



**MEMORANDUM ON THE OPEN SKIES AGREEMENT NEGOTIATIONS
BETWEEN THE EU AND USA**

Lead Ministry	Ministry for Competitiveness and Communications	
Secondary Ministry	Ministry for Investment, Industry and Information Technology	
Originating Department / Entity	Department of Civil Aviation, Ministry for Competitiveness and Communications	
Approvals	Cabinet (6 September 2004)	Inter-Ministerial Committee for European Union Affairs (30 July 2004)
Copy	Permanent Representative to the EU	Permanent Secretary, Ministry for Competitiveness and Communications
	Permanent Secretary, Ministry for Investment, Industry and Information Technology	Director EU Affairs, Ministry for Competitiveness and Communications
	Director EU Affairs, Ministry for Investment, Industry and Information Technology	
Reference Documents	9949/04	
DMS Reference Number	TTE OPESKI 300704	
Signature	 Ministry for Competitiveness and Communications	

1 Background

- 1.1 During the past ten years, a number of European Union States have drawn up an Open Skies Agreement with the USA. The European Commission did not agree with certain provisions in these agreements and furthermore considered that only it has the competence to negotiate air service agreements on behalf of Member States with non-Community States. The Commission took legal action against those States which had concluded an Open Skies Agreement with the USA in the European Court of Justice (ECJ) which eventually ruled in favour of the Commission.
- 1.2 As a result of the ECJ court ruling, the European Commission issued a proposal for regulation on Community wide negotiation of air transport agreements with third countries. The Commission also specifically requested the authorisation to commence Community negotiations for the creation of an "Open Aviation Area" with the United States. The Commission and the US authorities agreed to open negotiations for a Community wide air transport agreement on 25 June 2003 while substantive discussions began on 1 October 2003.
- 1.3 Five rounds of talks have to date been held between the Commission and the USA authorities. Amongst the contentious issues there are the US restrictions to foreign ownership and restriction on access to London Heathrow airport imposed by the British Authorities. In addition the US authorities are still refusing to include cabotage rights for European carriers within the USA. The Commission was unable to reach an agreement at the EU-USA Summit of 25-26 June 2004, but it was agreed with the US team to continue to work towards a comprehensive aviation agreement.
- 1.4 The negotiations so far conducted have resulted in a draft text of an air transport agreement in which some provisions have still to be concluded. These provisions concern the granting of rights to each side's carriers (the main issue being cabotage rights in the USA for European carriers or opening of the US domestic market to EU carriers).
- 1.5 It is to be noted that the draft EU-US air transport agreement mentions the Malta -USA Open Skies agreement in the list of such agreements with European States which is included therein.

2 Legal basis

2.1 *Basic Treaties*

2.1.1 Article 300 of the EC Treaty

2.2 *Decision-making procedure applied*

2.2.1 N/A

2.3 *Voting procedure*

2.3.1 Qualified Majority Voting

3 Malta's position

3.1 Malta's position on the dossier in concrete terms

The following is the consolidated position of the Ministries concerned (Lead: Ministry for Competitiveness and Communications; Secondary: Ministry for Investment, Industry and Information Technology) with regard to the Open Skies Agreement negotiations between the EU and USA.

3.1.1 The text of the draft agreement so far negotiated and agreed upon between the EU and the USA appears to give the same rights to Maltese carriers as they have under the Open Skies agreement signed between Malta and the USA on 12 October 2000. Consequently the improvements which the EU is seeking to obtain from the USA would be an added bonus for Malta.

3.2 Economic and financial repercussions of the dossier

3.2.1 There are no economic and financial repercussions envisaged for Malta.

4 National Context

4.1 Internal Consultations

4.1.1 N/A

4.2 External Consultations

4.2.1 N/A

4.3 Related national legislation

4.3.1 N/A

4.4 Changes required in national legislation

4.4.1 N/A