



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.6.2006
COM(2006) 266 final

2006/0094 (CNS)

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and the Republic of Paraguay on certain aspects of air services

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Republic of Paraguay on certain aspects of air services

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Following the judgements of the Court of Justice in the so-called “Open Skies” cases, on 5 June 2003 the Council granted the Commission a mandate to open negotiations with third countries on the replacement of certain provisions in existing agreements with a Community agreement¹ (the “horizontal mandate”). The objectives of such agreements are to give all EU air carriers non-discriminatory access to routes between the Community and third countries, and to bring bilateral air service agreements between Member States and third countries in line with Community law.

- **General context**

International aviation relations between Member States and third countries have traditionally been governed by bilateral air services agreements between Member States and third countries, the Annexes to such agreements and other related bilateral or multilateral arrangements.

Traditional designation clauses in Member States’ bilateral air services agreements infringe Community law. They allow a third country to reject, withdraw or suspend the permissions or authorisations of an air carrier that has been designated by a Member State but that is not substantially owned and effectively controlled by that Member State or its nationals. This has been found to constitute discrimination against Community carriers established in the territory of a Member State but owned and controlled by nationals of other Member States. This is contrary to Article 43 of the Treaty which guarantees nationals of Member States who have exercised their freedom of establishment the same treatment in the host Member State as that accorded to nationals of that Member State.

There are further issues, such as aviation fuel taxation or tariffs introduced by third country air carriers on intra-Community routes, where compliance with Community law should be ensured through amending or complementing existing provisions in bilateral air service agreements between Member States and third countries.

- **Existing provisions in the area of the proposal**

The provisions of the Agreement supersede or complement the existing provisions in the bilateral air services agreements between Member States and the Republic of Paraguay.

- **Consistency with the other policies and objectives of the Union**

The Agreement will serve a fundamental objective of the Community external aviation policy by bringing existing bilateral air service agreements in line with Community law.

¹ Council Decision 11323/03 of 5 June 2003 (restricted document)

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Member States as well as the industry were consulted throughout the negotiations.

Summary of responses and how they have been taken into account

Comments made by Member States and the industry have been taken into account.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

In accordance with the mechanisms and directives in the Annex to the "horizontal mandate", the Commission has negotiated an agreement with the Republic of Paraguay that replaces certain provisions in the existing bilateral air services agreements between Member States and the Republic of Paraguay. Article 2 of the Agreement replaces the traditional designation clauses with a Community designation clause, permitting all Community carriers to benefit from the right of establishment. Articles 4 and 5 of the Agreement address two types of clauses concerning matters of Community competence. Article 4 deals with the taxation of aviation fuel, a matter which has been harmonised by Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, and in particular Article 14 (2) thereof. Article 5 (Pricing) resolves conflicts between the existing bilateral air services agreements and Council Regulation No 2409/92 on fares and rates for air services which prohibits third country carriers from being price leaders on air services for carriage wholly within the Community.

- **Legal basis**

EC Treaty Art. 80(2), 300(2)

- **Subsidiarity principle**

The proposal is entirely based on the "horizontal mandate" granted by the Council taking into account the issues covered by Community law and bilateral air service agreements.

- **Proportionality principle**

The Agreement will amend or complement provisions in bilateral air service agreements only to the extent necessary to ensure compliance with Community law.

- **Choice of instruments**

The Agreement between the Community and the Republic of Paraguay is the most efficient instrument to bring all existing bilateral air services agreements between Member States and the Republic of Paraguay into conformity with Community law.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation.

The relevant provisions of bilateral air service agreements between Member States and the Republic of Paraguay will be substituted by provisions in one single Community agreement.

- **Detailed explanation of the proposal**

In accordance with the standard procedure for the signature and conclusion of international agreements, the Council is asked to approve the decisions on the signature and provisional application and on the conclusion of the Agreement between the European Community and the Republic of Paraguay on certain aspects of air services and to designate the persons authorised to sign the Agreement on behalf of the Community.

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and the Republic of Paraguay on certain aspects of air services

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission²,

Whereas:

- (1) The Council authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.
- (2) On behalf of the Community, the Commission has negotiated an Agreement with the Republic of Paraguay on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council Decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.
- (3) Subject to its possible conclusion at a later date, the Agreement negotiated by the Commission should be signed and provisionally applied.

HAS DECIDED AS FOLLOWS:

Sole Article

1. The President of the Council is hereby authorised to designate the person(s) empowered to sign on behalf of the Community the Agreement between the European Community and the Republic of Paraguay on certain aspects of air services subject to its conclusion at a later date.
2. Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the parties have notified each other of the completion of the necessary procedures for this purpose. The President of the Council is hereby authorised to make the notification provided for in Article 8(2) of the Agreement.

² OJ C [...], [...], p. [...].

3. The text of the Agreement is attached to this Decision.

Done at Brussels,

*For the Council
The President*

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Republic of Paraguay on certain aspects of air services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission³,

Having regard to the opinion of the European Parliament⁴,

Whereas:

- (1) The Council authorised the Commission on 5 June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.
- (2) On behalf of the Community, the Commission has negotiated an Agreement with the Republic of Paraguay on certain aspects of air services in accordance with the mechanisms and directives in the Annex to the Council Decision authorising the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.
- (3) The Agreement was signed on behalf of the Community on subject to its possible conclusion at a later date, in conformity with Council Decision .../.../EC of⁵.
- (4) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Agreement between the European Community and the Republic of Paraguay on certain aspects of air services is hereby approved on behalf of the Community.

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

2. The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to make the notification provided for in Article 8(1) of the Agreement.

Done at Brussels,

*For the Council
The President*

ANNEX

AGREEMENT

between the European Community and the Republic of Paraguay

on certain aspects of air services

THE EUROPEAN COMMUNITY

of the one part, and

THE REPUBLIC OF PARAGUAY

of the other part

(hereinafter referred to as ‘the Parties’)

NOTING that bilateral air service agreements have been signed between several Member States of the European Community and the Republic of Paraguay containing provisions contrary to European Community law,

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements between Member States of the European Community and third countries,

NOTING that under European Community law Community air carriers established in a Member State have the right to non-discriminatory access to air routes between the Member States of the European Community and third countries,

HAVING REGARD to the agreements between the European Community and certain third countries providing for the possibility for the nationals of such third countries to acquire ownership in air carriers licensed in accordance with European Community law,

RECOGNISING that certain provisions of the bilateral air service agreements between Member States of the European Community and the Republic of Paraguay, which are contrary to European Community law, must be brought into conformity with it in order to establish a sound legal basis for air services between the European Community and the Republic of Paraguay and to preserve the continuity of such air services,

NOTING that it is not a purpose of the European Community, as part of these negotiations, to increase the total volume of air traffic between the European Community and the Republic of Paraguay, to affect the balance between Community air carriers and air carriers of the Republic of Paraguay, or to negotiate amendments to the provisions of existing bilateral air service agreements concerning traffic rights.

HAVE AGREED AS FOLLOWS:

ARTICLE 1
General Provisions

1. For the purposes of this Agreement, ‘Member States’ shall mean Member States of the European Community. ‘LACAC Member States’ shall mean Member States of the Latin American Civil Aviation Commission.
2. References in each of the agreements listed in Annex 1 to nationals of the Member State that is a party to that agreement shall be understood as referring to nationals of the Member States of the European Community.
3. References in each of the agreements listed in Annex 1 to air carriers or airlines of the Member State that is a party to that agreement shall be understood as referring to air carriers or airlines designated by that Member State.

ARTICLE 2
Designation, Authorisation and Revocation

1. The provisions in paragraphs 2 and 3 of this Article shall supersede the corresponding provisions in the articles listed in Annex 2 (a) and (b) respectively, in relation to the designation of an air carrier by the Member State concerned, its authorisations and permissions granted by the Republic of Paraguay, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively. The provisions in paragraphs 4 and 5 of this Article shall supersede the corresponding provisions in the articles listed in Annex 2 (a) and (b) respectively, in relation to the designation of an air carrier by the Republic of Paraguay, its authorisations and permissions granted by the Member State, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.
2. On receipt of a designation by a Member State, the Republic of Paraguay shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:
 - i. the air carrier is established in the territory of the designating Member State under the Treaty establishing the European Community and has a valid Operating Licence in accordance with European Community law;
 - ii. effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation; and
 - iii. the air carrier is owned, directly or through majority ownership, and it is effectively controlled by Member States and/or nationals of Member States, or by other states listed in Annex 3 and/or nationals of such other states.
3. The Republic of Paraguay may refuse, revoke, suspend or limit the authorisations or permissions of an air carrier designated by a Member State where:

- i. the air carrier is not established in the territory of the designating Member State under the Treaty establishing the European Community or does not have a valid Operating Licence in accordance with European Community law; or
- ii. effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or
- iii. the air carrier is not owned and effectively controlled directly or through majority ownership by Member States and/or nationals of Member States, or by other states listed in Annex 3 and/or nationals of such other states; or
- iv. the air carrier is already authorised to operate under a bilateral agreement between the Republic of Paraguay and another Member State and the Republic of Paraguay demonstrates that, by exercising traffic rights under this Agreement on a route that includes a point in that other Member State, it would be circumventing restrictions on traffic rights imposed by that other agreement; or
- v. the air carrier holds an Air Operators Certificate issued by a Member State and there is no bilateral air services agreement between the Republic of Paraguay and that Member State, and traffic rights to that Member State have been denied to the air carrier designated by the Republic of Paraguay.

In exercising its right under this paragraph, the Republic of Paraguay shall not discriminate between Community air carriers on the grounds of nationality.

- 4. On receipt of a designation by the Republic of Paraguay, a Member State shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:
 - i. the air carrier is established in the Republic of Paraguay; and
 - ii. the Republic of Paraguay has and maintains effective regulatory control of the air carrier and is responsible for issuing its Air Operators Certificate; and
 - iii. the air carrier is owned and effectively controlled directly or through majority ownership by LACAC Member States and/or nationals of LACAC Member States.
- 5. A Member State may refuse, revoke, suspend or limit the authorisation or permissions of an air carrier designated by the Republic of Paraguay where:
 - i. the air carrier is not established in the Republic of Paraguay; or
 - ii. effective regulatory control of the air carrier is not exercised or not maintained by the Republic of Paraguay or the Republic of Paraguay is not responsible for issuing its Air Operators Certificate; or

- iii. the air carrier is not owned and effectively controlled directly or through majority ownership by LACAC Member States and/or nationals of LACAC Member States; or
- iv. the air carrier is already authorised to operate under a bilateral agreement between the Member State and another LACAC Member State and the Member State demonstrates that, by exercising traffic rights under this Agreement on a route that includes a point in that other LACAC Member State, it would be circumventing restrictions on the traffic rights imposed by that other agreement.

ARTICLE 3

Safety

1. The provisions in paragraph 2 of this Article shall complement the articles listed in Annex 2 (c).
2. Where a Member State has designated an air carrier whose regulatory control is exercised and maintained by another Member State, the rights of the Republic of Paraguay under the safety provisions of the agreement between the Member State that has designated the air carrier and the Republic of Paraguay shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other Member State and in respect of the operating authorisation of that air carrier.

ARTICLE 4

Taxation of aviation fuel

1. The provisions in paragraph 2 and 3 of this Article shall complement the corresponding provisions in the articles listed in Annex 2 (d).
2. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 2 (d) shall prevent Member States from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of the Republic of Paraguay that operates between a point in the territory of that Member State and another point in the territory of that Member State or in the territory of another Member State.
3. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 2 (d) shall prevent the Republic of Paraguay from imposing on a non-discriminatory basis taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated air carrier of a Member State that operates between a point in the territory of the Republic of Paraguay and another point in the territory of the Republic of Paraguay or in the territory of another LACAC Member State.

ARTICLE 5
Tariffs for carriage

1. The provisions in paragraph 2 and 3 of this Article shall complement the articles listed in Annex 2 (e).
2. The tariffs to be charged by the air carrier(s) designated by the Republic of Paraguay under an agreement listed in Annex 1 containing a provision listed in Annex 2 (e) for carriage wholly within the European Community shall be subject to European Community law. European Community law is applied on a non-discriminatory basis.
3. The tariffs to be charged by the air carrier(s) designated by a Member State under an agreement listed in Annex 1 containing a provision listed in Annex 2 (e) for carriage between the Republic of Paraguay and another LACAC Member State shall be subject to Paraguayan law concerning price leadership and applied on a non-discriminatory basis.

ARTICLE 6
Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the agreements listed in Annex 1 shall (i) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition; (ii) reinforce the effects of any such agreement, decision or concerted practice; or (iii) delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.
2. The provisions contained in the agreements listed in Annex 1 that are incompatible with paragraph 1 of this Article shall not be applied.

ARTICLE 7
Annexes to the Agreement

The Annexes to this Agreement shall form an integral part thereof.

ARTICLE 8
Revision or amendment

The Parties may, at any time, revise or amend this Agreement by mutual consent.

ARTICLE 9
Entry into force and provisional application

1. This Agreement shall enter in force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.

2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.
3. Agreements and other arrangements between Member States and the Republic of Paraguay which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex 1(b). This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.

ARTICLE 10
Termination

1. In the event that an agreement listed in Annex 1 is terminated, all provisions of this Agreement that relate to the agreement listed in Annex 1 concerned shall terminate at the same time.
2. In the event that all agreements listed in Annex 1 are terminated, this Agreement shall terminate at the same time.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

Done at [...] in duplicate, on this [...] day of [..., ...] in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish, and Swedish languages. In case of divergence the Spanish text shall prevail over the other language texts.

FOR THE EUROPEAN COMMUNITY: FOR THE REPUBLIC OF PARAGUAY:

ANNEX 1

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between the Republic of Paraguay and Member States of the European Community which, at the date of signature of this Agreement, have been concluded, signed and/or are being applied provisionally

- Air Transport Agreement between the Republic of Paraguay and the Federal Republic of Germany, signed in Bonn on 26 November 1974, hereinafter referred to as “Paraguay – Germany Agreement” in Annex 2;
- Agreement between the Republic of Paraguay and the Kingdom of Belgium on scheduled air transport, signed in Asuncion on 1 September 1972, hereinafter referred to as “Paraguay – Belgium Agreement” in Annex 2;

Modified by the Agreed Record signed in Brussels on 3 September 1982;

- Agreement between the Government of the Republic of Paraguay and the Government of Spain on air transport, signed in Madrid on 12 May 1976, hereinafter referred to as “Paraguay – Spain Agreement” in Annex 2;

Supplemented by the Agreed Record signed in Asuncion on 2 November 1978;

Supplemented by the Agreed Record signed in Asuncion on 1 September 1985;

Supplemented by the Agreed Record signed in Madrid on 6 October 1992;

- Agreement between the Republic of Paraguay and the Kingdom of the Netherlands concerning scheduled air transport, signed in The Hague on 7 February 1974, hereinafter referred to as “Paraguay – Netherlands” Agreement in Annex 2.

(b) Air service agreements and other arrangements initialled or signed between the Republic of Paraguay and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally

- Draft Agreement between the Government of the Republic of Paraguay and the Government of the Italian Republic on air services between their respective territories, initialled in Rome on 18 July 1985 as Annex to the Agreed Record of Consultations, hereinafter referred to as “Draft Paraguay – Italy Agreement” in Annex 2;
- Draft Agreement between the Government of the Republic of Paraguay and the Government of the United Kingdom of Great Britain and Northern Ireland concerning air services, initialled in Asuncion on 28 August 1998 as Annex B to the Agreed Protocol between the aeronautical authorities of the Republic of Paraguay and the United Kingdom, hereinafter referred to as “Draft Paraguay – United Kingdom Agreement” in Annex 2.

ANNEX 2

List of articles in the agreements listed in Annex 1 and referred to in Articles 2 to 5 of this Agreement

(a) Designation:

- Article 3 of the Paraguay – Germany Agreement;
- Article 3 of the Paraguay – Belgium Agreement;
- Article 3 of the Paraguay – Spain Agreement;
- Article 4 of the Draft Paraguay – Italy Agreement;
- Article 3 of the Paraguay – Netherlands Agreement;
- Article 4 of the Draft Paraguay – United Kingdom Agreement

(b) Refusal, Revocation, Suspension or Limitation of Authorisations or Permissions:

- Article 4 of the Paraguay – Germany Agreement;
- Article 4 of the Paraguay – Belgium Agreement;
- Article 4 of the Paraguay – Spain Agreement;
- Article 5 of the Draft Paraguay – Italy Agreement;
- Article 4 of the Paraguay – Netherlands Agreement;
- Article 5 of the Draft Paraguay – United Kingdom Agreement

(c) Regulatory control:

- Article 10 of the Draft Paraguay – Italy Agreement;
- Article 14 of the Draft Paraguay – United Kingdom Agreement;

(d) Taxation of Aviation Fuel:

- Article 6 of the Paraguay – Germany Agreement;
- Article 5 of the Paraguay – Belgium Agreement;
- Article 5 of the Paraguay – Spain Agreement;
- Article 6 of the Draft Paraguay – Italy Agreement;
- Article 5 of the Paraguay – Netherlands Agreement;
- Article 8 of the Draft Paraguay – United Kingdom Agreement

(e) Tariffs for Carriage within the European Community:

- Article 9 of the Paraguay – Germany Agreement;
- Article 9 of the Paraguay – Belgium Agreement;
- Article 6 of the Paraguay – Spain Agreement;
- Article 8 of the Draft Paraguay – Italy Agreement;
- Article 9 of the Paraguay – Netherlands Agreement;
- Article 7 of the Draft Paraguay – United Kingdom Agreement

ANNEX 3

List of other states referred to in Article 2 of this Agreement

- (a) **The Republic of Iceland** (under the Agreement on the European Economic Area);
- (b) **The Principality of Liechtenstein** (under the Agreement on the European Economic Area);
- (c) **The Kingdom of Norway** (under the Agreement on the European Economic Area);
- (d) **The Swiss Confederation** (under the Agreement between the European Community and the Swiss Confederation on Air Transport)