central/South America	4.4	5.5	3.1
Africa (except North)	5.7	5.1	5.6
South Asia/Indian Ocean	1.2	9.5	7.0
South East Asia	1.9	20.0	9.7
Far East/Pacific	8.5	7.3	7.2
Australia/New Zealand	4.9	14.9	8.1
Total	1.4	13.5	8.3

Source : Economic Intelligence Unit

TABLE E

INTERNATIONAL SCHEDULED PASSENGER TRAFFIC BY REGION - EC CARRIERS (based on RPKs)

	<u>EI</u>	<u>AF</u>	<u>AZ</u>	<u>BA</u>	<u>IB</u>	<u>KL</u>	<u>LH</u>	<u>LG</u>	<u>OA</u>	<u>SN</u>	<u>SK</u>	<u>TP</u>	<u>AVERAGE</u>
Share of geographical Eur. in total traffic (domestic + intl)	41.3	16.6	25.3	15.3	29.8	10.4	18.6	100	34.7	21.8	34.9	35.8	32.0
Share of geographical Eur. in total intl traffic	42.0	21.0	28.2	16.3	38.0	10.4	20.0	100.0	40.8	21.8	43.6	40.3	35.2
Share of North Atl. traffic in total Intl traffic	58.0	25.5	32.1	39.0	20.4	39.8	38.2	-	24.6	34.7	33.5	23.2	30.8
Share of Europe-North Afr traffic in total intl traffic	-	8.0	2.8	0.5	1.2	1.6	1.4	-	1.7	2.1	0.3	0.1	1.6
Share of Europe-Middle East Traffic in total intl trffc	-	3.3	2.4	1.8	0.7	2.0	2.7	-	3.1	2.3	1.1	-	1.6
Share of other long haul traffic in total intl traffic	-	42.2	34.5	42.5	39.7	46.2	37.7	-	29.7	39.0	21.5	36.4	30.8
Total	100	100	100	100	100	100	100	100	100	100	100	100	100
Share of domestic traffic in total traffic	1.7	20.8	10.4	5.9	21.6	0.02	6.8	-	15.1	-	19.8	11.2	9.4
Share of intl traffic in total traffic	98.3	79.2	89.6	94.1	78.4	99.9	93.2	100	84.9	100	80.2	88.8	90.6

SOURCE : AEA - Statistical Appendices to Yearbook, May 1991

NOTE: Totals may not sum due to rounding

The EC/US Market – A statistical overview

The EC/United States Market

1. Routes

The total number of different North Atlantic routes between the United States and the European Community as of August 1991 was 278 (including 122 city pairs served under a published through flight number but with aircraft change at an intermediate point). (See Table A).

Table B details the share carrier by carrier. In summary, EC carriers operate on 97 routes. Despite this, EC carriers do perform well in terms of business and market share on the routes. Table C details the EC share of capacity flown, broken down by Member States. Of the 11 EC Member States, 5 have the majority share of their market with the US.

2. Gateways

Again using data from August 1991 there is an imbalance in what has been achieved between the Community and Member States. In the EC there are 28 Gateways, 27 used by EC carriers and 22 used by US Carriers (see table D) and of 55 American Gateways, 54 are used by US carriers and 22 by EC carriers (see Table E). The AEA have additionally completed an analysis (Table F) which confirms the present imbalance.

3. Fifth Freedom Operations

Table G details the Fifth Freedom "rights" achieved by US negotiators for their carriers. As of August 1991, there were 20 routes operated by 4 carriers. In addition to this, there were 33 routes operated from European airports by US airlines. The AEA's analysis is also provided (Table H).

TABLE A

August 91 CITY PAIRS

AMSTERDAM

Anchorage : JL (online stopover traffic only)
Atlanta : DL, KL
Baltimore : KL
Boston : NW
Chicago : KL, RO
Dallas : DL*
Denver : CO*
Houston : CO*, KL
Honolulu : CO*
Los Angeles : KL, TW*, DL*, NW*
Miami : DL*
Minneapolis : KL, NW
New York : PK, PA, TW, KL, CO*, RO, RJ
Orlando : KL, UA*, DL*
San Francisco : DL*
Tampa : DL*
Washington UA*

ATHENS

Atlanta : PA*
Boston : NW
Jacksonville : PA*
Los Angeles : TW*
New York : OA, TW*, PA*
San Francisco : TW*
Washington : PA*

BARCELONA

New York : IB, PA, TW

BERLIN

Atlanta : DL
Colorado : UA*
Denver : UA*
Miami : PA*
New York : TW, PA, LH
Washington : UA*

(*) Plane change at an intermediate point

BRUSSELS

Boston : SN
Chicago : SN, AA, UA*
Los Angeles : AA*
Miami : AA*
New York : PA, AA, TW, SN, TK, UA*
Raleigh/Durham : AA*
San Diego : UA*
San Francisco : AA, UA*
Seattle : UA*
Washington TW*

COLOGNE

New York : LH

COPENHAGEN

Anchorage : JL (online stopover traffic only)
Atlanta : DL
Chicago : SK
Detroit : TW*
Los Angeles : SK
Miami : FF
Milwaukee : TW*
New York : FF, TW, SK
Seattle : SK

DUBLIN

Atlanta : DL
Boston : EI
Chicago : DL*, EI
Cincinnati : DL
Dallas : DL*
Los Angeles : DL*
New York : EI
Orlando : DL
San Francisco : DL

DUSSELDORF

Anchorage : JL (online stopover traffic only)
Chicago : LH, AA (operated by LH aircraft)
Los Angeles : LT
Miami : LT, LH
New York : LH
San Francisco : LT

FRANKFURT

Albuquerque : DL*
Atlanta : LH, DL PA*
Austin : DL*
Baltimore : TW, US
Boston : NW, LH
Charlotte : LH, US*
Chicago : UA, AA, LH
Cincinnati : DL
Cleveland : US*, CO*
Dallas : DL, LH, AA
Dayton : US*
Denver : DL*, UA*, CO*
Detroit : NW
EL Paso : DL*
Fort Lauderdale : DL*
Fort Myers : DL*
Houston : DL*, PA*, LH, CO*
Indianapolis : US*
Jacksonville : FI, PA*
Kansas City : DL*
Las Vegas : DL*
Los Angeles : DL*, AA*, UA*, TW*, LH, US*, CO*, NZ
Memphis : DL*
Miami : DL*, LT, PA, LH
Milwaukee : NW*
Minneapolis : NW
Nashville : DL*
New Orleans : DL*
New York : PA, TW, LH, CO, PK
Oklahoma City : DL*
Orlando : DL
Philadelphia : LH, US
Phoenix : DL
Pittsburg : US
Raleigh : US*, DL*
Salt Lake City : DL*
San Antonio : DL*
San Diego : DL*
San Francisco : DL*, LH, AA, TW, UA*, PA, US*, CO*
San Juan : LH
Sarasota : DL*
Seattle : NW
St Louis : TW
Tampa : DL*
Tucson : DL*
Tulsa : DL*
Washington : TW*, UA, PA, LH
W Palm Beach : DL*

GLASGOW

Boston : NW
Chicago : AA
Dallas : AA
Los Angeles : AA*
New York : NW, BA
San Francisco : AA*
San Jose : AA*

HAMBURG

Atlanta : DL
New York : PA, UA*, LH

LISBON

Boston : TP
New York : PA, TW, TP

LONDON

Anchorage : BA, JL (online stpover traffic only)
Atlanta : DL, BA
Baltimore : TW
Boston : NW, AA, VS, BA
Charlotte : US
Chicago : AA, BA, UA*, CO*
Cincinnati : DL
Cleveland : PA, CO*
Colorado : UA*
Dallas : AA, CO*, BA
Denver : AA*, UA*, CO, DL*
Detroit : PA, NW*, BA
Honolulu : CO
Houston : BA, CO
Kansas City : DL*, TW*
Los Angeles : AA, UA, CO*, BA, NW*, VS, TW, DL*, NZ
Memphis : DL*
Miami : UA*, AA, PA, BA, VS, DL*
Minneapolis : NW
Nashville : AA*, DL*
New Orleans : US*, CO*, DL*
New York : AA, UA, TW*, BA, VS, CO, AI, LY, KU
Norfolk : US*
Orlando : AA*, TW*, US*, PA*, DL*, BA, UA*
Philadelphia : TW, BA
Phoenix : CO*, DL*
Pittsburgh : BA
Portland Ord : CO*
San Antonio : CO*
Raleigh/Dur : US*
St Louis : TW
Salt Lake City : DL*
San Antonio : CO*

LONDON (cont'd)

San Diego : UA*, TW*
San Francisco : AA*, TW, UA, BA, CO*, DL*
San Jose : AA*
San Juan : AA*, BA
Seattle : UA, CO*, BA
Tampa : US*, DL*, PA*, BA, CO*
Washington : UA, CO*, BA

LUXEMBOURG

Baltimore : FI
New York : FI
Orlando : FI

LYON

New York : AF

MADRID

Anchorage : JL (online stopover traffic only)
Boston : TW*
Chicago : UA*
Dallas : AA
Los Angeles : IB, TW*, AA*
Miami : PA*, AA, IB, AM
New York : PA, TW, IB
San Diego : AA*
San Francisco : AA*
San Juan : IB
Washington : UA, TW*

MANCHESTER

Atlanta : DL
Chicago : AA
Dallas/FTW : AA*, DL*
Los Angeles : DL*
Miami : AA*
Nashville : AA*
New York : AA, BA
Orlando : DL*
Raleigh : AA*
San Juan : AA*

MILAN

Boston : AZ/US
Chicago : AZ, AA
Dallas : AA*
Los Angeles : TW*, AZ/US
Miami : AZ
Nashville : AA*
New York : PA, TW, AZ
San Francisco : PA*, TW*

MUNICH

Atlanta : DL
Chicago : UA*, TW*, AA, LH
Cincinnati : DL*
Dallas/FTW : DL*
Los Angeles : UA*, DL*
Miami : PA*, LH
New York : UA*, TW*, PA, LT, LH
Orlando : DL*
St Louis : TW*
Seattle : UA*
Tampa : DL*

NICE

Honolulu : PA*
Los Angeles : PA
New York : PA, AF

PARIS

Anchorage : AF, JL (online stopover traffic only)
Atlanta : DL, TW*, AA*
Boston : TW, CO*, AF
Chicago : UA, TW*, AA, AF
Cincinnati : DL
Cleveland : CO*
Dallas FTW : AA, DL*
Denver : CO*, DL*
Detroit : NW
Greenville : DL*
Houston : CO*, AF
Jacksonville : TW*
Kansas City : DL*,
Los Angeles : UA*, PA*, AA*, TW, DL*, NW, AF
Memphis : DL*
Miami : PA, UA*, DL*, AA*, AF, AM, QN
Nashville : DL*, AA*
New Orleans : DL*
New York : PA, TW, CO, AA, FF, AF, PK
Phoenix : TW*, DL*
Portland : TW*
Raleigh : AA
San Diego : UA*, AA
San Francisco : TW*, UA*, UT, PA*, DL*, AA*
San Juan : AA*
Salt Lake City : DL*
Seattle : TW*
St Louis : TW
Tampa : DL*
Washington : PA*, CO*, UA, TW, AF

PONTA DELGADA

Boston : TP

ROME

Anchorage : JL (online stopover traffic only)

Boston : TW, AZ/US

Chicago : AZ

Los Angeles : TW*, PA*, AZ/US

Miami : AZ, PA*

New York : TW, PA, AZ

St Louis : TW*

San Diego : TW*

San Francisco : TW*

Washington : TW*

SHANNON

Atlanta : DL

Boston : EI

Chicago : DL*, EI

Cincinnati : DL*

Dallas : DL*

Los Angeles : DL*

Miami : SU

New York : EI

Orlando : DL*

San Francisco : DL*

Washington : SU

STUTTGART

Atlanta : PA*, DL

Dallas : DL*

Jacksonville : PA*

Los Angeles : DL*

Miami : DL*

New York : PA*

Orlando : DL*

San Francisco : DL*

Tampa : DL*

TERCEIRA

Boston : TP

VENICE

New York : AZ*

TABLE B

NORTH ATLANTIC OPERATIONS BY CARRIER - August 91

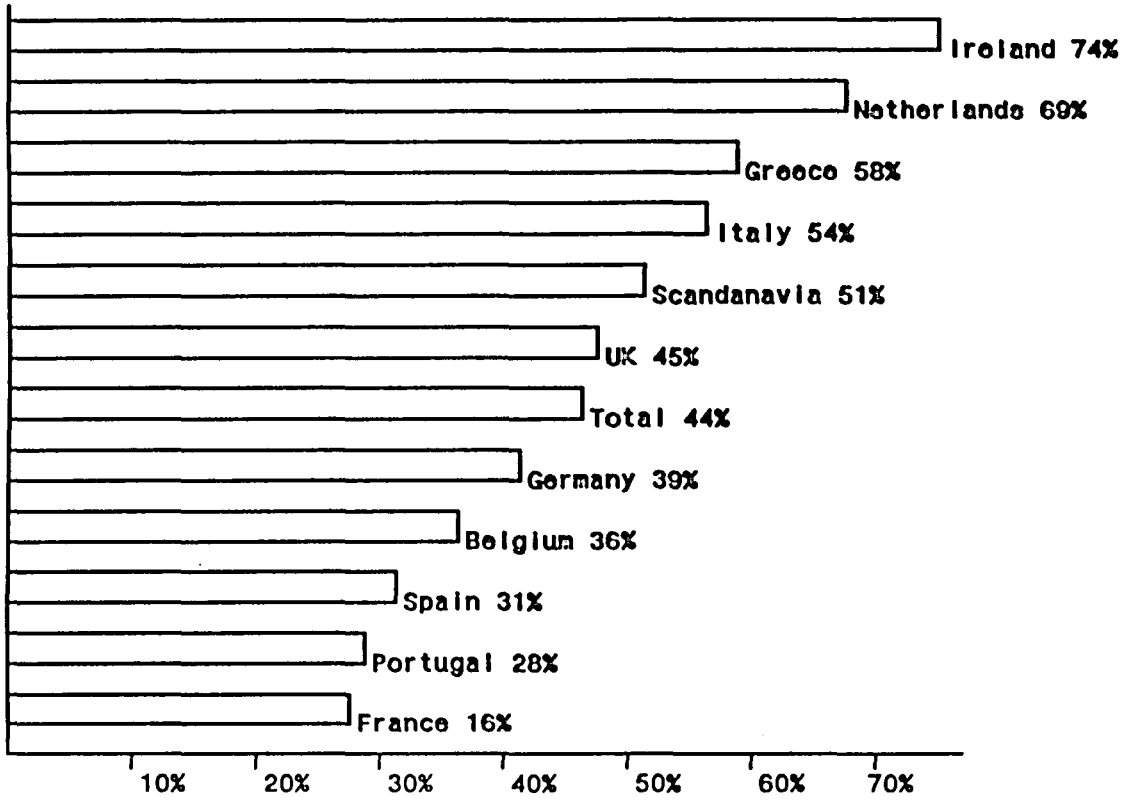
<u>EC CARRIERS</u>	<u>ROUTES</u>
KL	8
OA	1
IB	4
LH	22
SN	3
SK	4
EI	6
LT	5
BA	20
TP	4
VS	4
AF	10
AZ	11 (4 code sharing + 1 a/c change)
IW	2 (op. subj. to confirmation)
UT	1

<u>US CARRIERS</u>	<u>ROUTES</u>
DL	21 + 79 (with an a/c change)
TW	24 + 33 (" ")
NW	13 + 4
US	7 (4 code-sharing) + 12 (a/c change)
CO	6 + 27 (a/c change)
AA	27 + 29 (" ")
PA	21 + 22 (" ")
FF	3
UA	9 + 29 (" ")

<u>THIRD CARRIERS</u>	<u>ROUTES</u>
JL	7 (online stvr tfc only)
RO	2
PK	3
RJ	1
TK	1
NZ	2
AI	1
LY	1
KU	1
FI	3
AM	2
QN	1
SU	2

TABLE C

EC AIRLINES ESTIMATED CAPACITY SHARES ON US-EC ROUTES, JUNE 1992



Source : AVMARK

TABLE D

EC GATES BY EC AND US OPERATORS - August 91

	<u>EC</u>	<u>US</u>
AMS	KL	DL, NW, CO, TW, PA,
ATH	OA	PA, TW
BCN	IB	PA, TW
BER	LH	DL, UA, PA, TW
BRU	SN	PA, TW, UA, AA
CGN	LH	-
CPH	SK	DL, FF, TW
DUB	EI	DL
DUS	LH, LT	AA
FRA	LH, LT	PA, DL, NW, UA, AA, CO, TW, US
GLA	BA	NW, AA
HAM	LH	PA, UA, DL
LIS	TP	PA, TW
LON (LHR + LGW)	BA, VS	PA, TW, US, DL, CO UA, AA, NW
LYS	AF	-
LUX	FI	-
MAD	IB	PA, TW, UA, AA
MAN	BA	DL, AA
MUC	LH, LT	DL, UA, TW, AA, PF
MXP	AZ	AA, US, TW, PA
NCE	AF	PA
PAR (CDG+ORY)	AF, IW	PA, TW, CO, AA, FF, UA, DL, NW
PDL	TP	-
ROM	AZ	US, TW, PA
SNN	EI	DL
STR	-	PA, DL
TER	TP	-
VCE	AZ	-
28 Gates	27 used by EC carriers	22 used by US carriers

EFTA GATES BY EFTA AND US OPERATORS - August 91

	<u>EFTA</u>	<u>US</u>
GVA	SR	TW, PA
GOT	-	FF
HEL	AY	PA
OSL	SK	PA, FF
REK	FI	-
STO	SK	AA, TW, PA, FF
VIE	OS	TW, PA
ZRH	SR	AA, TW, PA
8 Gates	7 used by 5 EFTA carriers	7 used by 4 US carriers

TABLE E

US GATES BY EC AND US OPERATORS - August 91

	<u>US</u>	<u>EC</u>
ABQ (Albuquerque)	TW, DL	-
ANC (Anchorage)	-	BA, BF
ATL (Atlanta)	DL, TW, AA, PA	LH, KL, BA
AUS (Austin)	DL	- -
BWI (Baltimore)	TW, US	KL
BOS (Boston)	TW, CO, US, NW, AA	SN, AF, TP, EI AZ, VS, BA, LH
CLT (Charlotte)	US	LH (subj. gvt apr)
CHI (Chicago)	AA, UA, DL, CO TW	LH, EI, AZ, BA, KL, SK, SN, AF
CVG (Cincinnati)	DL	-
CLE (Cleveland)	US, CO, PA	-
COS (Colorado)	UA	
DFW (Dallas FTW)	AA, DL, CO	LH, BA
DAY (Dayton)	US	
DEN (Denver)	DL, UA, CO, AA	-
DTT (Detroit)	NW, PA	BA
ELP (El Paso)	DL	-
FLL (Fort Lauderdale)	DL	-
FMY (Fort Myers)	DL	
GSP (Greenville)	DL	-
HNL (Honolulu)	CO, PA	-
HOU (Houston)	CO, DL, PA	BA, KL, AF, LH
IND (Indianapolis)	US	-
JAX (Jacksonville)	PA, TW	-
MKC (Kansas City)	DL, TW	-
LAS (Las Vegas)	DL	-
LAX (Los Angeles)	DL, AA, UA, TW, US, CO, PA, NW	LH, LT, AF, IB SK, AZ, KL, BA VS, IW
MEM (Memphis)	DK	-
MIA (Miami)	DL, PA, AA, UA, FF	LT, LH, AF, IB AZ, BA, VS
MKE (Milwaukee)	TW, NW	-
MSP (Minneapolis)	NW	KL

BNA (Nashville)	AA, DL	-
MSY (New Orleans)	DL, US, CO	-
NYC (New York)	AA, NW, UA, TW CO, PA, FF	BA, EI, VS, LH, LT, LT, OA, AZ, KL, TP, SK, IB, AF, SN,
ORF (Norfolk)	US	-
ORL (Orlando)	DL, AA, TW, US PA, UA	BA, KL
OKC (Oklahoma City)	DL	-
PHL (Philadelphia)	US, TW	LH, BA
PHX (Phoenix)	CO, DL, TW	-
PIT (Pittsburgh)	US	BA
POR (Portland OR)	TW, CO	-
RDU (Raleigh)	US, AA, DL	-
SAT (San Antonio)	DL, CO	-
SAN (San Diego)	DL, UA, AA, TW	-
SFO (San Francisco)	AA, TW, UA, CO DL, PA, US	BA, LT, UT, IW LH
SJC (San Jose)	AA	IB
SJU (San Juan)	AA	BA, IB, LH
SLC (Salt Lake City)	DL	-
SRQ (Sarasota)	DL	-
SEA (Seattle)	NW, UA, TW, CO	SK, BA
STL (St Louis)	TW	-
TPA (Tampa)	DL, US, PA, CO	BA
TUS (Tucson)	DL	-
TUL (Tulsa)	DL	-
WAS (Washington)	UA, CO, PA, TW	BA, AF, LH
PBI (W Palm Beach)	DL	-
55 Gates	54 used by US carriers	22 used by EC carriers

BILATERAL ARRANGEMENTS

TABLE F

EUROPEAN AIRLINES IN THE US - AUGUST 1991

<u>Country</u>	<u>Rights Granted</u>	<u>Rights Used</u>
1) AUSTRIA	New York + one optional pt.	New York
2) BELGIUM	1) New York Boston Chicago Atlanta Detroit 2) Pts in the US (all-cargo serv. only)	Boston Chicago New York
3) FINLAND	New York Seattle Anchorage One pt in California	Los Angeles New York
4) FRANCE	New York Washington Boston Chicago Philadelphia Houston Los Angeles Anchorage Miami San Francisco San Juan	Anchorage Boston Chicago Houston Los Angeles Miami New York San Francisco Washington
5) GERMANY	Anchorage Atlanta Boston Chicago Dallas Fairbanks (cargo) Houston Los Angeles Miami New York Philadelphia San Francisco San Juan Washington	Atlanta Boston Charlotte(*) Chicago Dallas Houston Los Angeles Miami New York Philadelphia San Francisco San Juan Washington

(*) Subject to government approval

6) GREECE	New York or Boston/Chicago or New York/Chicago or any one other US point	New York
7) IRELAND	New York Boston Chicago Los Angeles	New York Boston Chicago
8) ITALY	1) New York Boston Detroit Philadelphia Washington Chicago Los Angeles or San Francisco 2) New York Boston Chicago (all-cargo services only)	New York Boston Chicago Los Angeles Miami
9) LUXEMBOURG	None	None
10) NETHERLANDS	New York Chicago Los Angeles Houston Anchorage Atlanta Orlando	Atlanta Baltimore Chicago Houston Los Angeles Minneapolis New York Orlando
11) PORTUGAL	New York Boston Los Angeles Miami or San Juan	New York Boston
12) SCANDINAVIAN COUNTRIES	New York Chicago Seattle Los Angeles Anchorage San Juan	Chicago Los Angeles New York Seattle

13) SPAIN

New York
Boston
Washington
Baltimore
San Juan
Miami
Chicago
Los Angeles

New York
San Juan
Miami
Los Angeles

14) SWITZERLAND

New York
Boston
Chicago
Anchorage
Atlanta
Los Angeles

New York
Boston
Chicago
Atlanta
Los Angeles
Philadelphia

15) UK

- 1) Anchorage
Atlanta
Boston
Chicago
Dallas FW
Detroit
Houston
Los Angeles
Miami
New York
Newark
Orlando
Philadelphia
San Francisco
Seattle
Washington
San Juan
Tampa
Pittsburg
Denver
San Diego
One other US pt
to be nominated
- 2) Pts in US
(all cargo
services only)

Anchorage
Atlanta
Boston
Chicago
Dallas FW
Detroit
Houston
Los Angeles
Miami
New York
Newark
Orlando
Philadelphia
San Francisco
Seattle
Washington
San Juan
Tampa
Pittsburg

None

BILATERAL ARRANGEMENTS

TABLE G

US AIRLINES IN EUROPE - AUGUST 1991

<u>Country</u>	<u>Rights Granted</u>	<u>Rights Used</u>
1) AUSTRIA	Vienna	Vienna
2) BELGIUM	Pts in Belgium	Brussels
3) FINLAND	Pts in Finland	Helsinki
4) FRANCE	Paris Nice Lyon Marseille	Paris Nice
5) GERMANY	Pts in Germany	Berlin Dusseldorf Hamburg Munich Stuttgart Frankfurt
6) GREECE	Athens	Athens
7) IRELAND	Shannon Dublin (via Shannon)	Shannon Dublin
8) ITALY	1) Rome Milan (Combination & all cargo ser.) 2) Turin or Pisa or Naples (all cargo serv. only)	Rome Milan
9) LUXEMBOURG	None	None
10) NETHERLANDS	Any pts in Netherlands	Amsterdam
11) PORTUGAL	Lisbon Azores	Lisbon
12) SCANDINAVIAN COUNTRIES	Copenhagen Oslo Stockholm Gothenburg Bergen Stavenger	Copenhagen Oslo Stockholm

13) SPAIN	Madrid Barcelona Malaga Palma	Madrid Barcelona
14) SWITZERLAND	Zurich Geneva Basle	Zurich Geneva
15) UK	1) London Manchester(*) Prestwick Glasgow 2) Pts in the UK (all cargo serv. only)	London Manchester Glasgow

(*) provisional and for use on Chicago only

FIFTH FREEDOM RIGHTS PURSUANT TO BILATERAL AGREEMENTS

TABLE H

<u>Country</u>	<u>US Airlines</u>		<u>European Airlines</u>	
	<u>Rights Granted</u>	<u>Rights Used</u>	<u>Rights Granted</u>	<u>Rights Used</u>
AUSTRIA	2 Intermediate pts except PAR/DUS/MUC	VIE-FRA VIE-BUD	Between one Intermediate pt and the 2nd pt in the US	
BELGIUM	Any Intermed. and beyond pts	BRU-BER BRU-GVA	Intermediate pts and beyond pts in Canada and/or Mexico	
FRANCE	1) Between Paris and Switzerland Italy, Greece, Turkey, Egypt, Near East, Pakistan, India, Ceylan, Burma, Thailand, Hanoi, China, and beyond 2) Between Nice/Marseille, and Spain, Greece, Italy, Switzerland, Albania, Budapest, Bulgaria, Roumania, Turkey, Yugoslavia, Pakistan, India, Ceylan, Burma, Thailand, Hanoi, Singapore, Jakarta, China, Macao, Hong Kong, Manila, and beyond 3) Between Paris** and Brussels**, Cologne and Maastricht**	PAR-ATH PAR-GVA PAR-MUC* PAR-ROM PAR-TLV PAR-ZRH	Intermediate pts over N. Atlantic New York-Mexico Montreal-Chicago Houston-Mexico	HOU-MEX ANC-TYO*
GERMANY	Any Intermediate and beyond pts	FRA-BEG FRA-BUM FRA-BUH FRA-KHI FRA-DBV FRA-IST FRA-LED FRA-LON FRA-MOW FRA-NBO FRA-PRG FRA-KRK	Any intermediated And beyond pts	DFW-MEX DFW-ATL* HOU-CLT* ANU-SJU SXM-SJU PHL-YMQ ATL-DFW*

(*) online stpvr trf only
 (**) cargo only

		FRA-RUH FRA-WAW FRA-ATH* FRA-ANK FRA-BUD* FRA-VIE HAM-LON MUC-LON MUC-PAR* STR-AMS STR-DBV NUE-BER		
GREECE	Rome-Athens Athens-Cairo Athens-Tel Aviv	ATH-ROM ATH-FRA* ATH-PAR*		
IRELAND	Any points beyond Shannon	DUB-SNN*	None	
ITALY	1) Between Italy and intermediate pts in Ireland, UK, France, FRG Switzerland, Portugal, Spain, and 2) Between Rome and beyond pts in Greece, Turkey, Lebanon, Israel, Syria, Egypt, Saudi Arabia, Iran, Pakistan, India, Sri Lanka, Burma, Thailand, Malaysia, Cambodja, Vietnam, PR China, Hong Kong	ROM-ATH ROM-PAR ROM-CAI ROM-IST	Intermediate pts in France or Spain, Ireland or Portugal, UK, and pt in Canada	
LUXEMBOURG	None	None	None	None
NETHERLANDS	Any intermediate and beyond pts	AMS-STR AMS-HAM	Montreal- Houston	

(*) online conex/stpvr trf only

PORTUGAL	Beyond pts on Med. Islands and in countries bordering Med. sea, Africa North of Equator, Kenya, Uganda, Tanzania, Near/Middle/Far East	LIS-BCN	1) Between an intermediate pt in Canada and Los Angeles 2) Between Miami and beyond pts in Caribbean/ Centr. America or between San Juan and Caracas/ beyond pts in countries on the west coast of South America
SCANDINAVIAN COUNTRIES	Any intermediate and beyond pts	OSL-HEL CPH-STO OSL-STO CPH-LON*	1) Anchorage-Tokyo 2) Between intermediate pts in part of FRG, UK, Ireland, Iceland Azores, Canada (Labrador, Newfoundland, Quebec) and alternate terminal pts New York and Chicago
SPAIN	1) Between Azores/Lisbon and Madrid/Barcelona 2) Between Madrid/Barcelona and pts in South of France Italy, Greece, Algeria, Tunisia, Libya, Egypt, Uganda, Kenya, Tanzania, Turkey, Israel, Lebanon, Jordan, Iraq, Iran, Syria, Saudi Arabia, Arabian Peninsula, Afghanistan, Pakistan, India	BCN-LIS	Between San Juan and pts in Haiti Jamaica Mexico Guatemala Honduras Nicaragua El Salvador Costa Rica Panama Trinidad Curacao Venezuela Colombia Ecuador Peru Bolivia Chili

(*) online conex trf only

UK	1) Between London and Glasgow/ Prestwick on the one hand and Frankfurt, Berlin, Hamburg and Munich on the other	LON-FRA LON-HAM LON-MUC LON-BER LON-CPH*	1) Between Boston, Chicago, Dallas, Detroit, New York Philadelphia and Washington on the one hand and Canada on the other	DET-YMQ TPA-BDA ANC-OSA ANC-TYO ORL-BDA
	2) Prestwick-Oslo		2) Between Boston, Detroit, New York, Philadelphia, and Washington on the one hand and Mexico City on the other	
	3) Between London and Turkey, Lebanon Syria, Iran, Pakistan, New Delhi, Calcutta, Thailand and Japan		3) Between Atlanta and San Juan on the one hand and Venezuela, Colombia & Peru on the other	
	4) Prestwick-Shannon		4) Between San Juan and other pts in S. America	
			5) Between Anchorage and Japan	

(*) online conex trf only

Source: AEA, ABC - August 1991

TABLE I

5TH FREEDOM OPERATIONS IN THE EC AUGUST 1991

<u>ROUTE</u>	<u>CARRIER</u>
BCN-LIS	PA
BER-BRU	TW
BER-HAM	PA
BER-HAJ	PA
BER-LON	UA
BER-NUE	PA
BER-GWT	PA
COP-LON	DL (int'l online connections traffic only)
PAR-ATH	TW (online connections traffic only)
PAR-MUC	TW (online connections traffic only)
PAR-ROM	TW
FRA-ATH	PA (online connections/stopover traffic only)
FRA-LON	UA,TW
LON-HAM	UA
LON-MUC	UA
DUB-SNN	DL (online connections/stopover traffic only)
STR-AMS	DL (online connections/stopover traffic only)
STR-FRA	PA (online connections/stopover traffic only)
HAM-AMS	PA
ATH-ROM	TW

20 ROUTES, 4 CARRIERS

US AIRLINES OPERATING SERVICES FROM EUROPEAN AIRPORTS
(excluding 5th freedom operations within the EC)

<u>Route</u>	<u>Carrier</u>
BEG-FRA	PA
BEG-VIE	PA
BEG-BUH	PA
BRU-GVA	TW
BUH-FRA	PA
BUD-FRA	PA (online connections/stopover traffic only)
BUD-VIE	PA
ROM-CAI	TW
DBV-VIE	PA
FRA-VIE	TW
FRA-ANK	PA
FRA-BOM	PA
FRA-DEL	PA
FRA-DBV	PA
FRA-IST	PA

FRA-KHI	PA
FRA-KRK	PA
FRA-LED	PA
FRA-MOW	PA
FRA-PRG	PA
FRA-VIE	TW
FRA-NBO	PA
FRA-RUH	PA
FRA-WAW	PA
OSL-HEL	PA
OSL-STO	PA
PAR-GVA	TW
PAR-TLV	TW
PAR-ZRH	TW
STO-COP	TW
IST-ROM	TW
STR-DBV	PA
BUC-BEG	PA

33 Routes

2 Carriers

Airline Designations

AA : American Airlines
AF : Air France
AI : Air India
AM : Aeromexico
AY : Finnair
AZ : Alitalia
BA : British Airways
CO : Continental Airlines
DL : Delta Airlines
EI : Aer Lingus Plc
FF : Tower Air
FI : Icelandair
IB : Iberia
IW : Minerve
JL : Japan Airlines
KL : KLM
KU : Kuwait Airways
LH : Lufthansa
LT : LTU
LY : El Al Israel Airlines
NW : Northwest
NZ : Air New Zealand
OA : Olympic
PA : Pan Am
PK : Pakistan International
QN : Air Outre Mer
RJ : Royal Jordanian
RO : Tarom
SK : SAS
SN : Sabena
SU : Aeroflot
TK : Turkish Airlines
TP : TAP
TW : TWA
UA : United Airlines
US : USAir
UT : UTA
VS : Virgin Atlantic Airways

C I T Y C O D E S

ABQ: Albuquerque
AMS: Amsterdam
ANC: Anchorage
ANK: Ankara
ANU: Antigua
ATH: Athens
ATL: Atlanta
AUS: Austin
BCN: Barcelona
BDA: Bermuda
BEG: Belgrade
BER: Berlin
BNA: Nashville
BOM: Bombay
BOS: Boston
BRU: Brussels
BUD: Budapest
BUH: Bucharest
BWI: Baltimore
CAI: Cairo
CGN: Cologne
CHI: Chicago
CLE: Cleveland
CLT: Charlotte
COS: Colorado
CPH: Copenhagen
CVG: Cincinnati
DAY: Dayton
DBV: Dubrovnik
DEN: Denver
DFW: Dallas FTW
DTT: Detroit
DUB: Dublin
DUS: Dusseldorf
ELP: El Paso
FLL: Fort Lauderdale
FMY: Fort Myers
FRA: Frankfurt
GLA: Glasgow
GOT: Gothenburg
GSP: Greenville
GVA: Geneva
GWT: Westerland
HAJ: Hannover
HAM: Hamburg
HEL: Helsinki
HNL: Honolulu
HOU: Houston
IND: Indianapolis
IST: Istanbul
JAX: Jacksonville
JJY: Julianehaab
KHI: Karachi
KRK: Krakow
LAS: Las Vegas
LAX: Los Angeles
LED: Leningrad
LIS: Lisbon
LON: London
LUX: Luxembourg

LYS: Lyon
MAD: Madrid
MAN: Manchester
MEM: Memphis
MEX: Mexico
MKC: Kansas City
MKE: Milwaukee
MIA: Miami
MOW: Moscow
MSP: Minneapolis
MSY: New Orleans
MUC: Munich
MXP: Milan
NBO: Nairobi
NCE: Nice
NUE: Nuremberg
NYC: New York
OKC: Oklahoma City
ORF: Norfolk
ORL: Orlando
OSA: Osaka
OSL: Oslo
PAR: Paris
PBI: W. Palm Beach
PDL: Ponta Delgada
PHL: Philadelphia
PHX: Phoenix
PIT: Pittsburgh
POR: Portland OR
PRG: Prague
RDU: Raleigh
REK: Reykjavik
ROM: Roma
RUH: Riyadh
SAN: San Diego
SAT: San Antonio
SEA: Seattle
SFO: San Francisco
SJC: San Jose
SJO: San Jose, Costa Rica
SJU: San Juan
SLC: Salt Lake City
SNN: Shannon
SRQ: Sarasota
STL: St. Louis
STO: Stockholm
STR: Stuttgart
SXM: Saint Maarten
TER: Terceria
TLV: Tel Aviv
TPA: Tampa
TUL: Tulsa
TUS: Tucson
TYO: Tokyo
VCE: Venice
VIE: Vienna
WAS: Washington
WAW: Warsaw
YMQ: Montreal
ZRH: Zurich

AGREEMENT ON AIR TRANSPORT

Annex V

AGREEMENT BETWEEN

ON AIR TRANSPORT

The Government of and
Government, hereinafter referred to as the "Contracting
Parties",

Being parties to the Convention on International Civil
Aviation opened for signature at Chicago on the seventh day
of December, 1944,

Desiring to promote their mutual relations in the field of
civil aviation and to conclude an agreement, supplementary to
the said Convention, for the purpose of establishing air
services between and beyond their respective territories,

Have agreed as follows:

ARTICLE 1

Definitions

1. For the purpose of this Agreement

- (a) the term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been approved by both Contracting Parties;
- (b) the term "aeronautical authorities" means, in the case of _____, the Minister for _____ and, in the case of _____ the _____ Minister for _____ or, in both cases, any person or body authorised to perform any functions being the responsibility of the said authorities;
- (c) the term "designated airline" means an airline which has been designated and authorised in accordance with the provisions of Article 3 of this Agreement;
- (d) the term "tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services but excluding remuneration or conditions for the carriage of mail;
- (e) the term "capacity" means:
 - (i) in relation to an aircraft, the payload of that aircraft available on a route or section of a route;

(ii) in relation to a specified air service, the capacity of the aircraft used on such service, multiplied by the frequency operated by such aircraft over a given period on a route or a section of a route;

(f) the terms "territory", "air service", "international air service", "airline", "stop for non-traffic purposes" have the meaning respectively assigned to them in Articles 2 and 96 of the Convention.

2. The Annex to this Agreement shall form an integral part of the Agreement and any reference to the Agreement shall be understood to include the Annex, except where otherwise provided for.

ARTICLE 2

Grant of Traffic Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the Annex hereto. Such services and routes are hereinafter called the "agreed services" and the "specified routes" respectively.
2. The airline or airlines designated by each Contracting Party shall enjoy the following rights, subject to the relevant provisions of this Agreement:
 - (a) to fly, without landing, across the territory of the other Contracting Party;
 - (b) to make stops in the territory of the other Contracting Party for non-traffic purposes; and

(c) in the territory of the other Contracting Party, while operating an agreed service on a specified route, the right to embark and disembark international traffic in passengers, cargo and mail, separately or in combination.

3. Airlines of each Contracting Party not designated under Article 3 of this Agreement shall also enjoy the rights specified in paragraphs 2(a) and (b) of this Article.
4. Nothing in this Agreement shall be deemed to confer on the designated airline or airlines of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail carried for hire or reward and destined for another point in the territory of that other Contracting Party.

ARTICLE 3

Designation of Airlines

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party an airline or airlines for the purpose of operating the agreed services on the specified routes. On receipt of such designation, the other aeronautical authorities shall, subject to the provisions of paragraphs 2 and 3 of this Article, without delay grant to the designated airline or airlines the appropriate operating authorisations.
2. The aeronautical authorities of either Contracting Party may require an airline or airlines designated by the other Contracting Party to satisfy them that it is qualified to fulfil, while operating the agreed services, the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

3. Each Contracting Party shall have the right to refuse to accept the designation of an airline or airlines from the other Contracting Party or to withhold or revoke the grant to such an airline or airlines of the rights specified in Article 2 of this Agreement or to impose such conditions as it may deem necessary on the exercise by the designated airline or airlines of those rights, in any case where it is not satisfied that the airline or airlines in question have their central administration and principal place of business in the territory of the other Contracting Party, that the majority of their shares are owned by nationals or by the Government of that other Contracting Party and are effectively controlled by such nationals or Government.
4. The designated airline or airlines, when so authorised, may commence at any time to operate the agreed services in whole or in part, provided that the airline complies with the applicable provisions of this Agreement and that tariffs, established in accordance with the provisions of Article 6 of this Agreement, are in force in respect of such services.
5. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 2 of this Agreement by the airline or airlines designated by the other Contracting Party or to impose such conditions as it may deem necessary on the exercise of these rights:
 - (a) in the case of failure by such airline or airlines to comply with the laws or regulations of the Contracting Party which has granted these rights, or
 - (b) if the airline or airlines otherwise fail(s) to operate in accordance with the conditions prescribed under this Agreement and the Annex thereto.
6. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph 5 of this Article are

essential to prevent infringements of the laws or regulations referred to in paragraph 5 of this Article, such right shall be exercised only after consultation with the other Contracting Party, in accordance with Article 15 of this Agreement.

ARTICLE 4

Capacity

1. The capacity to be operated on the agreed scheduled air services shall bear close relationship, at a reasonable load factor, to the demand for the carriage of traffic originating in the territory of each Contracting Party and destined to the territory of the other Contracting Party.
2. In order to achieve a fair and equal treatment of the designated airlines, the airlines have to agree in good time upon the frequencies of their scheduled services, the types of aircraft to be used and the flight schedules, including the days of operation as well as the estimated times of arrival and departure.
3. The schedules so agreed upon shall be submitted for approval to the aeronautical authorities of both Contracting Parties at least thirty (30) days before the proposed date of their introduction. In special cases, this time limit may be reduced subject to the consent of the said authorities.
4. If the designated airlines cannot agree on the schedules mentioned above, the aeronautical authorities of the Contracting Parties shall endeavour to settle the problem.
5. Subject to the provisions of this Article, no schedules shall come into force, unless the aeronautical authorities of the Contracting Parties have approved of them.

6. The schedules established for one season in accordance with the provisions of this Article shall remain in force for corresponding seasons until new schedules have been established in accordance with the provisions of this Article.

ARTICLE 5

Provision of Statistics

1. The aeronautical authorities of one Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, periodic or other statements of statistics.
2. Such statements shall include all information required to determine the amount of traffic carried by that airline on the agreed services and the origin and destination of such traffic.

ARTICLE 6

Tariffs

1. The tariffs to be charged by the airline of one Contracting Party for the carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit and characteristics of service, such as standards of speed and accommodation.
2. The tariffs referred to in paragraph 1 of this Article shall be agreed upon by the designated airlines of both Contracting Parties.

3. The tariffs so agreed upon shall be submitted for approval to the aeronautical authorities of the Contracting Parties at least thirty (30) days before the proposed date of their introduction; in special cases this time limit may be reduced, subject to the consent of the said authorities.

4. If the designated airlines cannot agree on any of these tariffs, or if for some other reasons a tariff cannot be fixed in accordance with paragraph 2 of this Article, or if during the first fifteen (15) days of the thirty (30) days' period referred to in paragraph 3 of this Article, the aeronautical authorities of one Contracting Party give the aeronautical authorities of the other Contracting Party notice of their dissatisfaction with any tariff agreed upon in accordance with the provisions of paragraph 2 of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to agree upon the tariffs.

5. If the aeronautical authorities cannot agree on the approval of any tariff submitted to them under paragraph 3 above or on the determination of any tariff under paragraph 4, the Contracting Parties shall endeavour to agree upon the tariffs.

6. No tariff shall come into force unless the aeronautical authorities of either Contracting Party have approved of it.

7. The tariffs established in accordance with the provisions of this Article shall remain in force until new tariffs have been established in accordance with the provisions of this Article.

ARTICLE 7

Application of Laws and Regulations

1. The laws and regulations of a Contracting Party governing entry into and departure from its territory of aircraft engaged in international air transport or the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline of the other Contracting Party.
2. The laws and regulations of a Contracting Party governing entry into, stay in and departure from its territory of passengers, crew, cargo and mail, such as formalities regarding passports, customs, currency and sanitary measures, shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Contracting Party while they are within the said territory.
3. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party, and still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services.
4. Each Contracting Party reserves the right, however, to refuse to recognise, for the purpose of flights above its own territory, certificates of competency and licences granted to its own nationals or rendered valid by another State.

ARTICLE 8

Investigation of Accidents

1. In the case of a forced landing or accident of an aircraft of either Contracting Party within the territory of the other Contracting Party, the aeronautical authorities of the Contracting Party in whose territory the forced landing or accident takes place shall immediately notify the aeronautical authorities of the other Contracting Party thereof, take immediate steps to assist the crew and the passengers, provide for the safety of the aircraft and mail, baggage and cargo on board and take necessary measures for an inquiry into the particulars and circumstances of the forced landing or accident.
2. The aeronautical authorities of the Contracting Party conducting the inquiry into the particulars and circumstances of the forced landing or accident shall inform the aeronautical authorities of the other Contracting Party of the holding of the inquiry and the aeronautical authorities of the other Contracting Party shall be granted full facilities to be represented at the inquiry. The aeronautical authorities of the Contracting Party conducting the inquiry shall send to the aeronautical authorities of the other Contracting Party the report of the inquiry as soon as it is available.

ARTICLE 9

Aviation Security

1. In accordance with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities and any other threat to aviation security.
3. The Contracting Parties shall act in full conformity with the provisions of the Convention on Offences and Certain other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 or of any other aviation security conventions to which the two parties may adhere.
4. The Contracting Parties, in their mutual relations, shall act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation signed at Chicago on 7 December 1944, to the extent that such security provisions are applied by the Contracting Parties; they shall require that operators of aircraft of their registry or operators who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Contracting Party shall advise the other of its intention to notify any difference to the standards of the Convention on International Civil Aviation.
5. Each Contracting Party agrees to observe the security provisions required by the other Contracting Party for entry into the territory of that other Contracting Party and to take adequate measures to protect aircraft and to inspect passengers, crew, their carry-on items as well as cargo and aircraft stores prior to and during boarding or loading.

Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for special security measures to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports and air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and such other appropriate measures, as may be agreed, intended to terminate rapidly and safely such incident or threat thereof.
7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within 15 days from the date of such request will constitute grounds to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline or airlines of the other Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of 15 days.

ARTICLE 10

Airport Fees and Charges

Fees and charges imposed in the territory of either Contracting Party for the use of airports and other aviation facilities by the aircraft of the designated airline or airlines of the other Contracting Party shall not be higher than those imposed on aircraft of an airline of the first Contracting Party engaged in similar international air services.

ARTICLE 11

Customs Charges and Procedures

1. Aircraft operated on international air services by the designated airline or airlines of either Contracting Party, as well as the fuel, lubricants, spare parts, equipment and aircraft stores (including food, alcoholic and non-alcoholic drinks and tobacco) on board such aircraft on arriving in the territory of the other Contracting Party shall be exempt from all customs duties, inspection fees and other charges and taxes, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.
2. Fuel, lubricants, spare parts, equipment and aircraft stores (including food, alcoholic and non-alcoholic drinks and tobacco) delivered or which are to be delivered by the designated airline or airlines of either Contracting Party to the territory of the other Contracting Party exclusively for its operational needs shall be exempt from all customs duties, inspection fees and other charges and taxes on their arrival, departure and while within the territory of that other Contracting Party.
3. There shall also be exempt from such customs duties, fees, charges and taxes, with the exception of charges corresponding to services performed:
 - (a) aircraft stores (including food, alcoholic and non-alcoholic drinks) taken on board aircraft in the territory of either Contracting Party for use on board aircraft used in the operation of international air services by the designated airline or airlines of the other Contracting Party;
 - (b) spare parts and equipment entered into the territory of either Contracting Party for the maintenance or repair of aircraft used in the operation of international air services by the designated airline or airlines of the other Contracting Party;

(c) fuel and lubricants destined for use in the operation of international air services by the designated airline or airlines of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

4. Supplies referred to in paragraphs 1 to 3 of this Article may be required to be kept under customs supervision or control.
5. The regular airborne equipment as well as the materials and supplies retained on board the aircraft of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory. In such case, they may be placed under the supervision of said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.
6. Passengers, baggage, cargo and mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against violence and air piracy, and smuggling of controlled drugs, be subject to no more than simplified control.
7. Baggage, cargo and mail in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 12

Airline Representation, Ticketing, and Sales Promotion

1. The designated airlines of each Contracting Party shall have an equal opportunity to employ, subject to the laws and

regulations of the other Contracting Party, the technical and commercial personnel for the performance of the agreed services on the specified routes and to establish and operate offices in the territory of the other Contracting Party.

2. The designated airlines of each Contracting Party shall further have an equal opportunity to issue all kinds of documents of carriage and to advertise and promote sales in the territory of the other Contracting Party.

ARTICLE 13

Transfer of Funds

1. All the accounts between the designated airlines shall be done in convertible currency.
2. Each Contracting Party shall grant to the airline or airlines designated by the other Contracting Party permission to transfer without any restriction to the Head Office of the said airline, in accordance with the rules and regulations existing with regard to currency exchange control, the profit arising in respect of its operation of the agreed services in the territory of the other Contracting Party.

ARTICLE 14

Taxation

1. Profits from the operation of aircraft in international traffic shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.

2. Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.
3. Where a special Agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

ARTICLE 15

Consultations

1. In a spirit of close co-operation, the aeronautical authorities of both Contracting Parties shall consult with each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement.
2. The aeronautical authorities of either Contracting Party may request consultations, through discussions or correspondence, which shall commence within a period of sixty (60) days from the date of receipt of the request, unless both aeronautical authorities agree to an extension of this period.

ARTICLE 16

Settlement of Disputes

1. Any dispute relating to the interpretation or application of this Agreement or the Annex thereto shall be settled by direct negotiations between the Contracting Parties. Such negotiations shall commence as soon as practicable but in any event not later than sixty (60) days from the date of

receipt of a request for such negotiations, unless otherwise agreed by the Contracting Parties.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or the dispute may, at the request of either Contracting Party, be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice, through diplomatic channels, requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral body.
3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.
4. If and for so long as either Contracting Party fails to comply with a decision given under paragraph 2 of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default.
5. Each Contracting Party shall bear the expenses and remuneration necessary for its arbitrator; the fee for the third arbitrator and the expenses necessary for this one as well as those due to the activity of the arbitration shall be equally shared by the Contracting Parties.

ARTICLE 17

Modification

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, including the Annex thereto, it may request consultations between the Contracting Parties in relation to the proposed modification. Such consultations shall commence within a period of sixty (60) days of the date of receipt of the request. Any modifications so agreed shall come into force when they have been confirmed, in writing, by the Contracting Parties.
2. A modification to the Annex may be made by direct agreement between the appropriate authorities of both Contracting Parties and shall be confirmed by exchange of diplomatic notes.

ARTICLE 18

Registration

This Agreement and all amendments thereto shall be registered with the Council of the International Civil Aviation Organisation and the Secretariat of the United Nations.

ARTICLE 19

Applicability of Multilateral Agreements or Conventions

If any provision of the Agreement conflicts with an obligation which either Contracting Party may have towards a third Party, both Contracting Parties shall enter into consultations, in accordance with Article 15, to amend the Agreement in order to resolve any such conflict as soon as possible.

ARTICLE 20

Notice of Termination of Agreement

1. Either Contracting Party may at any time give notice, in writing, to the other Contracting Party of its decision to terminate this Agreement; such notice shall be sent simultaneously to the International Civil Aviation Organisation and the Secretariat of the United Nations. In such case, the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period.
2. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

ARTICLE 21

Entry into Force

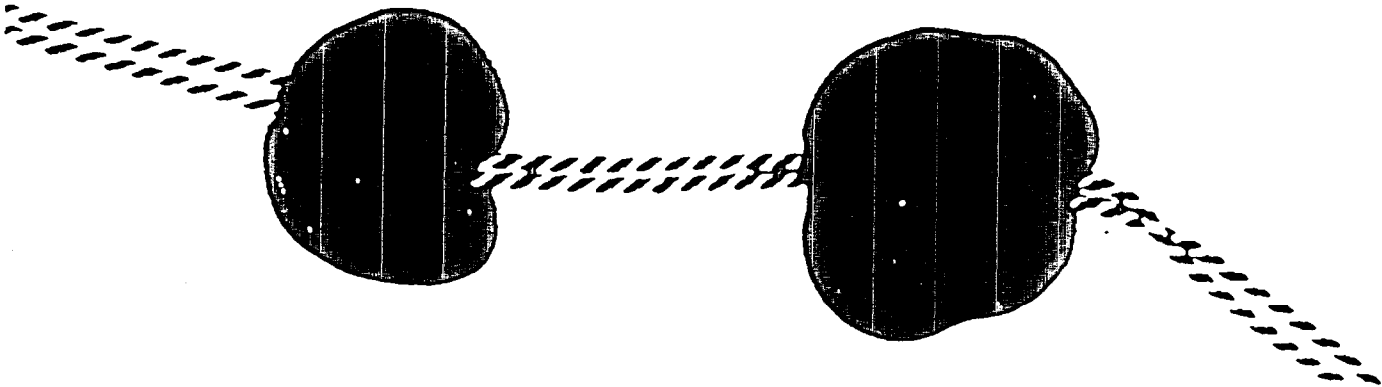
This Agreement shall enter into force on the first day of the second month, following the date of signature.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Agreement.

Done in duplicate at this day of each in
the English and languages, both texts being equally
authentic.

FOR THE GOVERNMENT

FOR THE
GOVERNMENT



ANNEX

A. The airline(s) designated by _____ shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of departure:

Points of arrival:

Points in

Points in

B. The airline(s) designated by _____ shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of departure:

Points of arrival:

Points in

Points in

C. Any intermediate points may be served by the designated airlines of each Contracting Party without exercising Fifth Freedom traffic rights.

D. (1) The airline(s) designated by either Contracting Party may exercise fifth freedom rights initially at _____ on a route between both countries, provided that such rights are available to the airlines of both Contracting Parties.

(2) The exercise of Fifth Freedom rights at other points may be agreed upon by the aeronautical authorities of the two Contracting Parties.

FICHE FINANCIERE

VOLET 1 : IMPLICATIONS FINANCIERES

1. **Intitulé de l'action :** Preparation for negotiations with Third countries on civil aviation

2. **Lignes budgétaires concernées :** Article B2-704

3. **Base légale :** Article 113 of the Treaty
The data bank is proposed in Communication to the Council on aviation relations with third countries (No COM ...)

4. **Description de l'action**

4.1 **Objectifs spécifiques de l'action :**

The establishment of a data bank on aviation activities within the Community and between the Community and third countries. On the basis of this information the Community can take up its responsibilities in the area of external aviation relations and in particular develop the necessary directives for negotiations.

The information should contain

- the rights exchanged in bilateral agreements in the air transport sector between Community Member States and third countries
- a summary of bilateral agreements, MOU's, and other official documents

4.2 **Durée :**

Establishment of data base one year and thereafter normal updating

4.3 **Population visée par l'action :**

National administrations, air carriers, airports, Commission services

5. **Classification de la dépense ou des recettes**

5.1 DNO

5.2 CND

5.3 None

6. Quelle est la nature de la dépense ou des recettes

6.1 Subvention à 100% : Yes

6.2 Subvention pour co-financement avec d'autres sources du secteur public et/ou privé : No

6.3 Bonification d'intérêt : No

6.4 Autres : No

6.5 En cas de réussite économique de l'action, un remboursement partiel ou total de l'apport financier communautaire est-il prévu? No

6.6 L'action proposée implique-t-elle une modification du niveau des recettes? Si oui, de quelle nature est la modification et quel type de recette est visé? No

7. Incidence financière sur les crédits d'intervention (partie B du budget)

7.1 Indiquez le mode de calcul du coût total de l'action

The costs have been estimated on the basis of previous experience in the context of the establishment of a special data base on statistics.

7.3 Echancier indicatif des crédits d'engagement et de paiement

- Engagement :	1993 :	500.000 Ecus	(already included in the draft preliminary budget)
- Payment :	1993 :	250.000 Ecus	
	1994 :	200.000 Ecus	

8. Quelles sont les dispositions anti-fraude prévues dans la proposition d'action?

Normal Commission provisions

VOLET 2 : DEPENSES ADMINISTRATIVES
(PARTIE A DU BUDGET)

1. L'action proposée implique-t-elle une augmentation du nombre d'effectifs de la Commission?
Si oui, de combien?

Oui.

This activity will be ensured by the staff of unit VII/C.1 (which will need some additional staff dependant on the speed and scope of the transitional period adopted by the Council).

- 2) Indiquez le montant des dépenses de fonctionnement et de personnel générées par la proposition.
Explicititez le mode de calcul.

The additional staff will involve reallocation of work inside DG VII and administrative expenses for missions and meetings.

VOLET 3 : ELEMENTS D'ANALYSE COUT-EFFICACITE

1. Objectifs et cohérence avec la programmation financière

- 1.1 Objectif(s) spécifique(s) de l'action proposée. Il doit être quantifié (dans la mesure du possible) et présenté pour chacune des années concernées s'il s'agit d'une action pluriannuelle.

The establishment of an external aviation policy is an essential element of the internal market.

The negotiation of a large number of agreements with third countries requires different procedures in the Community. The necessary proposals have been adopted by the Commission and submitted to the Council. According to the proposals the Commission is responsible for the development of directives for negotiations. This can only be done on the basis of updated and readily available information. The data-bank proposed will give such information.

- 1.2 L'action est-elle prévue dans la programmation financière de la DG pour les années concernées?

Reference is made to fiche financière APB 1993

- 1.3 Indiquez à quel objectif plus général défini dans la programmation financière de la DG correspond l'objectif de l'action proposée.

Preparatory action for the negotiation of international transport agreements

2. Justification de l'action

2.1 Justification de l'action choisie par rapport à une alternative qui permettrait d'atteindre les mêmes objectifs. La justification doit se baser notamment sur trois critères :

- a) Coût : The alternative for a data bank would be to request the information on a case by case basis. This would also make it very difficult for the Community to make any progress in this area.
- b) Effets dérivés (Impact au-delà de(s) objectif(s) spécifique(s)) : A data bank work ensures that the Commission has the necessary information to develop directives for negotiations.
- c) Effet multiplicateurs (capacité de mobilisation d'autres sources de financement) : No multiplier effects.

3. Suivi et évaluation de l'action

3.1 Indicateurs de performance sélectionnés :

Immediate availability of the information

3.2 Modalités et périodicité de l'évaluation prévues

Monthly and ad-hoc

3.3 Principaux facteurs d'incertitude pouvant affecter les résultats spécifiques de l'action

Cooperation by Member States to submit the information

COM(92) 434 final

DOCUMENTS

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