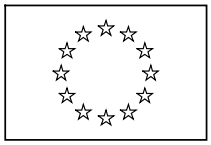

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.11.2002
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COMMUNICATION FROM THE COMMISSION

on the consequences of the Court judgements of 5 November 2002 for European air transport policy

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1. THE CURRENT SITUATION AND ITS PROBLEMS

1.1. Introduction

1. During the past decade, the European Union has progressively developed its position on the World stage. Reflecting an increased sense of a common Community interest in a wide range of issues, Community positions have been adopted in many international and multilateral discussions. A Community approach has worked particularly well in international trade negotiations and has secured valuable new opportunities for companies and consumers and helped drive the creation of a more open trading environment for all countries.

2. However, the European Union still lacks a coherent policy for international air transport. Since 1992, when the European Single Market was created and proposals were last made for a European approach to international relations in this industry, the Commission has consistently argued that the fifteen Member States should work through the Community institutions to manage international air services. The Commission has long believed that air transport would benefit from a coherent Community approach, grounded in the principles and procedures of the founding Treaty and based on common objectives. With Community initiatives today covering most aspects of air transport, from safety and security to passenger protection, it has become increasingly inappropriate for international relations to be handled by each Member State individually.

3. In its White Paper on European Transport Policy[1] for 2010 "Time to Decide", the Commission identified the development of a coherent external policy for aviation as being an urgent priority given the effects of a fragmented approach on the development of our airline industry.

1.2. The integration process

4. In the past fifteen years, the European Union has undertaken a massive programme of air transport liberalisation and integration. The Community has merged a series of individual markets to create one "domestic" aviation marketplace. Globally, this marketplace is second only to the United States in size and its creation has demonstrated the means and the benefits to industry and consumers of overcoming the traditional barriers to trade in air transport services.

5. A decade has now passed since the adoption of the aviation measures known as the "Third Package", which applied the principles of the Single Market programme to the aviation industry. The "Third Package" finally did away with decades of

[1] COM (2001) 0370

restrictions that had limited access to air transport markets in Europe, prevented cross-border investment by European airlines and regulated in detail the operation of the market itself.

6. The "Third Package" turned all Community-owned airlines, regardless in which Member State they were legally established, into "Community air carriers" with equal rights of access to the entire internal market and with equal responsibilities under the law. It allowed existing airlines to enter previously closed markets and allowed the establishment of new airlines on the basis of common principles and rules. In short, air services could be provided in line with what passengers wanted and needed instead of in line with protectionist rules and government intervention. Only international flights to and from the EU remained subject to traditional bilateral aviation agreements.

7. The Community's activities in the sector are not limited, however, to questions of market access. Integration has also meant the establishment of a framework of rules establishing common levels of safety, environmental and passenger protection and air traffic management. Thus Community carriers operate not only on the basis of common market access rights, but more generally on the basis of common standards.

8. In 1999, the Commission presented an analysis on the functioning of the internal market[2]. The events of 11 September 2001 created serious problems for the industry and depressed the aviation market generally, but European airlines appear to be in a period of recovery and the broad trends remain valid today. The key conclusions were as follows:

   – As in the rest of the World, the EC market had seen strong growth in the 1990's, with the fastest growth of all being on the newly opened routes in between individual Member States.

   – The productivity of Community carriers had increased.

   – The overall number of airlines operating scheduled flights in the Community had almost doubled to 140 airlines.

   – There had been serious problems at some of the established carriers that have resulted in job losses and difficult times for some people, however, considered overall, employment in the sector had grown, with increases at new airlines and considerable expansion at some of the flag carriers.

   – Competition had increased, with many major routes being flown by three or more airlines. Fares on these routes were on average between 10% and 25% cheaper than on monopoly routes. Since the Communication, low fares have become even more widespread.

   – The overall number of routes flown had increased.

9. These changes and trends notwithstanding, the European domestic aviation market is also remarkable for what has not happened. Contrary to expectations and in contrast

[2] Commission Communication entitled "The European Airlines Industry: From Single Market to Worldwide challenges"[2] (COM(1999)182)

with the situation in many other service industries like telecommunications, insurance or banking, the ranks of the major players has changed very little. Most major airlines in the Community remain fragmented along national lines and have tended to grow by strengthening their position in their home markets rather than looking to new opportunities for investment in other Member States or seeking growth through merger and acquisition.

10. The Community aviation market is a lively and innovative place, but while it remains divided along national lines from the point of view of external relations, the most successful companies will find it difficult to realise their true potential and consumers will miss out on the benefits of additional competition.

Existing relations between Member States and third countries

11. Within the framework of the Chicago Convention of 1944, the worldwide regulatory framework has developed on the basis of bilateral air services agreements (ASAs). These agreements regulate the market conditions under which air carriers are able to operate air services. Since the internal market was implemented in the Community, Member States have continued to conclude bilateral air transport agreements in the traditional mould. Most have a considerable number of ASAs with foreign countries - on average there are 60-70 per Member State.

12. These agreements do not differ greatly in form. Their main body contains the general principles, while annexes set out more detailed provisions, including the routes to be operated, the capacity and frequencies which can be provided and any additional traffic rights that can be exercised - for example "fifth freedom" rights, under which airlines can extend their routes beyond destinations in the two parties to destinations in other countries. Often, there are also confidential memoranda of understanding that deal with such matters as commercial arrangements between air carriers and other financial questions. The main text of most ASAs remains unchanged for years, but changes in the annexes and Memoranda of Understanding (MOUs) are more frequent to take account of market developments.

13. ASAs come in variety of forms, ranging from the very liberal to the very restrictive. Some allow open competition between multiple carriers from the two parties, while others virtually eliminate competition between operators.

14. The "Open Skies" agreements commonly negotiated by the United States, are traditional bilateral agreements in that they reserve traffic rights strictly to the airlines from the two parties to the agreement. However, they do provide for the removal of quantitative restrictions on the frequency of flights, the capacity to be provided and the number of air carriers permitted. Significantly for the EU, they also permit airlines of both parties to extend routes between them, offering unrestricted fifth freedom services to other countries. These fifth freedoms are of relatively little value on the American side of the Atlantic, given that there are relatively few viable onward destinations. However, in parts of the World where there are many international markets in close proximity, such as the EU, they are more useful. In effect, they give American carriers access to Europe's domestic market, while the US domestic market remains firmly closed to foreign operators. These rights are currently used in particular by American cargo companies to provide intra-EU parcel services.

15. Overall, the web of bilateral ASAs is highly complex and, on the whole, very restrictive compared with the international trade rules that govern other service industries such as maritime transport, telecommunications or banking.

1.3. Existing relations between the Community and third countries

(a) Creating a regional aviation area

16. The EU's recent focus in air transport external relations has been the expansion of the internal market into a fully-fledged regional aviation area. The Commission has obtained the backing of Member States for this and pursued negotiations in this area on the basis of mandates granted by the Council.

17. The vision is a large market, comprising around thirty countries, which will all operate on the basis of Community legislation. Within this area, all airlines will enjoy the same freedoms currently enjoyed by Community carriers.

18. Significant steps have been taken towards this goal. Norway and Iceland are already part of the market by virtue of the European Economic Area (EEA). This means that all Community legislation applies to these countries and their airlines enjoy full rights as Community air carriers.

19. An agreement between the EC and Switzerland substantially liberalises air transport on the basis of Community legislation. As with Norway and Iceland, Community legislation in the air transport field applies to Swiss air carriers and Switzerland is effectively part of the internal air transport market. The key exception to this is that cabotage within individual Member States and within Switzerland itself is not included.

20. Finally, negotiations are now largely complete between the Community and the current accession candidates on their full incorporation into the internal market. A new agreement creating a European Common Aviation Area will offer the possibility for all the candidate countries to become part of the internal aviation market, which offers particular advantages to those countries whose accession is not yet imminent.

(b) General relations with third countries and dealing with trade barriers

21. Action has been taken at Community level to develop a more unified and concerted approach towards a number of specific issues. Differences of opinion over the treatment of Community carriers in foreign markets and by foreign governments necessitate from time to time interventions by the Commission on behalf of the Community interest as a whole. These interventions have been made in an ad-hoc manner as problems arise.

22. The Commission has also developed general aviation discussions with a number of countries. This includes the United States, where a regular aviation dialogue enables the two sides to identify and discuss issues of common interest. This dialogue also provides a forum for the discussion of potential barriers to trade in air transport services. Discussion on aviation with the Community's various other trading partners takes place from time to time in the various joint committees established by the trade and co-operation agreements that have been concluded.

(c) Multilateral Activity

23. The Community has no formal status in the most important global air transport organisation, the International Civil Aviation Organisation (ICAO). However, many issues now under discussion in that forum are covered by Community legislation. A certain degree of co-ordination has proved valuable in such cases.

24. In the review of the air transport annex of the General Agreement on Trade in Services in the WTO, the Community has pressed for extended coverage of services related to aviation. It is established practice in the WTO that the Community speaks with one voice on the basis of an agreed line and it proved possible to handle aviation within this framework. Further negotiations will take place within this framework as the next round of trade negotiations develops.

(d) Technical Assistance

25. Through its technical assistance programmes in Central Europe and safety-related projects in Asia and Latin America, the Commission has sought to help raise safety standards throughout the aviation industry. Assistance is mainly targeted at government institutions, helping them improve their ability and capacity to oversee the implementation and enforcement of ever higher safety standards. The Commission set out its approach in its 2001 Communication "A European Community contribution to World aviation safety improvement"[3] framework.

(e) Competition policy in international aviation

26. The number of international alliances and other forms of co-operation agreements involving Community air carriers and carriers from third countries has increased significantly in recent years and seems likely to accelerate as a result of the Court's ruling. An effective and efficient enforcement of the Community competition rules is therefore an essential part of a coordinated international air transport policy. While the Community competition rules fully apply to the transport sector the current regime does not provide sufficient legal certainty either to the industry or to Member States, since the Commission does not have the same effective competition enforcement powers in the field of international traffic to and from the EU as it has for internal EU airtransport.[4].

2. THE "OPEN SKIES" COURT JUDGEMENTS

27. Against the background described above, international aviation has continued to develop mostly within a framework of bilateral ASAs. But the nature of the system and the individual manner in which it has been pursued by Member States creates conflicts with the unified system of regulation that has been developed inside the Community. Having become increasingly concerned about these conflicts, the Commission instigated legal action against eight Member States that had signed bilateral agreements with the United States - seven of them (Belgium, Denmark, Germany, Luxembourg, Austria Finland and Sweden have signed "open skies" type

[3] COM (2001)390 final of 19.07.2001
[4] It should be noted however that the EU regime for merger control fully applies to international aviation.

agreements as described above and one of them (the United Kingdom) a more restrictive bilateral.

28. On 5 November 2002, the European Court of Justice ruled in the cases against these eight Member States[5].

2.1. Areas of Community competence

29. The Court's judgements firmly establish the application of the so-called "AETR" principle in aviation by which the Community acquires an external competence by reason of the exercise of its internal competence, "where the international commitments fall within the scope of the common rules", or "in any event within an area that is already covered by such rules". The Court specifies in this instance that "whenever the Community had included in its internal legislative acts provisions relating to the treatment of nationals of non-member countries, it acquires an exclusive external competence in the spheres covered by those acts." The Court identified three specific areas of Community exclusive competence: airport slots, computer reservation systems and intra-Community fares and rates.

30. In this context it should be noted that, even in instances where Member States sought to take action to reflect Community law directly in the text of their bilateral agreements, the Court found that they nonetheless had failed in their obligations, because Member States no longer have competence to make undertakings of any sort on these issues.

31. It should also be stressed that there are further issues typically addressed in bilateral air services agreements, in addition to the areas identified by the Court, where the Community has exclusive external competence. Moreover, the acquis has expanded considerably in the years since the agreements in question were negotiated. These additional areas include:

- Safety issues (covered by Regulation EC No 1593/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency[6])
- Commercial Opportunities (including groundhandling, covered by Directive 96/67 of 15 October 1996 on access to the groundhandling market at Community airports[7] and combined transport, which gives access to the internal land transport market.)
- Customs duties, taxes and (user) Charges (the application of customs duties, covered by Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and the holding, movement and monitoring of such products[8] and the exemption of aviation fuel from

[5] cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98 and C-476/98 against the United Kingdom, *Denmark, Sweden, Finland, Belgium, Luxembourg, Austria, Germany*

[6] OJ L240/1of 7.9.2002
[7] OJ L 272 of 25.10.1996
[8] OJ L 076 of 23.03.1992

excise duties covered by Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils[9])

– Restrictions on aircraft for environmental reasons, which is often included under the fair competition section (subject to Council Directive 92/14 of 2 March 1992 on the limitation of the operation of aeroplanes covered by Part II, Chapter ", Volume 1 of Annex 16 to the Convention of International Civil Aviation[10] and Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports)

32. In addition, further issues, while not always directly addressed in international agreements, are still covered by Community legislation which applies to foreign air carriers. These matters inevitably shape the trading environment in which international air transport takes place and are certainly the subject of international discussions and arrangements. Legislation covers *inter alia*:

– Denied Boarding compensation (Council Regulation No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in air transport;[11]

– Air Carrier liability (Council Regulation No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents as amended[12].

– Council Directive No 90/314 of 13 June 1990 on package travel, package holidays and package tours[13];

– Data protection (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[14]

33. Therefore, in subjects where Member States have agreed that it makes sense to adopt common rules within the Community, they must draw the consequences and work through its institutions when discussing such matters with foreign countries.

2.2. Ownership and Control

34. The Court found that the eight agreements in question contain elements which deprive Community air carriers of their rights under the Treaty, the nationality clauses in the agreements being a clear violation of the right of establishment enshrined in Article 43. Therefore, although the Court could not have invalidated the agreements under international law, they constitute an infringement of Community law for which Member States are responsible towards the beneficiaries of the right of establishment.

[9] OJ L 316 of 31.10.1992
[10] OJ L 76 of 23.3.1992
[11] OJ L 36 of 8.2.1991
[12] OJ L 285 of 17.10.1997
[13] OJ L 158 of 23.6.1990
[14] OJ L 281 of 23.11.1995

35. Like most traditional ASAs, the agreements that were challenged have strict clauses covering ownership and control which ensure that only airlines that are owned and controlled by nationals of the two parties to the agreement can benefit from the traffic rights granted. This means that Community carriers majority-owned by interests from outside their home Member State are shut-out of international routes to and from that country. Moreover, Community carriers based in one Member State, but with an establishment in another, cannot take advantage of their rights under the Treaty to fly international routes from both. These clauses therefore prevent any merger and acquisition activity involving Community carriers with international networks. They also prevent the development of Community carriers with multiple hub systems, similar to those operated by American carriers.

36. Under Community law, such discrimination must now be considered illegal and all Community carriers, as long as they have an establishment in a Member State, must be able to fly international routes from there, regardless of where in the Community their principle place of business is, or of where in the Community their owners originate.

37. The beneficiaries of an international air transport agreement at Community level are "Community carriers". This is the sole definition of airlines within the Community and it is laid down in Regulation EC No 2407/92 of 23 July 1992 on the licensing of air carriers[15] and EC No 2408/92 of 23 July 1992 on access for Community carriers to intra-Community air routes.

2.3. Implications for other agreements and general policy

38. In so far as other bilateral air services agreements cover the same issues as the "open skies" agreements in question, they too will not be in conformity with Community law. This not only applies to other agreements with the United States, which have not yet been the subject of Court proceedings, but for all bilateral air services agreements that contain a similar nationality clause or which have infringed Community exclusive external competence.

39. The legal clarity provided by the Court of Justice's judgements confirms the need to devise a comprehensive international policy for the aviation sector that will allow the Community to address these problems.

[15] OJ L 240 of 24.8.1992

3. DEVELOPING COMMUNITY POLICY

40. Beyond the legal situation, a co-ordinated approach would benefit the Community, its airlines and its consumers a great deal from an economic and political standpoint. The Community is one of the most important players in international aviation. Its market is one of the largest and its industry one of the most successful. It brings together a group of the most influential and experienced aviation states that exist. With many issues handled through Member States' individual bilateral agreements, the Community finds itself unable to promote effectively the interests of its carriers and consumers and is deprived of the ability to defend their cause, eg to tackle discriminatory or unfair practices faced by Community carriers in some third countries in a coordinated and effective manner.

41. Through a new, unified approach, the Community will be able to defend its interests, argue its case and promote its vision for global aviation in a far more effective way than ever before. By providing a more flexible regulatory environment for European airlines, the development of a common external policy will not only facilitate consolidation and the constitution of stronger companies, but will also facilitate a more efficient use of airport capacity.

42. As a result of the Court's judgements, neither the Community nor the Member States have a free rein to conclude air transport agreements. It is important, when agreements deal with the question of traffic rights, that they should also offer guarantees on matters such as safety, competition and the environment. Competence for this wide range of issues is divided between Member States and the Community. In addition, it is vital to ensure that ownership and control clauses are renegotiated in a coherent manner to ensure that Community carriers can enjoy their full rights. The only way to proceed is in a coordinated manner, using the Community institutions.

43. As stated above, the Community has already pursued action across a number of fronts, including some international air services negotiations on the basis of mandates from the Council. The White Paper on European Transport Policy[16] for 2010 "Time to Decide", identified the development of a coherent external policy for aviation as being an urgent priority given the effects of a fragmented approach on the development of our airline industry. Now confronted by the need to address a much wider range of partners and issues, the Community must identify its key principles and the initial priorities for action.

44. These key principles arise from necessity - what the Community must do as a matter of urgency to rectify existing legal problems - and by a need to define a vision for air transport that will strengthen our industry's position in the global market and bring benefits for European consumers.

3.1. Key Principles

45. The main objective of the Community is to promote safe, secure and efficient air transport for the benefit of European citizens. This objective can be subdivided into four key aims:

[16] COM (2001) 0370

a) To bring agreements into line with Community law, maximising the potential of the Single Market;

b) To take forward an agenda for reform internationally, aimed at stimulating air services and increasing international investment in the industry;

c) To ensure that effective competition is preserved and promoted in order to spread the economic benefits to consumers;

d) To guarantee high standards of safety, security, environmental protection and passenger protection in the EC and promoting them worldwide.

(a) Bringing agreements into line with Community law, maximising the potential of the Single Market

46. The key objective must be to bring existing bilateral agreements into line with the law - notably in the area of ownership and control, where the Court's judgements now make action imperative. The aim should be to work towards a new generation of agreements concluded at Community level to replace those negotiated by individual Member States. This will enable the simultaneous modernisation of relations with trading partners and assurance of complete compatibility with the Community's legal framework.

47. As mentioned above, the bilateral system has prevented Community air carriers from gaining the full benefits of the EU Single Market and the Treaty provisions relating to the right of establishment. It will be an aim of the Community to give them these full benefits by concluding agreements that recognise their right to non-discriminatory treatment throughout the EU, for international traffic rights just as for internal routes.

48. Many Community carriers have withstood the economic difficulties of the past year rather well - at least better than their American counterparts - but they still lack the freedom they need to expand and restructure their businesses. The larger Community carriers compare well with their global competitors in terms of their financial situation and their substantial long haul businesses. But in the global market, the absolute size of an airline's network can be important and the big US airlines are much bigger than their EU counterparts in terms of passenger numbers (40.000.000 for EU number 1 - Lufthansa - and 110.000.000 for US number 1 - American Airlines), the number of hubs they operate, and their aircraft fleets (800+ aircraft for American Airlines against 280 for British Airways - the EU's largest fleet).The Community will need to conclude a new generation of agreements that gives them that freedom.

(b) Taking forward an agenda for reform at an international level

49. The Community should continue to favour international reform, with a view to providing a more flexible economic regime for the airline industry that would give airlines, both in the EU and abroad, more opportunities to regroup and develop a stable financial position, drawing on international capital and expertise as necessary.

50. As a further broad principle, the Community should aim to simplify the current system of Member States' bilaterals both in terms of the number of parties and the number of restrictions on operations. For practical reasons, when there are the interests of fifteen Member States to take into account, it will make sense to conclude agreements with no limits on the number of routes flown or carriers designated. The aim should be to avoid agreements that will be difficult to implement or which leave scope for dispute between Member States.

51. As regards allocation of traffic rights between Community carriers, "open skies" type agreements and other liberal accords, where there is no restriction on the number of carriers or on the number of flights that can be operated, pose few problems. However, in more restrictive agreements, where traffic rights are limited and must be allocated on the basis of a reciprocal division between the airlines of the parties, it is clear that a non-discriminatory mechanism at EU-level for allocating the traffic rights among Community carriers will be necessary.

52. Ultimately, given its economic priorities and preference for broad agreements at regional and global level, the Community should work over the long term towards a multilateral solution to the regulation of air transport. While there is no immediate prospect of progress, the inclusion of the sector within the WTO or another equivalent arrangement at global level should be considered to be an objective.

(c) Ensuring that effective competition is preserved and promoted

53. The effective enforcement of competition rules is an essential element of a co-ordinated international EU aviation policy. To that end the EU should have the same effective competition enforcement tools for international aviation as it has for air transport within the EU. In the past the Commission has submitted several proposals, most recently in 1997, to the Council to provide it with such powers.[17] It follows from the logic of the Court's judgement, that there is an urgent need to re-launch consideration of these proposals. Only by overcoming the limitations of the existing investigation and enforcement regime could a fully effective co-ordinated air transport policy be achieved.

(d) Guaranteeing high standards of safety, security and environmental protection

54. The integrated Community market is underpinned by high standards of safety, security and environmental protection. The EC and its Member States have a long record of introducing and maintaining high standards or safety, security and environmental protection. The EU has pressed for the best provisions on these issues at an international level and, where necessary, has sought to assist other countries, including future member states and developing countries, to improve their systems in order to be able to comply with them.

55. These high standards must not be compromised at international level and the EU must redouble its efforts to raise standards globally. The increased competitive pressures and greater freedom to invest internationally that might result from agreements should never lead to compromise on these standards. The Community will want to continue this work through its new agreements, building on existing

[17] Ea to extend the scope of Regulations No (EEC) No 3975/87 and No (EEC) No 3976/87 to transport between the Community and third countries

rules in order both to maximise the effect of its resources and making full use of its influence in international fora.

3.2. Negotiating priorities

56. In terms of opening negotiations, the four priorities for the EC must be

(a) To enter into negotiations with key bilateral partners;

(b) To continue to build-up relations with neighbouring countries;

(c) To build-up relations with developing countries.

(d) To assert the position of the Community in multilateral fora and work for reform internationally;

(a) Negotiations with key bilateral partners

57. The relationship with the United States is central to the European Union's air transport relations. It is of the utmost importance to open Community negotiations that will offer the opportunity of correcting problems in the bilaterals that were the subject of the Court's judgements and creating a better balance within the Transatlantic relationship. The two sides must take steps towards an open environment for the provision of services and investment, complemented by a framework of high standards. The Commission considers that the Council should approve a mandate for negotiations as soon as possible on the basis of the preparations already undertaken addressing not only market access conditions but also the regulatory environment.

58. Negotiations with Russia are also a high priority. The EU and Russia are in the process of deepening their co-operation in all areas and removing trade barriers with the aim of creating a joint economic area. As with the US, the EU and its Member States have frequent contacts with Russia on a variety of air transport issues, but resolution of these is difficult without entering into broader negotiations that address all aspects of the relationship in a coordinated manner

59. Japan is one of the EU's key trading partners and an important international market for aviation. It is important to allow air services to expand, ensuring that both sides have good access to infrastructure. The Court's confirmation of Community competence on slot allocation should allow a clearer dialogue to develop between the two parties.

(b) Building-up relations with neighbouring countries

60. As these negotiations progress, the EU must also continue to work with its near neighbours. The accession in 2004 of new member states to the EU will further enlarge the internal market. The planned European Common Aviation Area has allowed the Community to complete negotiations with the candidate countries on air transport and will enable the market to be extended in the short term even to those candidate countries whose EU membership is further away. This European Common Aviation Area will also provide a basis for developing closer ties with our other close trading partners around the Mediterranean and to the East.

(c) Building-up relations with developing countries

61. The EU must work with developing countries to ensure that air transport is free to develop between Europe and these countries in a positive manner, expanding opportunities for both sides, but without compromising on standards. The EU will continue with the assistance programmes it has sponsored to assist with the application of safety standards.

(d) Asserting the position of the Community in multilateral fora and work for reform internationally

62. Finally, in order to ensure that the European interest is presented and pursued in a coherent manner, the EU and its Member States must also present a more co-ordinated position in international organisations. European Community membership of ICAO must be a priority and the Commission has made a proposal to this effect. The Community must also develop firm positions in other global organisations on air transport issues.

CONCLUSIONS: IMPLICATIONS OF THE COURT'S JUDGEMENTS

63. The judgements of the Court of Justice of 5 November 2002 on the so-called "open skies" cases against eight Member States, not only have implications for the eight specific agreements with the United States but also for existing bilateral aviation agreements between Member States and other third countries and for any future negotiation of bilateral air services issues.

64. According to Article 10 of the Treaty Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

65. Moreover, as the Court found in the judgements of 5 November 2002, in the case of an infringement stemming from an international agreement, Member States are prevented not only from contracting new international commitments but also from maintaining such commitments in force.

66. This argues strongly in favour of the urgent development of a Community external relations policy for air transport, which would, in any case, have considerable economic and political advantages. The Commission will come forward with any proposals that are necessary to ensure an appropriate follow-up.

67. In the light of the foregoing considerations, the Commission has requested the eight governments directly concerned by the judgements to activate the provisions for denunciation contained in their agreements with the United States in order to ensure at the earliest possible date compliance with the judgements of the Court of Justice.

68. The Commission has also requested the remaining seven Member States to activate the provisions for denunciation contained in their agreements with the United States in order to ensure compliance of their agreements with Community law and to avoid the necessity to pursue further infringement procedures.

69. More generally, the Commission has asked all Member States to refrain from taking international commitments of any kind in the field of aviation before having clarified their compatibility with Community law

70. Finally, in order to take the first step forward in this area, the Commission has urged the Council of the European Union to agree a mandate as soon as possible for negotiations to replace the existing bilaterals with the United States with an agreement at Community level.