

SPEAKING NOTES EESC PUBLIC HEARING

“Trans-Atlantic relations between the EU and North American countries in the air transport sector”

Please forgive me for this easy analogy with a now well-known slogan, but when it comes to the 2nd stage negotiations with the US, we want to say: “Yes we can”;

Firstly, we can, because all the pre-conditions have been ticked in order to reach a comprehensive agreement with a country that is similar in size and maturity only to the EU;

Secondly, we can, because beyond this similarity of size, there is also a similarity of views, and indeed the US policy on aviation is comparable in many ways to ours;

And thirdly, yes we can, because both delegations have shown through the signature of a first-stage agreement, that was defined as an “Open Skies plus” at the time, and that was saluted by the AEA as a “first step in the right direction” their commitment towards the creation of an Open Aviation Area, or something close to its concept;

Let me then proceed by saying that the AEA at this point welcomes the excellent draft opinion released by the EESC; we welcome its thrust as much as its conclusions, inviting both delegations to go further and establish a true OAA;

We also welcome its timeliness; the Obama Administration may not have yet come up to speed with all the dossiers, yet we believe the second round of negotiations which will take place in June in Brussels is a key one as it will be the first under the new administration;

We finally welcome its balance: two of the most important aspects, from the Community airlines’ point of view, namely the regulatory convergence and the thorny question of ownership & control, are clearly outlined in the opinion as two prominent issues that will need to be dealt with;

Before going to the thick of things, let me briefly refer to today’s reality. The current crisis promises to last for at least another year; it has already claimed the scalps of many airlines (more than 40 bankruptcies in the last 6 months) and has left many scars amongst carriers;

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- TNT Airways
- Turkish Airlines
- Ukraine International Airlines
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This crisis has cost the jobs of thousands of skilled employees, and unfortunately many more will follow in the coming months. But as it unfolds, we should never forget the purposes and the objectives of the EU-US negotiations;

I say this because one of the reflexes that governments tend to have in similar downturns are of a protectionist nature. Governments feel time has come for a second wave of consolidation and they privilege first an internal consolidation and the emergence of national champions, forgetting that openness, rather than protectionism, can help by multiplying the sources of investment into carriers that desperately need it;

We already know that the Commission has adopted a very coherent approach in that sense, and we hope it will maintain it. The question is whether the new US administration will follow suit;

There are worrying signs that some members in the Senate are taking advantage of the crisis to put forward a series of bills that would have, if adopted, disastrous consequences on the trans-Atlantic market and ultimately on the passenger. Without going into details, I can mention here the proposed revision of the FAA Reauthorisation Bill and some of its clauses on the Anti-Trust Immunity, on the Foreign Repair Stations, or on State aid measures (such as the extension of war-risk insurance);

That provides me with an easy transition towards ownership & control, one of the cornerstones of the second-stage agreement in our opinion. We need to be pragmatic: there has never been any intention in the US to open up their domestic airspace to foreign carriers' operations. In other words, the right of cabotage (known as the 8th freedom), is banned by US law, and it will remain so in the foreseeable future;

As far as we are concerned, this is fine. But that shouldn't preclude the emergence of trans-national entities. For this, we need to lift barriers to ownership & control on both sides of the Atlantic, and allow American capital to be injected in EC carriers and vice-versa. It would facilitate the emergence of stronger companies with interests on both continents;

As you know, we are far from it at the moment. The US still forbids foreign control of more than 25% of voting shares of its carriers, whilst Europe caps it at 49%. A gradual lift of these barriers constitute in our opinion the priority number one;

Regulatory convergence constitutes another landmark. Although similar in principle, policies and regulations on both sides of the Atlantic substantially differ on topics of prime importance for aviation, such as security, safety, competition, environment, a.s.o. These differences persist despite the entry into force of the first stage agreement, causing harm and creating uncertainty to carriers as to which law applies when;

A second stage will not solve this, nor will it be a substitute to both rules; both the US and the EU will continue to take unilateral decisions in these fields, thus exercising their sovereignty; but it should become a catalyst for the

gradual harmonisation of laws, and the role of the Joint Committee here is absolutely crucial;

Summarising the two aspects (O&C and regulatory convergence), we touch here the very core of the agreement, namely the capacity to create a specific, differentiated relationship between two political and economic entities;

All this might sound obvious to you. It is certainly not so for the US. The US law doesn't recognise 1) the primacy of international law over its national law, and 2) the possibility to review the law, or create exceptions to it, only for determined stakeholders. In other words, if the O&C rules were to be liberalised, it would be so for the rest of the world, not only for European capital. This helps explain why the US regulator is so lukewarm to the mere idea of change;

This is a serious obstacle. But it is not insurmountable. Let me now briefly touch upon the international aspects of the possible agreement. Because of the weight of the two respective markets, it has the potential to lead to a new, post-Chicago, era in aviation;

By forming an oasis of regulatory convergence and openness, also open to newcomers, the EU-US Agreement has the potential to substitute the 1944 Chicago Convention by spreading like wildfire to other, like-minded, States, eventually forcing more and more countries to revise their policies in order to benefit the principles of the agreement;

This is of course predicated upon the recognition by the regulators and politicians alike that aviation is an industry like any other, and that it has stopped to represent a country, or a regime in place, which is far from being the case today. But as the world evolves, so does aviation, and the special regime that aviation has enjoyed up to now becomes less and less justifiable.

Back down to earth, we are confident that a meaningful and comprehensive agreement will eventually result from these negotiations within the due timeframe (i.e. before October 2010). We can simply not envisage that the sum of difficulties, which AEA doesn't underestimate, would prevail over good sense. If, for no other reason, because Article 21(3), nicknamed "clawback option", would allow the detractors of the first stage – and there are some – to suspend parts of the agreement, thus putting de facto an end to the process;

This is why we believe Mr Krawczyk's opinion comes in the right form and at the right moment;

Thank you.

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