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COMISSÃO LATINO-AMERICANA
DE AVIAÇÃO CIVIL

LATIN AMERICAN CIVIL
AVIATION COMMISSION

COMISIÓN LATINOAMERICANA DE AVIACIÓN CIVIL

SECRETARÍA
APARTADO 4127
LIMA 100, PERÚ

CLAC/CE/67-NI/01
16/09/04

LXVII REUNIÓN DEL COMITÉ EJECUTIVO DE LA CLAC

(Montreal, Canadá, 26 y 27 de septiembre de 2004)

Cuestión 5 del Orden del Día:

Otros asuntos

Negociación entre Chile y la Unión Europea

(Nota informativa presentada por Chile)

Antecedentes

1. Chile propuso a la Comisión Europea la celebración de un acuerdo de cielos abiertos que permitiera aumentar los derechos de tráfico con que cuentan actualmente las aerolíneas chilenas y europeas para operar entre Chile y Europa. La Comisión Europea señaló que por ahora no disponía de mandato para la celebración de un acuerdo de cielos abiertos con Chile, pero que cumplida la etapa de un acuerdo horizontal que modificara la cláusula de designación de los convenios celebrados entre países miembros de la Unión Europea y Chile, la etapa siguiente sería la negociación de un acuerdo entre Chile y la Comisión Europea que incluyera derechos de tráfico. Chile aceptó esta negociación, la que se efectuó en Bruselas los días 8 y 9 de Septiembre de 2004. La negociación incluyó también otros temas que interesaban a ambas partes. El Acuerdo a que se llegó se adjunta a la presente nota de estudio.

Designación multinacional de aerolíneas

2. El elemento más novedoso de este Acuerdo es que Chile adquiere el derecho de designar a cualquier aerolínea de los países miembros de la CLAC para utilizar los derechos de tráfico que le otorgan a Chile los acuerdos bilaterales que ha celebrado Chile con 10 países miembros de la Unión Europea. Este

elemento se constituye así en un elemento recíproco al derecho que adquieren los países miembros de la Unión Europea de designar a aerolíneas que tengan una nacionalidad distinta del país que las designa.

Resguardos a la designación multinacional

3. Este mecanismo de designación no permite que una aerolínea ya designada por un país miembro de la Unión Europea sea designada por otro país miembro para operar un punto en el territorio de la nacionalidad de la aerolínea, si en esa forma se sobrepasan restricciones del Convenio entre Chile y el país de la aerolínea. Este mismo resguardo se aplica a las designaciones que efectúe Chile respecto a aerolíneas de los países miembros de la CLAC.

4. En los casos en que no haya convenio entre Chile y el país de la aerolínea europea, Chile puede no aceptar esa designación si en el país de la aerolínea se le han negado derechos de tráfico a una aerolínea chilena.

Control regulatorio

5. Chile debe mantener el control regulatorio de las aerolíneas que designe. Si un Estado miembro de la Unión Europea designa a una aerolínea cuyo control regulatorio es ejercido por otro Estado miembro, los derechos de Chile en materia de seguridad establecidos en el acuerdo entre Chile y el país que designa a la aerolínea se harán efectivos respecto del país que ejerce ese control regulatorio.

Impuestos al combustible

6. Ambas partes mantienen el derecho a cobrar impuestos al combustible en sus respectivas regiones para los vuelos intraregionales de las líneas aéreas designadas por la otra parte.

Tarifas intraregionales

7. En los tramos intraeuropeos las aerolíneas designadas por Chile deberán atenerse a la normativa tarifaria de la Comunidad Europea. En los tramos entre un país miembro de la CLAC y Chile, las líneas aéreas designadas por algún país miembro de la Comunidad Europea deberán cumplir la normativa tarifaria establecida por Chile. Esto permite a Chile impedir que las líneas aéreas europeas en los tramos entre un país de la CLAC y Chile cobren tarifas inferiores a las de las líneas aéreas regionales que sirven esos tramos.

Medidas propuestas al Comité Ejecutivo

8. Se invita al Comité Ejecutivo a tomar conocimiento de la presente, intercambiar criterios y adoptar las medidas que estime pertinente.

AGREEMENT
between the European Community and the Republic of Chile
on certain aspects of air services

THE EUROPEAN COMMUNITY

of the one part, and

THE REPUBLIC OF CHILE

of the other part

(hereinafter referred to as 'the Parties')

NOTING that bilateral air service agreements have been concluded between ten Member States of the European Community and the Republic of Chile 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 by the Member States of the European Community,

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

NOTING that provisions of the bilateral air service agreements between Member States of the European Community and the Republic of Chile, which are not contrary to European Community law, do not need to be amended or replaced,

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 Chile, to affect the balance between Community air carriers and air carriers of the Republic of Chile, 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. 'CLAC 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 Chile, 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 Chile, 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 Chile 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 and shall continue to be owned 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, and shall at all times be effectively controlled by such states and/or such nationals.

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3. The Republic of Chile 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 Chile and another Member State and the Republic of Chile 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 Chile and that Member State, and traffic rights to that Member State have been denied to the air carrier designated by the Republic of Chile.

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

4. On receipt of a designation by the Republic of Chile, 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 Chile; and
- ii. the Republic of Chile 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 CLAC Member States and/or nationals of CLAC 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 Chile where:

- i. the air carrier is not established in the Republic of Chile; or
- ii. effective regulatory control of the air carrier is not exercised or not maintained by the Republic of Chile or the Republic of Chile 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 CLAC Member States and/or nationals of CLAC Member States; or
- iv. the air carrier is already authorised to operate under a bilateral agreement between the Member State and another CLAC 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 CLAC 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 Republic of Chile under the safety provisions of the agreement between the Member State that has designated the air carrier and the Republic of Chile 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 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 Chile 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 Chile 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 Chile and another point in the territory of the Republic of Chile or in the territory of another CLAC Member State.

ARTICLE 5
Tariffs for carriage

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 Republic of Chile 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 Chile and another CLAC Member State shall be subject to Chilean law concerning price leadership and applied on a non-discriminatory basis.

ARTICLE 6
Application of other provisions

The provisions of the agreements listed in Annex 1, other than those affected by Articles 1 to 5 of this Agreement, shall continue to apply, provided that they are not in contradiction with these Articles.

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 Chile 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, Polish, Portuguese, Slovak, Slovene, Spanish, and Swedish languages. In case of divergence the English text shall prevail over the other language texts.

Once the institutions of the European Union will be bound to publish all official acts in Maltese in the Official Journal of the European Union, the agreement will also be drawn up in duplicate in Maltese.

FOR THE EUROPEAN COMMUNITY:

FOR THE REPUBLIC OF CHILE:

List of agreements referred to in Article 1 of this Agreement

(a) Air service agreements between the Republic of Chile 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 Services Agreement between the Government of the Republic of Chile and the Government of the Kingdom of Belgium**, signed at Brussels on 13 September 2001, hereinafter referred to as “Chile-Belgium Agreement”;
- **Air Services Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Chile**, signed at Copenhagen on 27 June 2001, hereinafter referred to as “Chile-Denmark Agreement” ;
- **Agreement between the Governments of the Republic of Chile and the Republic of France concerning air services between and beyond their respective territories**, signed at Paris on 6 December 1979, hereinafter referred to as “Chile-France Agreement”;
- **Air Transport Agreement between the Federal Republic of Germany and the Republic of Chile**, signed at Santiago de Chile on 30 March 1964, as amended, hereinafter referred to as “Chile-Germany Agreement” ;
- **Air Services Agreement between the Government of the Republic of Chile and the Government of the Italian Republic**, signed at Rome on 27 February 2002, hereinafter referred to as “Chile-Italy Agreement”;
- **Agreement between the Government of the Grand-Duchy of Luxembourg and the Government of the Republic of Chile concerning air services between their respective territories**, signed at Luxembourg on 25 February 2002, hereinafter referred to as “Chile-Luxembourg Agreement”;
- **Air Services Agreement between the Kingdom of the Netherlands and the Republic of Chile**, signed at Santiago de Chile on 13 July 1962, hereinafter referred to as “Chile-Netherlands Agreement”;
- **Draft Air Services Agreement between the Republic of Chile and the Kingdom of the Netherlands for air services between their respective territories**, initialled and attached as Annex B to the Agreed Minutes of the Aeronautical Consulting Meeting between the Netherlands and Chile signed at Santiago de Chile on 12 April 2001, hereinafter referred to as “Draft Revised Chile-Netherlands Agreement”;
- **Agreement between the Government of Chile and the Government of Spain concerning commercial air transport services**, signed at Santiago de Chile on 17 December 1974, hereinafter referred to as “Chile-Spain Agreement”;
- **Air Services Agreement between the Government of the Republic of Chile and the Government of the Kingdom of Sweden**, signed in Copenhagen on 27 June 2001, hereinafter referred to as “Chile-Sweden Agreement” ;
- **Agreement between the Republic of Chile and the United Kingdom of Great Britain and Northern Ireland concerning air services**, signed at Santiago de Chile on 16 September 1947, hereinafter referred to as “Chile-UK Agreement”;

- **Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile concerning air services**, initialled and attached as Annex B to the Memorandum of Understanding between the aeronautical authorities of the United Kingdom and Chile signed at Santiago de Chile on 31 May 2000, hereinafter referred to as “Draft Revised Chile-UK Agreement”.

(b) Air service agreements and other arrangements initialled or signed between the Republic of Chile 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

[Annex 1b is intentionally left blank.]

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

(a) Designation by a Member State:

- Article 3 of the Chile-Belgium Agreement;
- Article 3 of the Chile-Denmark Agreement;
- Article 4 of the Chile-France Agreement;
- Article 3 of the Chile-Germany Agreement;
- Article 3 of the Chile-Italy Agreement;
- Article 3 of the Chile-Luxembourg Agreement;
- Article 3 of the Draft Revised Chile-Netherlands Agreement;
- Article 3 of the Chile-Spain Agreement;
- Article 3 of the Chile-Sweden Agreement;
- Article 4 of the Draft Revised Chile-UK Agreement;

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

- Article 4 of the Chile-Belgium Agreement;
- Article 4 of the Chile-Denmark Agreement;
- Article 5 of the Chile-France Agreement;
- Article 4 of the Chile-Germany Agreement;
- Article 4 of the Chile-Italy Agreement;
- Article 4 of the Chile-Luxembourg Agreement;
- Article V of the Chile-Netherlands Agreement;
- Article 4 of the Draft Revised Chile-Netherlands Agreement;
- Article 4 of the Chile-Spain Agreement;
- Article 4 of the Chile-Sweden Agreement;
- Article 4 of the Chile-UK Agreement;
- Article 5 of the Draft Revised Chile-UK Agreement

(c) Regulatory control:

- Article 6 of the Chile-Belgium Agreement;
- Article 14 of the Chile-Denmark Agreement;

- Attachment C to the Protocol between the aeronautical authorities of the Federal Republic of Germany and the Republic of Chile, signed at Berlin on 2 April 1998 – as applied provisionally in the framework of the Germany-Chile Agreement;
- Article 6 of the Chile-Italy Agreement;
- Article 6 of the Chile-Luxembourg Agreement;
- Article 6 of the Draft Revised Chile-Netherlands Agreement;
- Article 14 of the Chile-Sweden Agreement;
- Article 14 of the Draft Revised Chile-UK Agreement;

(d) Taxation of Aviation Fuel:

- Article 9 of the Chile-Belgium Agreement;
- Article 6 of the Chile-Denmark Agreement;
- Article 10 of the Chile-France Agreement;
- Article 6 of the Chile-Germany Agreement;
- Article 9 of the Chile-Italy Agreement;
- Article 15 of the Chile-Luxembourg Agreement;
- Article III of the Chile-Netherlands Agreement;
- Article 15 of the Draft Revised Chile-Netherlands Agreement;
- Article 5 of the Chile-Spain Agreement;
- Article 6 of the Chile-Sweden Agreement;
- Article 8 of the Draft Revised Chile-UK Agreement

(e) Tariffs for Carriage within the European Community:

- Article 12 of the Chile-Belgium Agreement;
- Article 10 of the Chile-Denmark Agreement;
- Article 9 of the Chile-France Agreement;
- Article 8 of the Chile-Germany Agreement;
- Article 12 of the Chile-Italy Agreement;
- Article 14 of the Chile-Luxembourg Agreement;
- Article 14 of the Draft Revised Chile-Netherlands Agreement;
- Article 8 of the Chile-Spain Agreement;
- Article 10 of the Chile-Sweden Agreement;
- Article 9 of the Chile-UK Agreement;
- Article 7 of the Draft Revised Chile-UK Agreement

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)