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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Response of the United States Department of State to the third Community action objecting to their rule on aircraft operating noise limits

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Consideration of a Community response

Previous Community Actions

1. On 28 June 1980, an Aide-Mémoire[1] was delivered to the US Department of State, the Federal Aviation Administration (FAA) and the Environmental Protection Agency (EPA) which contained a Community objection to the implementation of the FAA Notice of Proposed Rulemaking (NPRM) 80-7 on aircraft operating noise limits.

   This NPRM provided that, from 1 January 1985, all the foreign registered jet aircraft landing in the United States, would be subject to US noise standards (FAR 36). These standards are, in some respects, more stringent than the International standards defined in the Annex 16 to the Convention of the International Civil Aviation. The United States is a signatory to the Convention.

   Furthermore, the International Civil Aviation Organisation (ICAO), had recommended, in May 1979, that States should not forbid the movements of non noise certificated foreign registered aircraft before 1 January 1988. This recommendation was reinforced by the resolution A 23-10 of the Assembly of ICAO (October 1980).

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[1] see Doc. 8822/80 AER 28 ENV 140

The FAA published its rule in November 1980 without making any substantial concessions to Community, Member States or European Civil Aviation Conference objections.

2. On 1 July 1981, the Permanent Representatives Committee agreed that the Community should lodge a further protest against the unilateral action of the United States[2]. A second Aide-Mémoire was presented to the US authorities on 15 July 1981.

The US authorities replied on 12 August 1981 that they would give full and proper consideration to individual requests for exemptions by Community Airlines[3]. However, they did not modify their position on the main Community objections : i.e. their non application of the ICAO standards to foreign registered aircraft and non respect of the ICAO A23-10 resolution.

The Third Community Action

3. On 29 June 1983, the Permanent Representatives Committee agreed for a third demarche in protest to be presented to the US authorities[4].

An Aide-Mémoire and a petition, the drafts of which were prepared and submitted to the Council by the Commission[5], were handed over to the US Department of State, jointly, as for the previous actions, by the representatives of the Council Presidency and of the Commission's delegation in Washington, on 8 August 1983.

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2 see Doc. 7192/81 AER 10 ENV 99 + COR 1

3 Doc 8202/81 AER 26 ENV 115

4 Doc. 7426/83 AER 12 ENV 91 + ADD1

5 Doc. 6655/83 AER 8 ENV 59 - COM(83) 194 final

The Aide-Mémoire repeated the main objections already formulated and also drew the attention of the US authorities to the noise regulations adopted by the Port Authority of New York and New Jersey. These regulations were more stringent than the Federal rule and also did not comply with the ICAO recommendations.

The petition followed the FAA procedures for amending a rule and proposed amendments to FAR 91, to bring it in line with the international practice.

The response of the US authorities

4. In their response, handed over to the Commission's Delegation in Washington on 8 December 1983 (see Annex 1), the US authorities maintain their position that the US is not in violation of international agreements to which it is party and reject the Community's main objections relating to the application of national rules to foreign aircraft instead of the ICAO Annex 16 standards and to resolution A23-10 of the ICAO Assembly. They mentioned again that exemptions might be granted for duly justified individual cases.

Furthermore, they informed the Community that a federal district court has, in most respects, suspended the regulation adopted by the Port Authority of New York and New Jersey.

Consideration of a Community reply

5. The Commission has considered the legal issues raised in the US response, and concludes that further legal protest is unlikely to be fruitful or useful.

Nevertheless, the tone of the Department of State's response to the Community demarche is not acceptable. It is suggested, therefore, that our disagreement with the US position should be notified.

A draft response to the US Department of State is annexed to this communication (Annex 2). It is proposed that this Community response is transmitted to the US Department of State.

ANNEX 1

AIDE-MEMOIRE

The Department of State refers to the Commission of the European Communities' aide-memoire of August 9, 1983, forwarded jointly by the Delegation of the Commission of the European Communities and the Embassy of Greece, concerning the relationship between aircraft noise regulations issued by the United States Federal Aviation Administration (FAA). That aide-memoire transmitted a petition for amendment of Federal Aviation Regulation (FAR) Part 91, Subpart E, and stated the Communities' view that the amendment would bring FAR Part 91 "in line" with international agreements, including in particular the aircraft noise standards and recommended practices published by the International Civil Aviation Organization (ICAO) in Annex 16 to the Convention on International Civil Aviation.

The United States Government, including in particular the FAA, has carefully considered the Communities' views on noise standards for aircraft engaged in international air transportation as expressed in the Communities' aide-memoire. The United States notes that, like the Communities, it regards the orderly establishment of noise standards as an important and serious matter. In this regard, it is the view of the United States Government that the provisions of FAR 91 and the FAA's timetable for its implementation are in full accord with international agreements to which the United States is a party.

The United States cannot agree with the Communities that the FAA should amend its noise regulations on account of Resolution A23-10 of the ICAO Assembly. That Resolution constitutes a request by the ICAO Assembly that member states not require aircraft to meet the requirements of Annex 16 before 1988. However, as the chairman of the United States delegation to the 23rd Assembly of the ICAO, the FAA Administrator, explained when the Resolution was adopted, the provisions of FAR 91, Subpart E, were mandated by the Aviation Safety and Noise Abatement Act of 1979. In particular, the provision most affected by the petition, Section 91.303, was required by Section 302 of the statute to be applied to both United States and foreign air carriers. The FAA cannot by rule countermand a statute enacted by Congress and is therefore precluded from exempting all foreign registered aircraft from the noise requirements of Parts 91 and 36. Thus, because consideration of the Communities' petition would be futile, the FAA does not plan to publish the petition in the Federal Register and solicit public comment.

However, as the FAA Administrator pointed out to the ICAO Assembly, he may allow specific exemptions to individual operators which have a legitimate need for temporary relief from the timetable imposed by the regulations. The FAA will continue to consider such petitions, on a case-by-case basis in light of unusual or unique circumstances, to determine whether the granting of the temporary extension requested would be in the public or national interest.

Additionally, the United States Government notes that enforcement of noise rules imposed by the Port Authority of New York and New Jersey has in most respects been enjoined by the United States courts. Therefore, those rules are not being generally applied to aircraft operating into the Port Authority airports, and the FAA rules would apply instead.

Department of State,
Washington, Dec. 8, 1983

ANNEX II

DRAFT OF THE RESPONSE TO BE HANDED TO THE STATE DEPARTMENT OF THE UNITED STATES OF AMERICA

The European Community refers to the Department of State's Aide-Mémoire of 8 December, 1983 concerning the European Community's objections to noise rules imposed on foreign registered civil subsonic jet aircraft by the Federal Aviation Administration (FAA).

It regrets that the United States Government cannot take into account the amendment proposed by the Community petition, that the US Government considers the petition as futile on the ground that the FAA cannot act contrary to a statute enacted by Congress and that it has not seen fit to publish it in the Federal Register. It is felt that such publication might have elicited useful public comments.

Without being convinced that the FAA is so bound as regards foreign registered aircraft, the European Community holds the view that these internal considerations do not alter the principle of comity in the field of aviation. The United States Government should have ensured that the FAA rule complied with international practice, as other nations did.

Given the shared interest of the European Community and the United States Government in the orderly development of international air transport and establishment of international noise standards, the Community registers its disappointment with the Department of State's communication of 8 December 1983 and maintains its previously expressed objections to United States unilateral action, which is not in conformity with the resolution A23-10 of the International Civil Aviation Organization or with international practice in this field.