

For third countries, therefore, the situation after 1992 is neither entirely obvious nor yet clear. For bilateral agreement purposes the central issue is who exercises sovereignty over the air space covering the territory of each of the Member States. This should determine who is the Contracting Party in a bilateral air services agreement with a third country, and who negotiates on behalf of a Member State, or whether the Community will negotiate as one. To reconcile the external impact of the Community's air transport policy with the existing provisions of bilateral air agreements with third countries, will involve either the re-negotiation of agreements with each Member State, or the negotiation by each third country of one agreement with the Community. That is the question posed by the Commission in its February 1990 Communication to the Council. The Commission argued that air transport is a service; services are a commercial matter subject to the Community's common commercial policy; therefore, the Commission, under Article 113 of the Rome Treaty, is authorized to conduct negotiations on behalf of the Community and represent the particular interests of the Member States. This is the situation for example, in the GATT, where the Commission, flanked by representatives of Member States, speaks for the Community. In bilateral trade relations, the Commission, always under Council mandate, conducts negotiations on its own. The Commission recognized, however, that as it did not yet have the necessary resources and expertise to undertake the re-negotiation of over 600 bilateral air services agreements, there would be some transitional "ad hocery". This would allow Member States to negotiate under a Community mandate. There is a sort of