

SPAIN

Madrid, 14 September 2007

DGCA

Ref.: EC 2/16.8-07/43 dated 20 July 2007

Subject: **States' policies, positions and practices on air carrier ownership and control**

Sir,

In response to State letter EC 2/16.8-07/43, dated 20 July 2007 and concerning States' policies, positions and practices on air carrier ownership and control, I have the honour to submit herewith the duly completed questionnaire.

Accept, Sir, etc. ...

[sgd] Manuel Batista Pérez
Director General

Secretary General
ICAO
Montreal

ATTACHMENT B to State letter EC 2/16.8-07/43
Questionnaire on States' current policies, positions and practices regarding air carrier ownership and control

COMMENT, QUESTION 1

The designation of airlines to operate services to another country is carried out in accordance with the terms established in the bilateral agreement in force between the two countries.

Spain's policy with regard to its bilateral negotiations is to adapt the legal framework to the European regulations. Accordingly, Spain proposes designating "any European carrier established on Spanish territory which has obtained an operating licence in accordance with European Community regulations and which is under the effective and continuous regulatory control of the Member State responsible for the issuance of its air operator certificate".

European legislation defines a European airline as one which is owned and continues to be owned directly or through majority ownership by Member States and/or nationals of Member States, and which is at all times effectively controlled by such States or such nationals.

Spain has introduced this Community designation clause into a great number of bilateral agreements with third countries. However, there are a large number of countries which are still reluctant to accept the inclusion of European regulations in their bilateral agreements. For this reason, the old designation clauses, which require that ownership and control be in the hands of the State or nationals of the signatory States of the bilateral agreement, remain in force.

COMMENT, QUESTION 2

Generally, Spain's policy in its bilateral negotiations is to require that the airline of the other party be established in the territory of the other State, that it be authorized in accordance with the State's applicable legislation, and that it be under the effective and continuous regulatory control of the State's Authority; the question of ownership is not addressed.

Exceptionally, and in possible cases of State regional organizations recognized by the European Union, with the inclusion of a special reference to safety control, Spain can accept the designation of carriers which are established in the other State and which have been authorized and are under the effective and continuous regulatory control of the Authority of another State which is party to the organization.

COMMENT, QUESTION 3

As a general principle, Spain is not inclined to include the ownership and control criteria requirement in its bilateral agreements.

If, due to specific circumstances, it were necessary to include this point, Spain would, for the designation of Spanish carriers, submit to European legislation: "the airline shall be owned and continue to be owned directly or through majority ownership by Member States and/or nationals of Member States, and shall at all times be effectively controlled by such States or such nationals."

With regard to the other party, the percentage of ownership exigible of the other party would be treated by Spain as reciprocal to what European legislation requires of a European carrier (more than 50% of its capital).

COMMENT QUESTION 4

Spain would assent to accepting the designation of foreign carriers, both for Spain and for the other party, subject to the existence of a multilateral agreement signed between the European Union and a third country. Said agreement would have to be studied in detail, taking into account the special circumstances of each case, and giving particular importance to the protection of safety.

Madrid, 12 September 2007

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

(Date of response: 14/09/07)

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			
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			
	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		
	c) incorporated and having its principal place of business or permanent residence in the territory of the designating party	X			
	d) having its principal place of business in the territory of and effective control by the designating party (without the ownership requirement)		X		
	e) having its principal place of business in the territory of and effective regulatory control by the designating party		X		
	f) any other criteria (please describe)				
3.	In dealing with airline designations in the future, are you willing to accept criteria other than the traditional national ownership and control:	X			Guided by the provision of Yamoussoukra Declaration/African

No.	Question	Yes	No	Case by Case	Note/Comment
					Union on eligibility of airlines for designations
	a) for both yourself and the foreign partner?	X			
	b) for the foreign partner but maintain traditional criteria for yourself?		X		
	c) What economic regulatory conditions will you impose for such acceptance? (please describe)			X	Market conditions would determine
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			Any African State
	c) any other action? (please describe)				
Any other comments on your answers:					