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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 January 2008

5321/08

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**AVIATION 11
ISR 2**

REPORT

From : Council Secretariat

To: Delegations

No. Cion prop. : 15540/07 AVIATION 207 ISR 17

Subject : Draft Decision by the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council, authorising the Commission to open negotiations with Israel on a comprehensive air transport agreement

1. Introduction

On 22 November 2007, the Commission submitted a Recommendation to the Council in order to authorise the Commission to open negotiations with Israel on a comprehensive air transport agreement.

The Aviation Working Party held a first discussion on the above Recommendation at its meeting on 15 January 2008. All those delegations expressing an opinion supported the proposal on the granting of a mandate to the Commission to open comprehensive aviation negotiations with Israel. Most of the delegations also suggested that the proposed negotiating directives should be brought in line with the text of the Jordan mandate recently adopted by the TTE Council. Moreover, a number of delegations pointed out that a horizontal agreement with Israel should be negotiated and initialled, before negotiations on a comprehensive air transport agreement could be pursued.

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2. Follow-up

Further to the above Recommendation, and to the first discussion held at the Aviation Working Party meeting on 15 January 2008, delegations will find in the Annex a draft Decision on the above subject. The changes with regard to the Commission Recommendation are indicated in **bold** and ~~strikethrough~~.

The Aviation Working Party will pursue its examination of the draft Decision authorising the Commission to open negotiations with Israel on a comprehensive air transport agreement at its meeting on 29 January 2008.

FI has a general scrutiny reservation on the text.

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ANNEX

**DRAFT DECISION BY THE COUNCIL AND THE REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION,
MEETING WITHIN THE COUNCIL,
authorising the Commission to open negotiations with Israel
on a comprehensive air transport agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2),
in conjunction with Article 300(1) thereof,

HAS DECIDED AS FOLLOWS:

Sole article

The Commission is hereby authorised to open negotiations on behalf of the European Community and its Member States, within the limits of their respective competencies, with Israel with a view to establishing a comprehensive air transport agreement.

The Commission shall conduct the negotiations in accordance with the directives set out in Annex I and the ad hoc procedure set out in Annex II of this Decision.¹

This Decision is without prejudice to arrangements, in accordance with Community law and in particular Regulation (EC) N° 847/2004 on the negotiation and implementation of air service agreements between Member States and third countries, for ongoing bilateral agreements between Member States and Israel, pending the conclusion of a Community agreement.

¹ The negotiations shall be conducted in a way that will ensure full and timely consultation of all relevant stakeholders, including the European airline industry, throughout the negotiations.

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Application of this agreement to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated and to the continuing suspension of Gibraltar Airport from European Community Aviation measures existing as of 18th September 2006 as between Member States in accordance with the terms of the Ministerial Statement on Gibraltar Airport agreed in Cordoba on the 18th September 2006.

Done at Brussels,

*For the Council
The President*

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NEGOTIATING DIRECTIVES

(Community and its Member States-Israel, comprehensive Air Transport Agreement)

1. Negotiating objectives

Based on the close political and economic relations between the European Community and its Member States, on the one hand, and Israel, on the other hand, and on the specific aviation-related objectives in the EU-Israel Action plan, ~~the aim of the negotiations with Israel shall be to establish a Common Aviation Area~~ **the agreement will need to cover a range of issues which aim essentially at market opening** between the European Community and its Member States and Israel where carriers of both sides can freely provide their services on the basis of commercial principles and be able to compete on a fair and equal basis and subject to equivalent or harmonised regulatory conditions based on mutual recognition.

2. Scope of the Agreement

A comprehensive air transport agreement would allow the parties to establish a clear and coherent framework in which to constructively develop their aviation relations in the coming years. The framework would be based on a global package of rights and obligations to ensure and promote, *inter alia*, the approximation of aviation laws to avoid conflicts of rules, establish joint mechanisms for co-operation on security, safety and environmental standards and foster co-operation in the industrial field. The agreement would cover a number of issues, with the aim of ensuring a phased, reciprocal and sustainable opening of markets ~~with a view to establishing a fully open Common Aviation Area accompanied by~~ **subject to** a process of regulatory co-operation towards convergence, while providing for an appropriate level of flexibility (e.g. in relation to transitional periods). The agreement ~~will~~ **shall** not reduce the level of market access created by existing bilateral agreements. The Community will not grant any additional traffic rights between a point in the European Union and a point in a third country, without further reference to the Council.

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- (1) The Commission shall ensure that the agreement is consistent with the Treaty and relevant Community legislation.
- (2) The agreement should provide for adequate mechanisms for verification and information exchange, with the aim of ensuring mutual confidence in the fulfilment of obligations entered into, in order to ensure a level playing field.
- (3) The agreement should provide for stringent air safety and security provisions, taking into account the procedures, standards and developments applicable on or taking place in the territory of the Community.
- (4) The agreement should include provisions on competition and state aids to ensure a level playing field for all market operators.
- (5) The agreement should aim at associating Israel in the implementation of the Single European Sky.
- (6) The agreement should cover intermodality aspects between different modes of transport.
- (7) The agreement should allow for safeguarding the flexibility to take action within the EU with respect to environmental issues, in particular in respect of measures to mitigate the impact of aviation on climate change, air quality and noise levels around airports.
- (8) The agreement should not prohibit taxation of aircraft fuel supplied to aircraft. It should make clear that rules relating to the taxation of fuel for aircrafts of one Party shall be complied with by the other Party's air carriers when operating to, from or within the territory of the first Party.
- (9) The agreement should aim at ~~exploring~~ the liberalisation of the investment regime **between the Contracting Parties** subject to appropriate safeguards.

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- (10) A particular chapter should be dedicated to technical and research cooperation.
- (11) In implementing these objectives, the agreement should provide for the necessary flexibility, in particular with regard to transition periods.
- (12) **The inclusion of a “most favoured nation extension-clause” should be advocated. Via such a clause, the Community and a Mediterranean Partner endeavour to offer the liberalising measures they agree between each other to any other Mediterranean Partner with which a similar Euro-Mediterranean Agreement already exists. If the latter country wants to accept this offer, it is self-evidently obliged to offer the same to the Community and the former country. If it refuses the offer, there will be no reciprocity and the “extension” dies.**
- (13) **The Agreement should not affect the field of VAT, with the exception of turnover tax on imports. Furthermore, the agreement should not affect the provisions of the respective agreements in force between a Member State of the European Union and Israel for the avoidance of double taxation with respect to taxes on income and on capital.**
- (14) **Particular emphasis should be put on solving important "doing business" issues.**

3. Structure of the agreement

Upon entry into force, the final agreement will progressively replace the relevant provisions of the existing bilateral air services agreements between Member States and Israel, taking into account the horizontal air transport agreement to be negotiated simultaneously already initialled between the Community Commission and Israel beforehand. Provisions of the bilateral air services agreements will remain in force unless changed by the final agreement.

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It shall be proposed to implement certain elements of a final agreement earlier than others in a phased approach.

The Commission ~~shall~~ **should** negotiate appropriate clauses in order to apply provisionally the agreement between its signature and its conclusion by the parties, **in accordance with the application of national law.**

4. Management of the agreement

Each Party will be responsible for enforcement on its territory and with regard to its nationals and air carriers.

The agreement should provide for an appropriate dispute settlement mechanism and safeguard measures and a Joint Committee of representatives of the Parties shall be established, which shall be responsible for the administration of the agreement and for its proper implementation.

5. Conduct of the Negotiations

~~The Commission shall be assisted, during the negotiations, by a Special Committee designated by the Council. The Commission will regularly inform the Council on the progress of the negotiations.~~

~~The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.~~

The Commission shall conduct the negotiations in accordance with these directives and the ad hoc procedure set out in Annex II of this Decision.

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For areas of Member States' competencies, the Commission shall ensure during the negotiations that Member States' concerns are reflected adequately. The agreement, which shall be equally authentic in all official EU languages, shall include a language clause to this effect.

The Commission shall recommend the modification or the termination of the mandate, if no progress over a longer period of time is made and no progress can be expected in the near future.

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**AD HOC PROCEDURE FOR NEGOTIATIONS
CONCERNING A COMPREHENSIVE AIR TRANSPORT
AGREEMENT BETWEEN THE EUROPEAN COMMUNITY
AND ITS MEMBER STATES AND ISRAEL**

I. Procedure

- 1. The Commission shall conduct the negotiations on behalf of the Community and its Member States, in consultation with a Special Committee appointed by the Council to assist it in this task.**
- 2. The Commission shall report back regularly to the Council on the progress of the negotiations and on the outcome of these negotiations.**

II. Rules of conduct to be observed

- 1. The authorisation to open negotiations automatically entails the establishment of a Special Committee for the negotiations in question.²**

To this end, Member States shall notify the Council General Secretariat as soon as possible, in whatever manner they choose, of the names of their representatives on this Committee.

² For reasons of confidentiality it seems appropriate to lay down that Member States' representatives are appointed by name and are the sole addressees of the documents relating to the negotiations. This does not mean that they cannot be replaced or accompanied by experts.

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2. **The negotiations must be prepared for in good time.**

To this end, the Commission departments shall inform the Council General Secretariat of the schedule anticipated and forward the relevant documents as soon as possible.

3. **Close coordination shall be maintained between the Commission and the Member States.**

- (a) **Each negotiating session shall be preceded by a meeting within the Special Committee in order to identify the key problems for the Community and its Member States and to define, if possible, a common position or establish guidelines.**

The Presidency shall make the arrangements for this meeting in good time, in consultation with the Commission.

- (b) **Coordinating meetings shall be held on the spot throughout the negotiations at the initiative of the Commission, the Presidency or a Member State.**

The Presidency shall make arrangements for such meetings and, if necessary, shall draw up documents on the outcome of the discussions held.

- (c) **Members of the Special Committee shall be invited to attend all of the negotiating sessions.**

Talks at which the members of the Special Committee are not present should be exceptional and must not take the place of the normal procedure. In any event the Special Committee must be adequately briefed on any such talks.

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During such talks the Commission may be accompanied by a limited number of members of the Special Committee acting as experts. In any event, the Chair of the Special Committee may attend these talks at his/hers request.

- (d) For areas of Community competence the Commission shall be the spokesman for the Community during the negotiations, and the representatives of the Member States shall speak only if requested to do so by the Commission. Furthermore, the representatives of the Member States must take no action which is likely to handicap the Commission in its work.**

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