COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.8.2008
COM(2008) 506 final

2008/0161 (CNS)

Proposal for a

COUNCIL DECISION

on the signing of the Agreement on certain aspects of air services between the European Community and the United Mexican States

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement on certain aspects of air services between the European Community and the United Mexican States

(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 agreement[1] (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 services 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 twelve bilateral air services agreements between Member States and the United Mexican States.

- **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 services agreements in line with Community law.

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[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 Mexico that replaces certain provisions in the existing bilateral air services agreements between Member States and the United Mexican States. 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. Article 6 resolves potential conflicts with the EC competition rules.

- **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 services agreements.

- **Proportionality principle**

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

- **Choice of instruments**

The Agreement between the Community and the United Mexican States is the most efficient instrument to bring all existing bilateral air services agreements between

Member States and the United Mexican States 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 services agreements between Member States and the United Mexican States will be superseded or complemented 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 on the conclusion of the Agreement on certain aspects of air services between the European Community and the United Mexican States and to designate the persons authorised to sign the Agreement on behalf of the Community.

Proposal for a

COUNCIL DECISION

on the signing of the Agreement on certain aspects of air services between the European Community and the United Mexican States

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 Commission[2],

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 on certain aspects of air services with the United Mexican States 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,

HAS DECIDED AS FOLLOWS:

Sole Article

1. Subject to its conclusion at a later date, the President of the Council is hereby authorised to designate the person or persons empowered to sign on behalf of the Community the Agreement on certain aspects of air services between the European Community and the United Mexican States.

2. The text of the Agreement is annexed to this decision.

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[2] OJ C , , p. .

Done at Brussels,

For the Council
The President

2008/0161 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement on certain aspects of air services between the European Community and the United Mexican States

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 Commission[3],

Having regard to the opinion of the European Parliament[4],

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 on certain aspects of air services with the United Mexican States 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 has been signed on behalf of the Community on subject to its possible conclusion at a later date, in conformity with Decision …/…/EC of the Council on [5],

(4) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Agreement on certain aspects of air services between the European Community and the United Mexican States is approved on behalf of the Community.

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3 OJ C , , p. .
4 OJ C , , p. .
5 OJ C , , p. .

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

Article 2

The President of the Council is authorised to designate the person empowered to make the notification provided in Article 9(1) of the Agreement.

Done at Brussels,

For the Council
The President

ANNEX

AGREEMENT

on certain aspects of air services

between the United Mexican States and the European Community

THE EUROPEAN COMMUNITY

of the one part, and

THE UNITED MEXICAN STATES

of the other part

(hereinafter referred to as "the Parties"), in conformity with their respective competences;

HAVING REGARD TO the provisions of the bilateral air service agreements between various Member States of the European Community and the United Mexican States;

NOTING that on 5 June 2003, the Member States of the European Community authorised the European Commission to amend certain provisions of their bilateral air service agreements, in an agreement between the European Community and third countries;

NOTING that the European Community has exclusive competence with respect to several aspects that may be included in bilateral air service agreements which Member States of the European Community enter into or have entered into with third countries;

RECOGNISING the importance of updating the relationship between Member States of the European Community and the United Mexican States as regards air services, so as to provide a solid legal basis for air services between the European Community and the United Mexican States and to ensure the continuity of such air services;

UNDERLINING their interest in promoting free competition in the field of air services, and avoiding airlines entering into agreements the purpose of which is to hinder, restrict or distort competition;

NOTING that it is not the purpose of the European Community to affect the balance between European Community air carriers and air carriers of the United Mexican States, nor to amend the provisions of existing bilateral air service agreements concerning traffic rights.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

General provisions

1. References to nationals of a Member State of the European Community that is a Party to any of the bilateral agreements listed in Annex 1 shall be understood as referring to nationals of the Member States of the European Community.

2. References to air carriers from a Member State of the European Community that is a Party to each of the bilateral agreements listed in Annex 1 shall be understood as referring to air carriers designated by that Member State of the European Community.

3. This Agreement modifies certain provisions of existing bilateral air service agreements listed in Annex 1, without affecting existing traffic rights.

ARTICLE 2

Designation by a Member State of the European Community

1. The provisions of paragraphs 2 and 3 of this Article shall supersede the corresponding provisions of the Articles listed in Annex 2(a) and (b) respectively, as regards the designation of an air carrier by a Member State of the European Community, the authorisations and permissions granted by the United Mexican States, and the refusal, revocation, suspension or limitation of the authorisations or permissions of the air carrier, respectively.

2. Upon receipt of a designation by a Member State of the European Community, the United Mexican States shall grant the relevant authorisations and permissions without delay, provided that:

   i. the air carrier is established in the territory of the designating Member State of the European Community under the Treaty establishing the European Community and has a valid operating licence in accordance with Community law, and;

   ii. effective regulatory control of the air carrier is exercised and maintained by the Member State of the European Community responsible for issuing its Air Operator's 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 is effectively controlled by Member States of the European Community or nationals of such countries or by the countries listed in Annex 3 or nationals of those other countries.

3. In all cases where these conditions are not met, the United Mexican States will refuse, revoke, suspend or limit the authorisations or permissions granted to an air carrier designated by a Member State of the European Community.

In exercising its right under this paragraph, the United Mexican States shall not discriminate between air carriers from the European Community on the grounds of nationality.

ARTICLE 3

Safety

1. The provisions of paragraph 2 of this Article shall complement the Articles listed in Annex 2(c).

2. Where a Member State of the European Community has designated an air carrier whose regulatory control is exercised and maintained by another Member State of the European Community, the rights of the United Mexican States under the safety provisions of the agreement between the Member State of the European Community that has designated the air carrier and the United Mexican States shall apply equally in respect of the adoption, exercise and maintenance of safety standards by that other Member State of the European Community and in respect of the operating authorisation for that air carrier.

ARTICLE 4

Taxation of aviation fuel

1. The provisions of paragraphs 2 and 3 of this Article shall complement those of the Articles listed in Annex 2(d) to this Agreement.

2. Without prejudice to the provisions of the bilateral agreements listed in Annex 2(d) to this Agreement, Member States of the European Community may apply, on a non-discriminatory basis, levies, taxes, duties, fees or charges, as appropriate, to fuel supplied within its territory for aircraft of the air carrier designated by the United Mexican States operating between a point within the territory of the said Member State of the European Community and another point within the same territory or within the territory of another Member State of the European Community.

3. Without prejudice to the provisions of the bilateral agreements listed in Annex 2(d) to this Agreement, the United Mexican States may impose, on a non-discriminatory basis, levies, taxes, duties, fees or charges, as appropriate, to fuel supplied within its territory for aircraft of the air carrier designated by a Member State of the European Community operating between a point within the territory of the United Mexican States and another point within the territory of another country within the Americas.

ARTICLE 5

Tariffs for carriage

1. The provisions of paragraphs 2 and 3 of this Article shall complement those of the Articles listed in Annex 2 (e) to this Agreement.

2. The tariffs to be charged by the air carriers designated by the United Mexican States under the bilateral agreements listed in Annex 1 containing a provision listed in Annex 2(e) to this Agreement in respect of carriage wholly within the European Community shall be subject to Community law. Community law shall be applied on a non-discriminatory basis.

3. The tariffs to be charged by the air carriers designated by Member States of the European Community under the bilateral agreements listed in Annex 1 containing a provision listed in Annex 2(e) of this Agreement for carriage wholly between the United Mexican States and any point within the Americas shall be subject to the applicable legislation. That legislation shall be applied on a non-discriminatory basis.

ARTICLE 6

Compatibility with competition rules

1. None of the bilateral agreements between the United Mexican States and Member States of the European Community may: (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. Any provisions contained in the bilateral agreements listed in Annex 1 that are incompatible with paragraph 1 of this Article shall not apply.

ARTICLE 7

Annexes to the Agreement

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

ARTICLE 8

Revision and Amendment

The Parties may, at any time, revise or amend this Agreement by mutual consent, in writing. Those modifications shall enter into force in accordance with the procedure set out in Article 9(1) of this Agreement.

ARTICLE 9

Entry into force

1. This Agreement shall enter into force thirty (30) days after the date of the last note with which the Parties provide written notification, via diplomatic channels, that their respective internal procedures necessary for that effect have been concluded.

2. This Agreement shall apply to the bilateral agreements listed in Annex 1(b) once the latter have entered into force.

3. This Agreement shall take precedence in the event of a difference between the provisions of this Agreement and the bilateral agreements listed in Annex 1.

ARTICLE 10

Termination

1. In the event of the termination of any of the bilateral agreements listed in Annex 1, all provisions of this Agreement relating to the said agreement shall terminate simultaneously.

2. In the event of the termination of all of the bilateral agreements listed in Annex 1, this Agreement shall terminate at the same time as the last of these agreements.

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

DONE in duplicate at [….], on this […] day of […..], [*year*] in the Bulgarian, Spanish, Czech, Danish, German, Estonian, Greek, English, French, Italian, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Romanian, Slovak, Slovenian, Finnish and Swedish languages, each text being equally authentic. In the case of divergence, the Spanish version shall take precedence.

FOR THE UNITED MEXICAN STATES FOR THE EUROPEAN COMMUNITY

ANNEX 1

List of bilateral agreements referred to in Article 1 of this Agreement

(a) Air service agreements between the United Mexican States and Member States of the European Community which, at the date of signature of this Agreement, have been concluded and/or signed.

- Air Transport Agreement between the Government of the United Mexican States and the Federal Government of Austria, signed at Vienna, Austria on 27 March 1995, hereinafter referred to as the "Mexico-Austria Agreement".

- Air Transport Agreement between the Government of the United Mexican States and the Government of the Kingdom of Belgium, signed at Mexico City, on 26 April 1999, hereinafter referred to as the "Mexico-Belgium Agreement".

- Air Transport Agreement between the Government of the United Mexican States and the Government of the Czech and Slovak Federal Republic, signed at Mexico City, on 14 August 1990, hereinafter referred to as the "Mexico-Czech Republic Agreement".

- Air Transport Agreement between the Government of the United Mexican States and the Government of the French Republic, signed at Paris, France, on 18 May 1993, amended by the Agreement Modifying and Supplementing the Air Transport Agreement between the Government of the United Mexican States and the Government of the French Republic, concluded by exchange of notes dated in Paris and Mexico City on 13 January and 4 February 2004, hereinafter referred to as the "Mexico-France Agreement".

- Air Transport Agreement between the Government of the United Mexican States and the Federal Republic of Germany, signed at Mexico City, on 8 March 1967, hereinafter referred to as the "Mexico-Germany Agreement".

- Air Transport Agreement between the United Mexican States and the Italian Republic, signed at Mexico City on 23 December 1965, amended by the Agreement Modifying and Supplementing the Air Transport Agreement between the United Mexican States and the Italian Republic of 23 December 1965, concluded by exchange of notes dated Rome, Italy, 2 August and 7 December 2004, hereinafter referred to as the "Mexico-Italy Agreement".

- Agreement between the Government of the United Mexican States and the Government of the Grand-Duchy of Luxembourg on air transport, signed at Mexico City, on 19 March 1996, hereinafter referred to as the "Mexico-Luxembourg Agreement".

- Air Transport Agreement between the Government of the United Mexican States and the Government of the Kingdom of the Netherlands, signed at Mexico City, 6 December 1971, amended by the Agreement Modifying the Air Transport Agreement of 6 December 1971 between the Government of the United Mexican States and the Government of the Kingdom of the

Netherlands, concluded by exchange of notes dated 24 August 1992 in Mexico City, hereinafter referred to as the "Mexico-Netherlands Agreement".

– Air Transport Agreement between the Government of the United Mexican States and the Government of the Republic of Poland, signed at Mexico City, on 11 October 1990, hereinafter referred to as the “Mexico-Poland Agreement”.

– Agreement on Civil Air Transport between the Government of the United Mexican States and the Government of Portugal, signed at Lisbon, Portugal on 22 October 1948, hereinafter referred to as the "Mexico-Portugal Agreement".

– Air Transport Agreement between the Government of the United Mexican States and the Government of the Kingdom of Spain, signed at Mexico City, on 21 November 1978, hereinafter referred to as the “Mexico-Spain Agreement”.

– Agreement between the Government of the United Mexican States and the Government of the United Kingdom of Great Britain and Northern Ireland concerning air services, signed at Mexico City, on 18 November 1988, hereinafter referred to as the “Mexico-United Kingdom Agreement”.

(b) Air service agreements between the United Mexican States and Member States of the European Community which, at the date of signature of this Agreement, were no longer in force.

– Air Transport Agreement between the United Mexican States and the Portuguese Republic, signed at Mexico City on 6 November 1996.

– Air Transport Agreement between the United Mexican States and the Kingdom of Spain, signed at Madrid, Spain, on 8 April 2003.

ANNEX 2

List of Articles in the agreements listed in Annex 1 and referred to in Articles 2 to 6 of this Agreement

(a) Designation by a Member State:

- Article 3 of the Mexico-Austria Agreement;
- Article 3 of the Mexico-Belgium Agreement;
- Article 3 of the Mexico-Czech Republic Agreement;
- Article 3 of the Mexico-France Agreement;
- Article 3 of the Mexico-Germany Agreement;
- Article 3 of the Mexico-Italy Agreement;
- Article 3 of the Mexico-Luxembourg Agreement;
- Article 3 of the Mexico-Netherlands Agreement;
- Article 3 of the Mexico-Poland Agreement;
- Article 3 of the Mexico-Portugal Agreement;
- Article 3 of the Mexico-Spain Agreement;
- Article 4 of the Mexico-United Kingdom Agreement;

(b) Refusal, revocation, suspension or limitation of authorisations or permissions:

- Article 4 of the Mexico-Austria Agreement;
- Article 5 of the Mexico-Belgium Agreement;
- Article 4 of the Mexico-Czech Republic Agreement;
- Article 4 of the Mexico-France Agreement;
- Article 4 of the Mexico-Germany Agreement;
- Article 4 of the Mexico-Italy Agreement;
- Article 4 of the Mexico-Luxembourg Agreement;
- Article 4 of the Mexico-Netherlands Agreement;
- Article 4 of the Mexico-Poland Agreement;
- Article 4 of the Mexico-Portugal Agreement;

– Article 4 of the Mexico-Spain Agreement;

– Article 5 of the Mexico-United Kingdom Agreement;

(c) Safety:

– Article 6 of the Mexico-Austria Agreement;

– Article 7 of the Mexico-Belgium Agreement;

– Article 6 of the Mexico-Czech Republic Agreement;

– Article 6a of the Mexico-France Agreement;

– Article 6a of the Mexico-Italy Agreement;

– Article 6 of the Mexico-Luxembourg Agreement;

– Article 6 of the Mexico-Netherlands Agreement;

– Article 6 of the Mexico-Poland Agreement;

– Article 8 of the Mexico-Portugal Agreement;

– Article 8 of the Mexico-United Kingdom Agreement;

(d) Taxation of Aviation Fuel:

– Article 8 of the Mexico-Austria Agreement;

– Article 10 of the Mexico-Belgium Agreement;

– Article 8 of the Mexico-Czech Republic Agreement;

– Article 8 of the Mexico-France Agreement;

– Article 7 of the Mexico-Germany Agreement;

– Article 7 of the Mexico-Italy Agreement;

– Article 8 of the Mexico-Luxembourg Agreement;

– Article 8 of the Mexico-Netherlands Agreement;

– Article 8 of the Mexico-Poland Agreement;

– Article 6 of the Mexico-Portugal Agreement;

– Article 5 of the Mexico-Spain Agreement;

– Article 11 of the Mexico-United Kingdom Agreement;

(e) Tariffs for Carriage:

– Article 11 of the Mexico-Austria Agreement;

– Article 13 of the Mexico-Belgium Agreement;

– Article 3 of the Mexico-Czech Republic Agreement;

– Article 12 of the Mexico-France Agreement;

– Article 11 of the Mexico-Germany Agreement;

– Article 11 of the Mexico-Italy Agreement;

– Article 10 of the Mexico-Luxembourg Agreement;

– Article 11 of the Mexico-Netherlands Agreement;

– Article 11 of the Mexico-Poland Agreement;

– Article 16 of the Mexico-Portugal Agreement;

– Article 7 of the Mexico-Spain Agreement;

– Article 10 of the Mexico-United Kingdom Agreement;

ANNEX 3

List of other countries 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).