

Response of PORTUGAL

to questions concerning its current policy, position and practice on air carrier ownership and control

(Date of response: 02/01/04)

No.	Question	Yes	No	Case by Case	Note/Comment
1.	When designating your airline to operate the agreed services under an air services agreement, do you require it to be substantially (or majority) owned and effectively controlled by nationals of your country?		X		The airline to be designated by Portugal must be licensed according to Regulation 2407/92 and therefore be substantially owned and effectively controlled by EU nationals.
2.	In dealing with the designation of foreign airlines, which of the following criteria do you accept:				
	a) substantially (or majority) owned and effectively controlled by the designating party or its nationals (the traditional approach)	X		X	According to the designation clause
	b) substantially (or majority) owned and effectively controlled by one or more States that are parties to an agreement or within a predefined regional grouping (e.g. a “community of interest” carrier)	X		X	e.g. former multinational air carrier “Air Afrique”.
	c) incorporated and having its principal place of business or permanent residence in the territory of the designating party	X		X	According to the designation clause
	d) having its principal place of business in the territory of and effective control by the designating party (without the ownership requirement)			X	According to the designation clause
	e) having its principal place of business in the territory of and effective regulatory control by the designating party	X		X	According to the designation clause

	f) any other criteria (please describe)				
No.	Question	Yes	No	Case by Case	Note/Comment
3.	In dealing with airline designations in the future, are you willing to accept criteria other than the traditional national ownership and control:				
	a) for both yourself and the foreign partner?			X	Depending on negotiation
	b) for the foreign partner but maintain traditional criteria for yourself?		X		Portugal has to adopt the EU model clause on designation and therefore can not longer use for itself the traditional clause.
	c) What economic regulatory conditions will you impose for such acceptance? (please describe)				In what concerns economic regulatory conditions we point out that the economic fitness of an airline as a pre-condition for licensing and consequently to its designation. There must be no doubt about the aeronautical authority responsible for that airline's safety, security and economic issues.
4.	Are you willing to consider the following positive action in facilitating liberalization of air carrier ownership and control:				
	a) issuing an individual statement of policy for accepting designations of foreign air carriers?			X	

	b) developing a common policy with partner States? (please indicate, if possible, with which partner(s))	X			<p>The liberalization of the traditional national ownership and control criteria exists in the EU single market since the so-called “3rd Package”(1993). The EU Commission and its Member States worked on a new standard community designation clause to be proposed and negotiated third countries (copy attached). Such clause permits any community carrier to be designated under a bilateral agreement between an EU Member State and a third State, provided that community carriers is established in that EU Member State. Safety concerns are also addressed in that clause.</p> <p>Besides that, the Commission will ask for mandates from the Member-States in order to negotiate air services agreements on behalf of the Community with certain countries. Since June 2003 there is a mandate to the Commission to negotiate with USA.</p>
	c) any other action? (please describe)				
Any other comments on your answers:					

Annex 1

STANDARD COMMUNITY DESIGNATION CLAUSE

DESIGNATION PROVISIONS

Articles [] and [] of the [*name of Agreement between Member State and third country*] shall be replaced by the following:

Designation and Authorisation¹

Each Party shall have the right to designate [an airline or airlines] for the purpose of operating the agreed services on each of the routes specified in [Annex 1] and to withdraw or alter such designations. Each designations shall be made in writing and shall be transmitted to the other Party through diplomatic channels.

On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorisations and technical permissions, the other Party shall grant the appropriate authorisations and permissions with minimum procedural delay, provided:

- a) **in the case of an airline designated by [*name of Member State*]:**
- (i) **it is established in the territory of [*name of Member State*] under the treaty establishing the European Community and has received an Operating Licence in accordance with European Community law; and**
 - (ii) **effective regulatory control of the airline is exercised and maintained by the European Community Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation;**

1 Text in **bold** is mandatory, while text in normal font is indicative and will depend, inter alia, on the precise wording of the pre-existing bilateral agreement.

- b) in the case of an airline designated by [*name of third country*]:
- (i) it is established in the territory of [*name of third country*] and is licensed in accordance with the applicable law of [*name of third country*]; and
 - (ii) [*name of third country*] has and maintains effective regulatory control of the airline; and
- c) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Party considering the application or applications.

Revocation or Suspension of Authorisation

Either party may revoke, suspend or limit the operating authorisation or technical permissions of an airline designated by the other Party where:

- a) **in the case of an airline designated by [*name of Member State*]:**
- (i) **it is not established in the territory of [*name of Member State*] under the Treaty establishing the European Community or has not received an Operating Licence in accordance with European Community law; or**
 - (ii) **effective regulatory control of the airline is not exercised or not maintained by the European Community Member State responsible for issuing its Air Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation;**
- b) in the case of an airline designated by [*name of third country*]:
- (i) it is not established in the territory of [*name of third country*] or is not licensed in accordance with the applicable law of [*name of third country*]; or
 - (ii) [*name of third country*] is not maintaining effective regulatory control of the airline; or

- c) that airline has failed to comply with the laws and regulations referred to in [Article Z (Application of Laws)] of this Agreement.