



ECA Position Paper

EU-US Draft Air Transport Agreement

Introduction

ECA applauds the efforts made by the EU Commission to improve the draft agreement from the text rejected in 2004. Despite having some serious concerns which prevent us from giving the draft agreement wholehearted support, ECA believes that overall it represents a reasonable achievement, given the very weak position the EC was presented with as its starting point.

Safety and Security

Significant improvements in the text, which signal that the regulators of the two largest air transport markets in the world will work together to ensure the highest levels of safety and security, are welcomed by ECA. ECA applauds the persistence of the Commission in its logical argument that measures should wherever possible be consulted and agreed. This will avoid duplication of effort, or in the extreme case, mutually incompatible requirements; and will be another avenue for the widespread adoption of "best practice" in safety and security cultures.

ECA also calls upon all parties to recognise that as well as those market freedoms which were envisaged, liberalisation often creates unintended regulatory freedoms. Quick and effective new regulation to ensure that the highest levels of safety are maintained across a liberalised market are imperative, to ensure that the whole process does not fall into disrepute. This is a role for the joint committee, in which ECA intends to play its full part.

ECA is disappointed that our strong arguments in favour of a definition of Principal Place of Business were ignored in the final agreed draft. ECA believes there are many potential unintended consequences of the EU and US negotiators having ignored our advice.

Social Concerns

ECA welcomes the recognition that liberalisation does not come without cost to some in the industry – particularly the workforce. The following references are therefore welcome by ECA and we look forward to such references in all future air transport agreements.

- The preamble, "*Desiring to have all sectors of the air transport industry, including airline workers, benefit in a liberalized agreement*";

- The main agreement, under Joint Committee, *“considering the social effects of the Agreement as it is implemented and developing appropriate responses to concerns found to be legitimate”*;
- Second stage negotiations, *“...to maximise benefits for consumers, airlines, labor and communities on both sides of the Atlantic.”*
- The Memorandum of Consultations, Paragraph 31, joint committee participation; in particular, *“The two delegations also indicated that stakeholder participation would be an important element of the Joint Committee process and that stakeholder representatives would therefore be invited as observers, except where decided otherwise by one or both Parties.”*

ECA now intends to consolidate the work by participating fully and constructively in the Joint Committee process, ensuring that our Members’ safety and other concerns are properly raised and acted upon.

As stressed by ECA during the negotiations, there are serious flaws in the patchwork of disparate, non-harmonised employment legislation across the EU. Certain airlines would be tempted to abuse these flaws – to the detriment of employees. As the OAA risks exacerbating this situation there must be protection against this being abused on a wider trans-Atlantic scale.

ECA had proposed that provisions were included in the EU-US agreement on the employment law applicable to mobile staff in civil aviation, to ensure that employees and their working conditions are not the losers from the Agreement. Both the Joint Committee and the Revision of the EU’s 3rd Package should address this issue.

Wet Leasing – Provision of Aircraft with Crews

ECA welcomes the improvements in access to the US market in terms of the relaxation of wet leasing restrictions on some routes. ECA looks forward to full reciprocity in this area in stage two talks.

Wet leasing in the EU is not a well regulated area with some Member States still granting wet leasing licences for significantly longer than “temporary needs” and in other than “exceptional circumstances”. This needs to be addressed both within the EU legislation and the second stage talks, to ensure the future EU-US agreement contains specific conditions for wet-leasing operations, based on, among other things, precise definitions of “temporary needs” and of “exceptional circumstances”.

Competition Rules

ECA welcomes the recognition that with liberalisation of the market, there must be convergence of competition rules to ensure everyone can compete fairly. ECA looks forward to the robust approach to market distortions such as chapter 11, Fly America and State Aid by the EU and US Authorities.

Market Access

Given the very unbalanced starting position, where the US had access to the EU internal market through a series of individual 'Open Skies' arrangements which include 5th and 7th freedoms, ECA had urged the EU Commission to negotiate towards a more balanced deal. Unfortunately, the draft agreement, far from starting to balance market access, exacerbates the imbalance!

In particular, ECA is very disturbed by the equation of real market access to the internal EU market for US airlines (by the extension of US 5th freedoms to all EU countries) with moves towards, but not complete reciprocity in ownership and control (O&C) regulations from the US.

ECA believes that it is inappropriate to equate these different market access tools. There is not a single extra job for EU pilots or other workers in relaxed O&C regulations in the US, yet the extension of 5th freedoms potentially opens the door to EU crews competing with our American colleagues in our own home EU market!

Second stage negotiations must, in ECA's view, move towards reciprocity of market access and ECA would not be able to support a further liberalisation based on the equating of real market access gains by the US with O&C relaxation for EU airlines.

Conclusion

In 2003, at the start of this process, ECA stated four areas we believed should be addressed in the eventual agreement.

1. Recognition of the EU as an equal and full partner in international air services negotiations;
2. Reciprocity & equal opportunities for EU carriers and their employees. The best way to re-balance the current situation is a managed liberalisation where operators and employees of both sides would move freely in a common area with high safety and social standards;
3. Establishment of a framework that allows real fair competition not only in economic terms, but also in social, safety, security and environmental terms;
4. Full involvement of social partners as a key to the success of the OAA agreement and its implementation.

Although 3 of the 4 issues have to a greater or lesser degree been addressed, it is unfortunately one of the more important issues which has not. ECA looks forward to a resumption of negotiations for a stage two agreement which will rebalance market access across the Atlantic, incorporate the notion of Principal Place of Business and address issues related to the employment law applicable to mobile staff within the EU-US Open Aviation Area.

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