

MEMORANDUM OF CONSULTATIONS

1. Delegations representing the Government of the Republic of Croatia and the Government of the United States of America reached *ad referendum* agreement on the text of an Open Skies air transport agreement ("the Agreement") during discussions held in Zagreb March 12-13, 2008. Delegation lists are appended as Attachment A and the text of the Agreement is appended as Attachment B to this Memorandum.

2. The negotiations were conducted in a professional, cordial, and positive atmosphere. The two sides noted their shared commitment to liberalization of international aviation and expressed their desire that the new Agreement enhance aviation ties and further strengthen the good relations between the United States and Croatia.

3. The Croatian delegation noted that it is a member of the European Common Aviation Area (ECAA) and that an important priority for the Croatian delegation in these negotiations is to ensure that the provisions of the Agreement are consistent with Croatia's obligations under the agreement establishing the ECAA.

4. Bearing in mind that the Republic of Croatia is a candidate state for membership in the European Union (EU), both delegations expressed their anticipation that, following Croatia's accession to the EU, the bilateral agreement between the Republic of Croatia and the United States will be replaced by the U.S.-EU Air Transport Agreement (U.S.-EU agreement) in a manner to be agreed within the U.S.-EU agreement framework.

5. In response to a question from the Croatian delegation, the U.S. delegation confirmed that the United States has agreed under Article 3, paragraphs 1 (c) (ii) of the U.S.-EU agreement that airlines of the European Community and its Member States will have the right to perform international air transportation between any point or points in the United States and any point or points in Croatia, as Croatia is a current member of the ECAA.

6. In response to a question from the Croatian delegation, the U.S. delegation confirmed that, in Article 2, paragraphs 1 and 2 of Annex 4 of the U.S.-EU agreement, the U.S. has agreed not to exercise any available rights under an air services arrangement with Croatia, as a current member of the ECAA, to refuse, revoke, suspend or limit authorizations or permissions for any airline of Croatia on the grounds that substantial ownership or effective control of that airline is vested in a Member State or States of the European Union, nationals of such a state or states, or both.



7. The U.S. delegation further explained that it is the general practice of the U.S. Department of Transportation (DOT) not to refuse, suspend or limit the authorization of an airline of an Open Skies partner on the ground that substantial ownership or effective control of that airline is vested in a third country or its nationals, so long as the U.S. also has an Open Skies agreement that is being implemented with the third country, the airline otherwise meets the standard licensing requirements reflected in paragraphs 2c and 2d of Article 3 of the Agreement, and doing so is not otherwise inimical to U.S. aviation policy or interests. In response to a further question from the Croatian delegation, the U.S. delegation explained that as of the date of this memorandum, the following countries that are also ECAA members are implementing Open Skies air services agreement with the United States: The Kingdom of Norway, The Republic of Iceland, Albania and Bosnia and Herzegovina.

8. In response to a question from the Croatian delegation, the United States confirmed that the U.S.-EU agreement addresses franchising and branding. The U.S. delegation confirmed that those provisions of the U.S.-EU agreement reflect existing U.S. law and practice, and that the United States, in applying these laws and practices, does not discriminate on the basis of nationality.

9. The delegations noted that references in Article 5 of the Agreement to "laws and regulations" include the procedures that airlines must follow in complying with those laws and regulations.

10. The Croatian delegation raised specific concerns about the ability of an airline or airlines of Croatia to offer the air transportation services covered by the Agreement by using an entire aircraft with crew provided by an airline or airlines of the United States or a third country. The United States delegation explained that Article 8(6) of the Agreement provides that each Contracting Party has the right to enter into leasing arrangements, including the provision of aircraft with crew, with a) an airline or airlines of either Contracting Party or b) an airline or airlines of a third party, provided that such arrangements must meet certain regulatory requirements. The United States delegation also confirmed that the Department of Transportation regularly approves applications for such service.

11. The United States delegation noted that the Croatian airline or airlines would be required to have the underlying economic authority to provide the service that they are holding out. Further, the airline or airlines providing the aircraft with crew would need to have charter authority from DOT, as well as a statement of authorization. These licensing requirements apply to both U.S. and foreign airlines providing aircraft with crew.



12. The U.S. delegation indicated its belief that virtually all Community airlines that now provide scheduled service to the United States also hold worldwide charter authority from the DOT. Therefore, from an economic licensing perspective, they would only need a statement of authorization to provide an entire aircraft with crew to an airline or airlines of Croatia. The U.S. delegation further indicated that it did not anticipate that applications from other Community airlines for charter authority would raise any difficulties.

13. The issuance of a statement of authorization to a foreign carrier requires a DOT finding that the proposed operations are in the public interest. This finding is strongly facilitated by a determination that the proposed services are covered by applicable air services agreements. Inclusion of the rights in an agreement also establishes that reciprocity exists. The primary focus of the public interest analysis would be on whether:

- the country issuing the foreign carrier's Aircraft Operator's Certificate (AOC) has received a Category 1 rating under the Federal Aviation Administration's International Aviation Safety Assessment program;
- the foreign airline's home country deals with U.S. carriers on the basis of substantial reciprocity;
- the lease agreement provides that operational control will remain with the lessor carrier; and
- the regulatory oversight responsibility remains with the lessor's AOC-issuing authority.

14. The delegations noted that consultations pursuant to Article 13 might address subjects such as the implementation, interpretation, application or amendment of the Agreement.

15. The Croatian delegation stressed the importance it places on approval of the application pending before the DOT for code-share authority between U.S. and Croatian air carriers, for the sake of the reciprocal enjoyment of the benefits extended under the present Agreement. The U.S. delegation acknowledged the significance of this issue for the Croatian side.

16. The delegations stated their governments' intention to take all necessary steps to sign the Agreement at the earliest possible date.

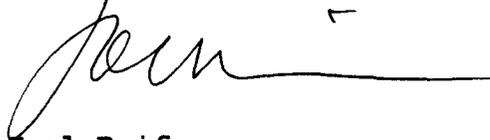
March 13, 2008

For the delegation of the
Republic of Croatia:



Dražen Breglec

For the delegation of the
United States:



Joel Reifman

Attachment A

Croatia - U.S. Aviation Negotiations Zagreb, March 12-13, 2008

Delegation of the Republic of Croatia

Mr. Dražen Breglec – Head of Delegation
State Secretary for Transport
Ministry of the Sea, Transport and Infrastructure

Ms. Andreja Metelko-Zgombić
Head of the International Law Department
Ministry of Foreign Affairs and European Integration

Mr. Damir Vince
Assistant Minister
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Ms. Betty Pavelich Sirois
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Mr. Miro Cvijin
Senior Adviser International Affairs
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Ms. Ankica Vlašić
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Mr. Željko Slijepčević
Croatia Airlines



Croatia - U.S. Aviation Negotiations
Zagreb, March 12-13, 2008

Delegation of the United States of America

Mr. Joel Reifman - Head of Delegation
Deputy Director, Office of Aviation Negotiations
U.S. Department of State

Mr. Steven Hatley
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U.S. Department of Transportation

Mr. Matthew A. Finston
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Ms. Kathleen Milton
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