



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

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Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.2: Air carrier ownership and control

NATIONAL RESTRICTIONS ON AIR CARRIER OWNERSHIP AND CONTROL

(Presented by Ireland on behalf of the European Union (EU) and its Member States¹ and other Member States of the European Civil Aviation Conference² (ECAC))

EXECUTIVE SUMMARY

This working paper presents the European considerations regarding national restrictions on air carrier ownership and control, and suggests that the Conference discuss the relevance of national restrictions on air carrier ownership and control in today's more and more global and competitive economic environment with a view to making further progress in liberalising air carrier ownership and control.

Action: The Conference is invited to agree to the recommendations presented in paragraph 5.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 Air carrier ownership and control have traditionally been subject to restrictions following from two sources. First, the right of a State to refuse to accept the designation of an air carrier in accordance with a bilateral air services agreement if it is not majority (or substantially) owned and effectively controlled by the other party to the agreement or its nationals. This issue is addressed in ATConf/6-WP/49. Secondly, and as examined in this paper, a number of States have passed laws on air carrier licensing or foreign investment that restrict ownership and control of air carriers by nationals of other States ("national restrictions").

¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

² Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, the Republic of Moldova, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine.

1.2 It is useful to examine the reasons behind national restrictions on air carrier ownership and control and whether they are still relevant in the rapidly changing global air transport sector, or whether they could be abolished in order to generate economic benefits.

2. BACKGROUND

2.1 International air transport services are regulated by bilateral air services agreements (ASAs) between States. When negotiating ASAs, States generally wish to secure that the rights exchanged with their partners will benefit the air carriers of both parties but not air carriers of other States who are not parties to the agreement and thus not providing reciprocal rights. The simplest way to reserve rights for air carriers of the parties is for each party to restrict designation to air carriers majority owned and effectively controlled by that party. At the same time, restrictions are also reflected in national laws of the parties. Indeed, an obvious reason for national restrictions has been the logic of ASAs with respect to securing benefits as described above.

2.2 At the time when restrictions on air carrier ownership and control appeared in ASAs and in national laws, States had the following main reasons for introducing such restrictions:

- a) national air carriers were dominantly government owned and controlled;
- b) national air carriers were considered as key strategic assets;
- c) national security concerns about the foreign control of strategic assets;
- d) the intention to make aircraft readily available when needed for the purposes of national defence, emergency needs or providing air services for public interest, for example, to/from remote areas of the country;
- e) market access rights, especially cabotage, were reserved to national air carriers; and
- f) Labour issues such as the concern that foreign investors may not maintain the same labour standards.

2.3 In today's more and more globalised and competitive environment in which air carriers operate, it is worth for ICAO to examine whether the above reasons are still valid and indeed whether such restrictions serve the interest of air carriers or indeed public interests, taking into account the vast potential benefits that liberalization may bring (paragraph 3 refers). The policy objectives for restrictions may be better served by other, more flexible means, for example through national licensing requirements that would not deprive the air transport sector of the potential benefits of liberalization.

2.4 It should be noted that, while national restrictions are still the general practice among States, there are clear exceptions of liberal ownership and control regimes, mostly agreed on a regional level, among States with integrated (air transport) markets ("community of interest"). Such examples include the European Union and the European Economic Area, the CARICOM Agreement or the Single Aviation Market Agreement between Australia and New Zealand.

2.5 When examining the issue, the Conference should recall that the liberalization of air carrier ownership and control is linked with market opening and fair competition issues, and is invited to refer to EU-ECAC Working Paper, ATConf/6-WP/54, "Liberalization of market access" and EU-ECAC Working Paper, ATConf/6-WP/51, "Basic principles of fair competition".

3. THE BENEFITS OF LIBERALIZATION OF AIR CARRIER OWNERSHIP AND CONTROL

3.1 Based on its experience, Europe believes that, in many cases, the abolition or reduction of national restrictions of air carrier ownership and control, where complemented with the necessary safeguards (paragraph 4.2 refers), would bring significant benefits to the air transport sector and the wider economy. Some of those benefits are the following.

- a) liberalization would allow increased access by air carriers to capital which will become increasingly important in a more and more competitive environment, and which would in general facilitate the rationalisation of the air transport sector which is still subject to restrictions unknown in other economic sectors;
- b) free investment in air carriers could support consolidation, mergers and takeovers in the air transport industry, and could enable the development of transnational air carriers that are able to serve the whole air transport network worldwide without being subject to unbalanced restrictions;
- c) besides liberal designation and traffic rights regimes in ASAs (i.e. multiple designation of air carriers and unlimited third and fourth freedom rights at least), the increased possibility of establishing or investing in air carriers by foreign nationals would possibly contribute to further market opening, and thus play a supportive role in the process of liberalising air traffic rights;
- d) the possibility of foreign investment would support the privatisation of nationally owned air carriers in cases where States decide upon privatisation; and
- e) Where national air carriers can accept foreign capital, their reliance upon state aid and subsidies may be reduced. This would reduce the burden on governments to continue financing nationally owned air carriers and would contribute to improving air carrier management as investment by foreign air carriers may also bring new know-how and best practices.

3.2 As European experience shows, the liberalisation of air carrier ownership and control may help improve the economic efficiency of the air carrier industry through improved competitiveness and a greater variety of air services providing consumer benefits.

4. THE WAY AHEAD

4.1 States may be encouraged by several different factors to liberalise national restrictions on air carrier ownership and control. A liberal approach may be developed unilaterally, on the basis of internal policy objectives, or following from international agreements on an intra-regional basis, specific (bilateral) agreements between States and economic blocks (e.g. the EU-US and the EU-Canada Air Transport Agreements), agreements between economic blocks, through appropriately amended ASAs, or through a multi- or pluri-lateral instrument that can be developed by ICAO.

4.2 In all cases however, liberalisation would be facilitated and must be accompanied by safeguards applied to ensure that it will provide benefits and will not compromise basic values such as national security, fair and equal opportunities and the safe, sound and economic development of air transport. Such safeguards should include, among other measures, the implementation of effective

regulatory control maintained by the designating State over aviation safety and security, the financial fitness of air carriers, labour and other possible domestic issues, etc. National defence and emergency needs can be secured through appropriate licensing conditions making aircraft readily available. Furthermore, measures to secure fair competition and regulatory convergence in a level playing field between partner countries are also key enablers of liberalisation and the protection of consumer interests.

4.3 States willing to liberalise their national rules on air carrier ownership and control may well want to ensure that it will be done in a gradual manner and to seek reciprocity from partner countries. ICAO has already suggested useful instruments such as the "principal place of business" clause or waivers to restrictions in ASAs, and could be invited to develop this work further.

5. **RECOMMENDATIONS**

5.1 The Conference is invited to:

- a) discuss the relevance of national restrictions on air carrier ownership and control in today's more and more global and competitive economic environment;
- b) consider possible means to encourage States to progressively abolish national restrictions on air carrier ownership and control or make them more flexible in the interest of the air transport sector, subject to appropriate safeguard measures; and
- c) consider which further actions ICAO should take to support the process of further liberalisation of air carrier ownership and control.

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