COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.02.2006
COM(2006) 64 final

2006/0016 (CNS)

Proposal for a

COUNCIL DECISION

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

Proposal for a

COUNCIL DECISION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

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.

Following the judgements of the Court of Justice of the European Communities in cases C-466/98, C-467/98, C-468/98, C-471/98, C-472/98, C-475/98 and C-476/98, the Community has exclusive competence with respect to various aspects of external aviation. The Court of Justice also clarified the right of Community air carriers to benefit from the right of establishment within the Community, including the right to non-discriminatory market access.

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.

Following the Court of Justice judgements, the Council authorised the Commission in June 2003 to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with a Community agreement.[1]

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, the Commission has negotiated an agreement with the Oriental Republic of Uruguay that replaces certain provisions in the existing bilateral air services agreements between Member States and the Oriental Republic of Uruguay. 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.

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 Oriental Republic of Uruguay on certain aspects of air services and to designate the persons authorised to sign the Agreement on behalf of the Community.

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

Proposal for a

COUNCIL DECISION

on the signature and provisional application of the Agreement between the European Community and the Oriental Republic of Uruguay 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 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 with the Oriental Republic of Uruguay 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 Oriental Republic of Uruguay 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 9(2) of the Agreement.

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[2] OJ C , , p. .

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

Done at Brussels,

For the Council
The President

2006/0016 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Oriental Republic of Uruguay 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 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 with the Oriental Republic of Uruguay 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 of […][5].

(4) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Agreement between the European Community and the Oriental Republic of Uruguay on certain aspects of air services is hereby 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 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 9(1) of the Agreement.

Done at Brussels,

For the Council
The President

ANNEX

AGREEMENT

between the European Community and the Oriental Republic of Uruguay

on certain aspects of air services

THE EUROPEAN COMMUNITY

of the one part, and

THE ORIENTAL REPUBLIC OF URUGUAY

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 Oriental Republic of Uruguay 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 states providing for the possibility for the nationals of such third states 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 Oriental Republic of Uruguay, 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 Oriental Republic of Uruguay and to preserve the continuity of such air services,

NOTING that under European Community law air carriers may not, in principle, conclude agreements which may affect trade between Member States of the European Community and which have as their object or effect the prevention, restriction or distortion of competition,

RECOGNISING that, in the light of the above, provisions in bilateral air service agreements concluded between Member States of the European Community and the Oriental Republic of Uruguay which i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant routes; or ii) reinforce the effects of any such agreement, decision or concerted practice; or iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict

competition between air carriers on the relevant routes may render ineffective the competition rules applicable to undertakings,

NOTING that it is not a purpose of the European Community to affect the balance between Community air carriers and air carriers of the Oriental Republic of Uruguay, 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 and Limitation of Authorisations

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 Oriental Republic of Uruguay, 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 Oriental Republic of Uruguay, 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 Oriental Republic of Uruguay 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 Oriental Republic of Uruguay 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 Oriental Republic of Uruguay demonstrates that, by exercising traffic rights under this Agreement on a route that includes a point in another Member State, the airline would be circumventing restrictions on traffic rights imposed by a bilateral agreement between the Oriental Republic of Uruguay and that other Member state; or

v. the airline holds an Air Operators Certificate issued by a Member State and there is no bilateral air services agreement between the Oriental Republic of Uruguay and that Member State, and traffic rights to that Member State have been denied to the air carrier designated by the Oriental Republic of Uruguay.

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

4. On receipt of a designation by the Oriental Republic of Uruguay, a Member State shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

i. the air carrier is established in the territory of the Oriental Republic of Uruguay; and

ii. the Oriental Republic of Uruguay has and maintains effective regulatory control of the airline 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, unless more favourable provisions have been agreed in the bilateral air

services agreement between that Member State and the Oriental Republic of Uruguay.

5. A Member State may refuse, revoke, suspend or limit the authorisation or permissions of an air carrier designated by the Oriental Republic of Uruguay where:

i. the air carrier is not established in the Oriental Republic of Uruguay; or

ii. effective regulatory control of the air carrier is not exercised or not maintained by the Oriental Republic of Uruguay or the Oriental Republic of Uruguay 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, unless more favourable provisions have been agreed in the bilateral air services agreement between that Member State and the Oriental Republic of Uruguay; 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
Rights with regard to regulatory control

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 Oriental Republic of Uruguay under the safety provisions of the agreement between the Member State that has designated the air carrier and the Oriental Republic of Uruguay 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 authorisations of that air carrier.

ARTICLE 4
Taxation of aviation fuel

1. The provisions in paragraph 2 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 a Member State 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 Oriental Republic of Uruguay 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 Oriental Republic of Uruguay 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 Oriental Republic of Uruguay and another point in the territory of the Oriental Republic of Uruguay or in the territory of another LACAC Member State.

ARTICLE 5
Tariffs for carriage within the European Community

1. The provisions in paragraph 2 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 Oriental Republic of Uruguay 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 in a non-discriminatory manner.

ARTICLE 6
Compatibility with competition rules

1. The bilateral air services agreements concluded between Member States and the Oriental Republic of Uruguay shall not i) require or favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted practices that prevent, distort or restrict competition between air carriers on the relevant routes; or ii) reinforce the effects of any such agreement, decision or concerted practice; or iii) delegate to air carriers or other private economic operators the responsibility for taking measures that prevent, distort or restrict competition between air carriers on the relevant routes.

2. The provisions listed in Annex 2 (f) shall not be applied in a way that would be incompatible with paragraph 1 of this Article.

ARTICLE 7
Annexes to the Agreement

The Annexes to this Agreement 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 contracting 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 between Member States and the Oriental Republic of Uruguay 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, sign 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 ORIENTAL REPUBLIC OF URUGUAY:

Annex 1

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between the Oriental Republic of Uruguay 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

– Agreement between the Oriental Republic of Uruguay and the Federal Republic of Germany on air transport, signed at Montevideo on 31 August 1957, hereinafter referred to as "Uruguay – Germany Agreement" in Annex 2;

Last modified by the Agreed Record done at Bonn on 9 July 1997.

– Agreement between the Government of the Oriental Republic of Uruguay and the Government of the Kingdom of Belgium concerning air services, signed at Montevideo on 5 October 1972, hereinafter referred to as "Uruguay – Belgium Agreement" in Annex 2;

– Agreement between the Government of the Oriental Republic of Uruguay and the Government of the Kingdom of Denmark on air services, signed at Montevideo on 18 December 1981, hereinafter referred to as "Uruguay – Denmark Agreement" in Annex 2;

– Agreement between the Kingdom of Spain and the Oriental Republic of Uruguay on commercial air transport, signed at Montevideo on 13 August 1979, hereinafter referred to as "Uruguay – Spain Agreement" in Annex 2;

Last Modified by the Agreed Record signed at Madrid on 21 October 2005;

– Agreement between the Oriental Republic of Uruguay and the Portuguese Republic on air transport, as provided for in Annex 2 to the Memorandum of Understanding signed in Lisbon on 9 September 1998, hereinafter referred to as "Uruguay – Portugal Agreement" in Annex 2;

– Agreement between the Government of the Oriental Republic of Uruguay and the Government of the United Kingdom of Great Britain and Northern Ireland, as provided for in Annex B to the Agreed Record signed at London on 6 February 1998, hereinafter referred to as "Uruguay – United Kingdom Agreement" in Annex 2;

– Agreement between the Government of the Oriental Republic of Uruguay and the Government of the Kingdom of Sweden on air services, signed at Montevideo on 18 December 1981, hereinafter referred to as "Uruguay – Sweden Agreement" in Annex 2.

(b) Air service agreements and other arrangements initialled or signed between the Oriental Republic of Uruguay 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 Oriental Republic of Uruguay and the Federal Government of Austria on air transport, as provided for in Annex B to the Protocol signed at Montevideo on 28 February 1996, hereinafter referred to as "Draft Uruguay – Austria Agreement" in Annex 2;

– Draft Air Transport Agreement between the Kingdom of Spain and the Oriental Republic of Uruguay, as provided for in Annex to the Agreed Record signed at Madrid on 21 October 2005, hereinafter referred to as "Draft Revised Uruguay – Spain 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 Uruguay – Germany Agreement;

– Article 3 of the Draft Uruguay – Austria Agreement;

– Article 3 of the Uruguay – Belgium Agreement;

– Article 3 of the Uruguay – Denmark Agreement;

– Article 3 of the Uruguay – Spain Agreement;

– Article 3 of the Draft Revised Uruguay – Spain Agreement;

– Article 3 of the Uruguay – Portugal Agreement;

– Article 4 of the Uruguay – United Kingdom Agreement;

– Article 3 of the Uruguay – Sweden Agreement;

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

– Article 4 of the Uruguay – Germany Agreement;

– Article 4 of the Draft Uruguay – Austria Agreement;

– Article 3 of the Uruguay – Belgium Agreement;

– Article 4 of the Uruguay – Denmark Agreement;

– Article 4 of the Uruguay – Spain Agreement;

– Article 4 of the Draft Revised Uruguay – Spain Agreement;

– Article 4 of the Uruguay – Portugal Agreement;

– Article 5 of the Uruguay – United Kingdom Agreement;

– Article 4 of the Uruguay – Sweden Agreement;

(c) Safety:

– Article on safety as provided for in Annex 3 of the Agreed Record signed at Bonn on 9 July 1997 relating to the Uruguay – Germany Agreement;

– Article 17 of the Uruguay – Portugal Agreement;

– Article 14 of the Uruguay – United Kingdom Agreement;

(d) Taxation of Aviation Fuel:

– Article 6 of the Uruguay – Germany Agreement;

– Article 7 of the Draft Uruguay – Austria Agreement;

– Article 4 of the Uruguay – Belgium Agreement;

– Article 9 of the Uruguay – Denmark Agreement;

– Article 6 of the Uruguay – Spain Agreement;

– Article 5 of the Draft Revised Uruguay – Spain Agreement;

– Article 6 of the Uruguay – Portugal Agreement;

– Article 8 of the Uruguay – United Kingdom Agreement;

– Article 9 of the Uruguay – Sweden Agreement;

(e) Tariffs for Carriage within the European Community:

– Article 9 of the Uruguay – Germany Agreement;

– Article 11 of the Draft Uruguay – Austria Agreement;

– Article 9 of the Uruguay – Belgium Agreement;

– Article 6 of the Uruguay – Denmark Agreement;

– Article 7 of the Uruguay – Spain Agreement;

– Article 16 of the Uruguay – Portugal Agreement;

– Article 7 of the Uruguay – United Kingdom Agreement;

– Article 6 of the Uruguay – Sweden Agreement;

(f) Compatibility with competition rules:

– Article 9 of the Uruguay – Germany Agreement;

– Article 11 of the Draft Uruguay – Austria Agreement;

– Article 9 of the Uruguay – Belgium Agreement;

– Article 6 of the Uruguay – Denmark Agreement;

– Article 7 of the Uruguay – Spain Agreement;

– Article 16 of the Uruguay – Portugal Agreement;

– Article 6 of the Uruguay – Sweden 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).