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COMMUNICATION FROM THE COMMISSION

Developing a Common Aviation Area with Ukraine

1. INTRODUCTION

In its Communication “Developing the agenda for the Community’s external aviation policy” (COM (2005) 79 final), the Commission highlighted the importance to create a common aviation area with its Eastern and Southern Neighbours. The final objective should be to bring the EC and its partners along its southern and eastern borders together with the aim to share the same market operation rules. The Council of the European Union on 27 June supported this objective in its “conclusions on developing the agenda for the Community’s external aviation policy” in which it welcomed the progress in developing a wider European Common Aviation Area by 2010 incorporating EU neighbouring countries.

In the Communication “A Community aviation policy towards its neighbours” (COM (2004) 74 final), the Commission announced that it will closely monitor the legislative and economic developments in Ukraine with a view to making concrete proposals for closer aviation relations at the appropriate time.

Ukraine is, next to the Russian Federation, the largest neighbour of the enlarged European Union. The EU is the most important trade partner for Ukraine. In 2003, 34% of Ukrainian exports and 33.4% of imports were exchanged with the EU 25. In the same year, Ukrainian GDP grew by 8.5%, the transport sector even by 9%. EU-Ukraine relations are governed by the Partnership- and Cooperation Agreement. The Agreement highlights the objective to strengthen cooperation in the field of transport (Article 64) and provides for the possibility to negotiate specific transport agreements between the parties (Article 40). In particular following the political changes in the country, Ukraine is considered a priority country in the European Neighbourhood Policy. In February 2005, both sides endorsed a joint EU-Ukraine Action Plan to support Ukraine’s objective to further integrate into European political and economic structures. Increased cooperation in the field of civil aviation, including on safety and security issues, is one of the concrete priorities outlined in the Action Plan.

As a consequence of the “open skies” judgements of the European Court of Justice on 5 November 2002, the 25 bilateral agreements between Member States and Ukraine had to be amended because some of their provisions, in particular the provisions that do not authorise European carriers to fly to Ukraine unless they leave from their countries of origin, are not in line with Community law. The Commission has been given a “horizontal” mandate to negotiate with third countries such necessary corrections to bilateral agreements. The Commission’s use of the horizontal mandate in the course of 2005 has proven efficient in rendering a very significant number of bilateral agreements compatible with Community law. The European Commission has initialled an air services agreement under the horizontal mandate with Ukraine in June 2005, thus resolving the legal issues raised by the European Court of Justice in the *Open Skies* cases and creating a basis for the further development of EU-Ukraine aviation relations.

The improvement of EU aviation relations with other neighbours with the final objective to create a Common Aviation Area is an important objective for the further economic development of the European aviation industry. Destinations to

neighbouring countries of the EU represent 19% of international traffic beyond the EU, slightly less important than traffic to the markets in North America. The EU already integrated the aviation markets of Switzerland and Norway through close agreements. In March 2005, the Commission started to negotiate an European Common Aviation Agreement (ECAA) with the Western Balkans, based on negotiation directives given by the Council in December 2004. At the same time, the Commission received negotiation directives for a comprehensive aviation agreement with Morocco with the aim to integrate the country's aviation sector as far as possible into the European aviation area.

Ukraine, in its drive towards integration into European structures, has shown interest in much closer cooperation with the EU in the field of air transport and the opening of negotiations on a comprehensive aviation agreement. Ukraine has demonstrated its willingness to reform the framework for international air transport jointly with the European Community. Since early 2005, Ukraine has started to implement a more market-oriented economic and transport policy and to open its market towards EU Member States.

With this Communication the Commission therefore recommends that the Council authorises the Commission to negotiate a comprehensive agreement on an Common Aviation Area with Ukraine combining market opening with a parallel process of regulatory co-operation and/or convergence notably in priority areas such as aviation safety, security, environmental protection and application of competition rules ensuring a level playing field and fair and equal conditions for competition.

2. THE EXISTING FRAMEWORK

Following the May 2004 enlargement, the EU became Ukraine's largest trading partner accounting for about 35% of Ukraine's total trade. In 2003, Ukraine's exports to the EU-25 amounted to 5.7 billion Euro, and imports 8.8 billion euros. Trade with Ukraine is on a Most Favoured Nation treatment basis under the PCA, which allows for trade in goods without quantitative restrictions, excluding the steel sector where special arrangements exist. A new bilateral Steel Agreement for 2004 entered into force on 28 December 2004. The EC and Ukraine signed a bilateral agreement on trade in textiles on 9 March 2005. Under this agreement, the last remaining restrictions to trade in textiles and clothing products will be lifted, and both sides agree to matching low levels of customs duties. Ukraine is seeking to accede to the WTO, and in March 2003 signed its bilateral market access protocol with the EC. Ukraine is now working towards meeting all the multilateral rules of the WTO and the EU is supporting Ukraine in this process. In the light of the new political developments in Ukraine, the EU has undertaken to maximise its support for reforms and the modernisation of the Ukrainian economy.

Ukraine and EU have expanded their bilateral cooperation through the conclusion of a Science & Technology agreement and, recently, through the initialling of an agreement on Ukraine's participation in Europe's satellite radio-navigation programme GALILEO. This clearly demonstrates the wish of Ukraine to be better integrated into EU programmes and activities.

Ukraine has 68 bilateral air services agreements with third countries and is a long-standing member of the International Organisation of Civil Aviation (ICAO). Following the Russian Federation, Ukraine is the most important aviation market in Eastern Europe and the former CIS with a strong growth potential. According to preliminary figures, international passenger transport in Ukraine increased by 30% in the first months of 2005.

The EU and the Ukrainian aviation markets are closely connected. Ukraine is one of the few countries in the world which has bilateral air services agreements with all 25 EU Member States. This highlights the importance of aviation relations to this key neighbour of the European Union. In 2003, almost 1.2 million passengers travelled between the EU and Ukraine by air transport. According to provisional data, this figure grew up to 1.4 million passengers in 2004. The highest proportion of EU-Ukraine traffic is between Ukraine and Germany (260.000 passengers in 2004), Austria (215.000), the Netherlands (168.000) as well as Hungary (128.000) and Poland (110.000) 50% of passengers were carried by EC operators. The high growth rate in the last years took place despite a fairly restrictive attitude of the Ukrainian authorities with regard to market opening until 2004. Key factors stimulating travel from Ukraine are the booming economy, growing disposable income leading to a higher standard of living and in turn a higher propensity to travel abroad.

Ukraine is also a rapidly growing tourism market for tourists from Central and Western Europe. In 2002, more than 6 million foreign tourists visited Ukraine (+ 9%) – a figure comparable to the Russian Federation and Croatia.¹

Ukraine is since 1999 a full member of the European Civil Aviation Conference (ECAC) and became in 2004 member of Eurocontrol. The European choice of the Ukrainian aviation policy has been enhanced following the change of government in early 2005 and was confirmed by the initialling of the horizontal agreement with the European Community on 3 June 2005 in which Ukraine has accepted the principle of designation of Community carriers.

A step still to achieve by Ukraine is full membership in the Joint Aviation Authorities (JAA), where Ukraine is for the time being a candidate member. JAA, the functions of which will be integrated into the European Aviation Safety Agency (EASA), has 39 member countries and developed important safety standards valid throughout Europe. It is both in the interest of Ukraine and the European Union to increase their relations with regard to safety and to help Ukraine adopt EU safety standards. Within the EC Tacis programme, the EU has already launched projects to support activities in this field.

The Ukrainian aviation sector

In Ukraine, around 80 airlines are registered at the Ukrainian Civil Aviation Authorities. The two main international airlines are Aerosvit and Ukraine International Airlines, both operating domestic and international flights. In 2004, Aerosvit accounted for 33% of the Ukrainian market and saw its passenger numbers

¹ World Tourism Organisation, Facts & Figures, International Tourist Arrivals, Europe (<http://www.world-tourism.org/facts/tmt.html>)

grow by nearly 50% to 1 million passengers. The company operates a fleet of 9 Boeing 737s and 767s for flights to South East Europe, the US and the Far East and is majority owned by a Ukrainian travel agency with minority stakes of the State and a Dutch investment company. Ukraine International Airlines serves 20 international destinations mainly in Western Europe and is majority owned by the State Property Fund of Ukraine with a 22% stake of Austrian Airlines.

Remaining challenges in modernising Ukraine's aviation market are

- to remove infrastructure bottlenecks
- to modernise the aviation industry according to Western standards
- to fully implement European safety oversight requirements
- to modernise ATM procedures and navigation systems
- to increase the safety and environmental standards of Ukrainian aircraft: Ukrainian airlines have started to purchase and lease modern Western aircraft, but domestic flights are mostly operated with old aircraft dating back to the Soviet period. In 2003, only 5% of registered aircraft fully complied with EU environmental standards. The need for modern aircraft complying with international and EU standards will create opportunities both for the European and the Ukrainian industry.

Industrial co-operation

Ukraine inherited a significant aircraft manufacturing industry from the USSR, with the Antonov design bureau and related factories as its main component. Aircraft industry is considered as a high-tech nucleus for the redevelopment of the Ukrainian industry. The decline of the Post-soviet aviation sector also led to a sharp decrease of aircraft production during the last decade. Today, Antonov is focused on the production of a regional aircraft (An-140) and is continuing the development of other aircraft, including the military transport aircraft An-70. Ukrainian and EU industry have a major interest to increase their cooperation. The envisaged agreement could create a new framework for industrial aviation relations between the Ukraine and the EU which could accompany the restructuring and modernisation of the Ukrainian aerospace industry. This cooperation should be focused on common research projects, including in the context of the EU-Galileo cooperation agreement, the approximation of Ukrainian standards to the EU's safety, security, environmental standards, training programmes as well as supporting the modernisation of the Ukrainian airport infrastructure and air traffic management system with the aim to harmonise navigation systems. An increased cooperation under the umbrella of a comprehensive agreement would thus not only increase the safety and security level in the aviation sector of a key neighbour of the EU, but also open opportunities for the aerospace industry by creating common standards and certification procedures. It

would also pave the way for Ukrainian participation in key EU projects and undertakings such as “Sesame”², or the European Aviation Safety Agency (EASA).

3. FURTHER STRENGTHENING THE RELATIONS WITH A KEY NEIGHBOUR

In June 2005, following the initialling of a horizontal agreement between the Community and Ukraine, Ukraine has requested to enter into more comprehensive aviation relations with the European Union. The Ukrainian authorities confirmed their readiness to start as soon as possible the approximation of Ukrainian aviation legislation with the EU *acquis communautaire* and to enter into a new quality of aviation relations with the European Union. The Ukrainian government is also interested to enhance relations in the field of aviation safety, including co-operation with the European Aviation Safety Agency, and in EU support for the modernisation of Ukrainian airports and air navigation systems.

Since early 2005, Ukraine has adopted a more liberal approach towards more liberal international operations with several EU Member States and has granted better access to the Ukrainian market. In several bilateral negotiations, Ukraine and EU Member States could significantly increase their weekly frequencies on a reciprocal basis.

4. BENEFITS AND ADDED VALUE OF A COMMUNITY APPROACH

The civil aviation sector (including infrastructure, operators and other industrial actors) is a significant component of the European economy. Air carriers account for about 1.5% of the European GDP and employ 350.000 people, while the whole sector employs about 3 million people throughout the EU. The creation of a single aviation market since the early 90s has significantly contributed to make the sector more dynamic and efficient and has created large economic and social benefits. Between 1992 and 2003, the number of intra-Community routes increased by more than 40%. The main Community carriers experienced a productivity rise of 87% between 1990 and 2002.³ Nevertheless, the full potential of the internal market is unlikely to be achieved until the Community acts as a single coordinated entity in its aviation relations with third countries wherever such co-ordinated efforts can create added value in the interest of the European aviation industry and users. Moreover, the experiences which the EU has gained in this respect are considered highly valuable by third countries. This is even more valid for Ukraine with which the EU would like to establish a privileged relationship.

EU Member States and Ukraine have negotiated diverse bilateral air services agreements with a different level of market opening and different conditions for operators. Some Member States have achieved more open agreements with Ukraine, others not yet. A number of agreements allow multiple designation, whereas in

² Sesame, the technical implementation of the Single European Sky launched by the European Commission, aims at preparing for a new generation of Air Traffic Management systems which is able to cope with growing air traffic.

³ Annex to the Communication from the Commission « developing the agenda for the Community’s external aviation policy » COM (2005) 79 final

agreements with some Member States designation is restricted to one carrier. The current system of bilateral air services agreements between EU Member States and Ukraine therefore distorts patterns of traffic and may disadvantage several EC carriers as well as consumers in some EU Member States. An EU agreement would establish – at the highest possible level – a level playing field for all EC carriers and allow passengers in all Member States to benefit from similar conditions and increased traffic between the EU and Ukraine.

There would be significant economic benefits from an EU-Ukraine Common Aviation Area. Market opening and the approximation of EU rules by Ukraine would in particular benefit Central European markets thanks to their geographical position and traditional close economic and trade links with Ukraine.

As a consequence of market opening, travel opportunities for EU and Ukrainian passengers would significantly improve. The number of direct connections between EU and Ukraine as well as the overall number of flights is expected to significantly increase trade and tourism flows between EU and Ukraine. We expect that an important share of the economic benefits would be reaped by the European airline industry and the wider European economy. It would create substantial new market opportunities for air carriers in the EU that would like to start operations to Ukraine but do currently not have any traffic rights. It could also facilitate the integration of Ukrainian carriers into existing alliances of EU carriers thus allowing their modernisation and higher safety, security and environmental standards.

Obviously, it will be of paramount importance to ensure that opening and integration of markets is undertaken in a balanced manner that takes into account other important policy objectives and mitigates potential adverse impacts. It is essential to ensure that the process of market opening is accompanied by a parallel process of regulatory co-operation and/or convergence with regard to safety, security, environmental and competition law aspects thereby ensuring a level playing field and fair competition based on equal opportunities. Open markets need a framework that ensures fair competition and high standards for safety and security. With regard to environmental issues, the agreement must be consistent with the Community's commitment to sustainable development. It is important that the agreement does not restrict the EU's ability to apply regulatory or economic instrument to mitigate unwanted side-effects of growth in air traffic, notably on the air quality and noise levels around airports and through the contribution to global climate change.

It is of political and economic interest to the EU to ensure the implementation of European standards at its Eastern borders. This can only be done through a comprehensive agreement negotiated at Community level. The final aim of the agreement will be the integration of the Ukrainian aviation sector into a Common Aviation Area with the European Union and the full harmonisation of legislation in key areas of the EU aviation legislation.

Proposing a comprehensive mandate for the negotiations with Ukraine would demonstrate the EU's commitment to open markets, expand its safety and security standards and to sustainable development to its neighbours. An EU-Ukraine aviation agreement could have wider economic implications for air transport between the EU and other neighbouring countries on the Eastern Borders of the EU and increase regional cooperation.

As this Communication has shown, Ukraine has declared to be ready to start the integration into a Common aviation area with the EU as proposed by the European Commission in its Communication from March 2005. This will imply Ukraine's readiness to embark on the modernisation of its civil aviation sector.

5. CONCLUSIONS

The Commission therefore considers it important to offer Ukraine a comprehensive scope for strengthened co-operation in civil aviation. The agreement with Ukraine would establish an ambitious framework integrating wider aviation issues such as regulatory co-operation in the fields of aviation safety, security, air traffic management, technology and research as well as "doing-business" issues and industrial co-operation.

The civil aviation sector offers significant new opportunities for further strengthening transport sector co-operation and mutual benefits of Ukraine and the EU. Efforts should therefore now be made for air transport to become a key area of closer co-operation between the EU and Ukraine thus offering Ukraine a concrete example for integration into European structures and markets. The agreement will be an important step towards the realisation of a Common aviation area between the European Union and its neighbours which is a key objective of EU external aviation policy, and an important element of EU external policy.

Only an EU wide agreement will be able to fulfil the Ukrainian aspirations to be better integrated into European aviation structures and to combine the benefits of market opening with cooperation in the regulatory, technical and industrial fields in order to achieve a level playing field for operators and advantages for consumers.

The substantial political and economic added value of an air transport agreement with Ukraine could – in the long term – serve as a model for other countries in the region and help increasing regional cooperation in Eastern Europe.

In the light of the above, the Commission proposes the negotiation and conclusion of a comprehensive open aviation agreement with Ukraine and invites the Council to authorise the Commission to enter into negotiations on such an agreement.

The Commission will work closely together with Member States and all relevant stakeholders in further developing and achieving the objectives set out in the proposed Council Decision.