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COMMUNICATION FROM THE COMMISSION

Developing an EU civil aviation policy towards Brazil

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1. INTRODUCTION

- 1.1 Traditionally, international air transport is governed by bilateral air services agreements between individual states. However, since 2003 the European Union (EU) has started a common external aviation policy with selected third countries. As outlined in the Communication from the Commission "Developing the agenda for the Community's external aviation policy"¹, targeted agreements between the EU and certain third countries will have the substantial added value of creating new economic opportunities by opening up markets and promoting investment opportunities. Furthermore, such agreements will be the best way to ensure fair competition and high standards of safety, security and environmental protection by promoting regulatory cooperation.

Therefore, the European Commission has proposed to launch targeted negotiations seeking to achieve comprehensive aviation agreements with selected key partners in all regions of the world, with the aim of strengthening the prospects for promoting European industry and ensuring fair competition, while at the same time seeking to reform international civil aviation.

- 1.2 With 4.4 million annual passengers travelling between the EU and Brazil² and high growth rates of air traffic between the EU and South America³, Brazil is a strong candidate for a new-generation air transport agreement on EU level. Recently, a strong cooperation has developed between the EU and Brazil in the field of civil aviation:

- An Agreement on certain aspects of air services ("Horizontal Agreement") has been negotiated between the EU and Brazil in early 2009.⁴

- Negotiations of a bilateral agreement on civil aviation safety between the EU and Brazil have started in December 2009.⁵

- An EU-Latin America Civil Aviation Summit is organised jointly with the Brazilian aviation authority in Rio de Janeiro on 24-26 May 2010.

¹ COM(2005) 79 final of 11.03.2005.

² Source: Eurostat.

³ The Airbus Global Market Forecast 2009-2028 expects air traffic between Europe and South America to grow at 5.7% per year, significantly above the world average of 4.7%, and at the same level as predicted traffic growth between Europe and India.

⁴ COM(2009) 411 final of 03.08.2009. On 09.10.2009, the Council authorised the signature of the agreement.

⁵ The Council authorised the Commission to launch such negotiations by decision of 09.10.2009.

- 1.3 The Brazilian Government has informed the Commission about its wish to enter into comprehensive air transport negotiations with the EU, with a view to replacing the existing bilateral air services agreements between Member States and Brazil and to establishing a modernised regulatory framework that would facilitate the growth of air services in advance of the FIFA World Cup in Brazil in 2014 and the Olympic Games in Rio de Janeiro in 2016.
- 1.4 An agreement on the gradual opening of market access with Brazil would bring economic benefits to air carriers, airports, passengers, shippers, the tourism industry and the wider economy both in the EU and in Brazil. According to an economic study undertaken on behalf of the Commission, opening aviation markets between the EU and Brazil could generate up to €460 million consumer benefits per year.⁶ Equally importantly, it would fundamentally reform the regulatory framework governing air services between the EU and Brazil. Therefore, the Commission recommends that the Council authorise the Commission to negotiate on behalf of the EU a comprehensive air transport agreement with Brazil, aiming at a gradual market opening and a high level of regulatory cooperation. An enhanced regulatory cooperation would guarantee a fair competition in a level playing field among all carriers. Regulatory cooperation could furthermore lead to significant cost decreases for the EU aviation industry.

2. THE EXISTING FRAMEWORK FOR AIR TRANSPORT BETWEEN THE EU AND BRAZIL

2.1 Bilateral air services agreements between Member States and Brazil

Currently, commercial air transportation between Brazil and the EU is governed by fifteen bilateral air services agreements. There is at present no legal basis for any air services between Brazil and the remaining twelve Member States.

The existing air services agreements between EU Member States and Brazil do not allow airlines, airports, passengers and shippers to take full advantage of the benefits of open markets. All agreements limit the number of weekly flights, constraining particularly the operations between the EU and São Paulo. Furthermore, the agreements limit the code-sharing rights and the rights to carry on freight or passengers between Brazil and third countries. Moreover, the considerable variation across the bilateral agreements has led to a patchwork for air services between the EU and Brazil. For example, the traffic rights exchanged range from two weekly flights to eighty weekly flights. The differences in the bilateral air services agreements between Member States and Brazil lead to inequalities in the opportunities available to EU airlines.

The framework for air transport in Brazil

- 2.2 Due to its geography Brazil is the fourth busiest domestic aviation market worldwide⁷. Following the entry of low-cost carriers, the domestic market volume has nearly doubled from 2003 to 2008. The largest airline in both domestic and

⁶ Booz & Co, The Economic Impacts of Opening Aviation Markets between the EU and Brazil, June 2009. (http://ec.europa.eu/transport/air/international_aviation/country_index/study_brazil_EN)

⁷ Source: World Air Transport Statistics, 51st edition.

international services is TAM, followed by low-cost carrier Gol. TAM is currently the only Brazilian carrier operating flights to Europe. 78% of passengers and 85% of freight tonnes on direct flights between the EU and Brazil are carried by EU airlines.⁸

2.4 Foreign ownership of Brazilian airlines is currently limited to 20%. A bill raising the limits for foreign airline ownership to 49% has been approved by the Brazilian Senate in November 2009.

2.5 The regulation of air transport in Brazil is marked by a strong presence of the National Civil Aviation Agency (ANAC), established in 2006, which is linked to the Ministry of Defence. Air traffic management is under the control of the Brazilian Air Force. Brazilian airports are organised by Infraero under the Ministry of Defence. The main international airport, São Paulo-Guarulhos, is seriously congested. Brazil is contemplating airport concessions in order to accelerate infrastructure improvements.

3. POTENTIAL BENEFITS OF A COMPREHENSIVE AIR TRANSPORT AGREEMENT BETWEEN THE EU AND BRAZIL

3.1 Further strengthening of the strategic partnership between the EU and Brazil

In 2007, Brazil and the EU agreed to establish a strategic partnership.⁹ Brazil is an important partner for the EU sharing not only close historic, cultural and commercial ties, but also sharing a capacity to make a difference in addressing many global challenges such as climate change and others.

Brazil is not only the tenth largest economy in the world, but also the tenth largest trade partner of the EU. Brazil has seen growth rates even during the world economic crisis 2008-09 and there is general agreement that the Brazilian economy embodies huge potential. The EU has a trade surplus in transport services of more than €700 million.¹⁰ Air transport between the EU and Brazil is driven both by tourism, business and personal exchanges. Strengthening air transport links between the EU and Brazil will be essential to facilitate trade, investment, tourism and personal exchanges with one of our strategic partners.

3.2 Economic benefits of opening aviation markets between the EU and Brazil

The economic study referred to earlier demonstrates that a possible air transport agreement with Brazil would have substantial economic benefits:

- The removal of bilateral capacity and frequency restrictions would allow airlines to expand their services according to the demand of passengers. Currently, several EU airlines utilise the maximum of the available traffic rights, particularly to and from São Paulo.
- The removal of price controls would benefit passengers by introducing more price competition.

⁸ Source: ANAC, Anuário do Transporte Aéreo 2008.

⁹ COM(2007) 281 final.

¹⁰ Source: Eurostat.

- The removal of code-share restrictions would allow airlines to offer wider network connectivity to their passengers.
- The removal of limitations on the number of designated airlines would enable new entrants to introduce new services between the EU and Brazil.
- The cargo market between the EU and Brazil could substantially benefit from a more open regulatory framework. 250,000 freight tonnes are carried per year between the EU and Brazil. Freighter services are constrained by the lack of traffic rights to carry traffic between Brazil and third countries and the lack of rights for intermodal transport.
- A potential reciprocal liberalisation of investment rules would give airlines more access to foreign capital and investors the ability to invest in attractive companies in other markets.
- A reduction of the costs of doing business would reduce the operating costs for airlines and ultimately benefit airline users, i.e. passengers and shippers.

The study estimates that opening aviation markets between the EU and Brazil could generate €300-460 million consumer benefits per year.¹¹

3.3 Added value of regulatory cooperation with Brazil at Union level

The added value of air transport negotiations at Union level with Brazil is far from limited to the economic benefits of opening aviation markets. The principle of reciprocity is very important in the Brazilian Aeronautical Code and special aviation laws and regulations. This provides a good legal basis for delivering reciprocal benefits in a modernised regulatory framework between the Union and Brazil.

The elements of regulatory cooperation in an air transport agreement on Union level go far beyond of what could be done on a bilateral level. An important point of an air transport agreement at Union level will be enhanced cooperation with Brazil to address the environmental impacts of aviation, including joint contribution to global efforts to mitigate the climate change impact of aviation. Given Brazil's interest in biofuels, such cooperation could include further development of sustainable biofuels that reduce the climate change impacts of aviation. Brazil is also a natural candidate for the developments of "green flights" through air traffic management innovation to and from the EU. Enhanced cooperation in aviation security, facilitation and airport policy could reduce the costs of airlines, airports and shippers alike.

The agreement would establish a Joint Committee in order to monitor the implementation of the agreement. Such a Joint Committee is an excellent mechanism to cooperatively address any issues affecting air services between the EU and Brazil. Many of these issues would be very difficult to address in consultations under bilateral air services agreements.

¹¹ This figures are limited to passenger flights and the direct impact of liberalisation on consumer surplus and do not include the indirect or induced economic benefits.

4. CONCLUSIONS: SUBSTANTIAL ADDED VALUE OF A FUTURE EU-BRAZIL AIR TRANSPORT AGREEMENT

4.1 Brazil has expressed its interest in starting negotiations on a comprehensive air transport agreement with the EU. The EU should respond favourably and seek to capitalise on Brazil's interest. A modernised framework for air transport between the EU and Brazil would offer significant new commercial opportunities for airlines and airports in the EU on the basis of a level playing field. European industry has asked the EU institutions to open comprehensive air transport negotiations with Brazil in 2010 with the objective of incentivising the recovery of air traffic after the global economic and financial crisis.¹² In addition, a strengthening of air transport links would further strengthen the strategic partnership between the EU and Brazil.

4.2 The negotiations of a comprehensive air transport agreement with Brazil would aim at a gradual opening of market access and investment opportunities. The resulting agreement would lead to equal rights and opportunities for Community carriers in a consistent legal framework, with market access as open as possible and regulatory standards as high as possible. Furthermore, it would create new market opportunities between Brazil and those Member States that currently do not have any legal basis for commercial air transportation from and to Brazil.

A recent study undertaken on behalf of the Commission demonstrated that there would not only be substantial economic benefits of a market opening between the EU and Brazil, but equally substantial benefits of a Joint Committee to discuss and resolve doing business issues of relevance for EU-Brazil air services and of close regulatory cooperation in all fields of civil aviation.

4.3 An air transport agreement between the EU and Brazil would reinforce high standards of safety, security and environmental protection for air services. In the field of aviation safety, a specific agreement is currently being negotiated aiming at close regulatory cooperation and in particular the reciprocal recognition of certification findings in the field of aviation safety and environmental compatibility.

The agreement needs to be consistent with the EU's commitment to sustainable development of transport. It is important that the agreement does not restrict the EU's ability to apply regulatory or economic instruments to mitigate the climate change effects of aviation. On the contrary, the agreement should aim at close cooperation to mitigate the climate change effects. Brazil should be incentivised to develop and implement measures that address the environmental and climate impacts of aviation. These measures could include market based measures such as emissions trading or other forms of emissions credits and measures.

Industry in both the EU and Brazil would benefit from closer cooperation between the regulatory authorities in various fields of civil aviation. Such regulatory cooperation can only be achieved at Union level.

¹² ACI Europe, Renewed Call for Competitive Relief Measures, November 2009.

4.4 In light of the above, the Commission recommends that the Council authorises the Commission to open negotiations with Brazil with a view to concluding a comprehensive air transport agreement.

The Commission will work closely together with Member States and all relevant stakeholders in further developing and achieving the objectives set out in the negotiating directives.