

COELUM

COELUM Pronunciation: 'che-läm, is Latin for air space or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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The EU and USA “Open Skies” Agreement | Viridiana Barquín *

The EU and the USA have signed the “Open Skies” agreement that liberalizes air traffic on both sides of the Atlantic Ocean. This treaty, agreed at the beginning of 2007, opens the transatlantic markets to full competition from next year and eliminates the very restrictive barriers that were established during World War II. The agreement went into effect on March 30, 2008, six months after the date expected because of requirements of the United Kingdom, which was requesting a moratorium for Heathrow, London’s main airport. The principal innovation of the “Open Skies” agreement is the elimination of the “nationality clause” which is present in the current bilateral agreements between every EU member state and the USA. The new agreement will now allow any European airline to fly from any EU airport to any US airport and vice-versa¹. Another advantage will be that it will tend to unify safety measures for the passengers as it will now not be necessary to duplicate the controls between two points. Moreover, the agreement will eliminate most of the airline restrictions on both sides of the Atlantic Ocean. This will affect more than 60%² of the world’s air traffic.

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In the current terms, the agreement allows American companies to acquire up to 49.9% of the capital of the European airlines, although voting rights will remain at 25%. In June 2008, there will be a second round of negotiations to discuss the possibilities of allowing participation of European companies with American carriers, and to discuss steps toward the “total liberalization” of the aviation market. Another key date for this agreement will be 2010³, when the results of “Open Skies” will be reviewed, and if the European states do not find it satisfactory, some of its terms may be suspended.⁴

Before the ratification last March 2007, the United States had concluded agreements with 15 member states (France, Germany, Netherlands, Luxembourg, Belgium, Denmark, Sweden, Finland, Italy, Portugal, Austria, Malta, Czech Republic, Slovakian Republic and Poland) and 5 more limited agreements with United Kingdom, Ireland, Greece, Spain and Hungary. Such agreements were declared null and void by the European Commission as they did not follow the European model due to the “clause of nationality”. This clause reserves the benefits of the agreements only to the companies of the signatory countries. This way a German company that operates in France was not authorized to offer flights from Paris to United States. This new agreement will make the European and American rules compatible in crucial sectors for the passengers, air carriers, cargo companies, airports, etc., and will avoid jurisdictional conflicts.

/ With Enrique Bouchot’s collaboration

1 <http://www.state.gov/t/vci/trty/102337.htm#articleVII> (Consulted on March 26th, 2008)

2 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0071&language=ES> (Consulted on March 26th, 2008)

3 <http://www.euractiv.com/en/transport/eu-us-open-skies-agreement/article-167482> (Consulted on March 26th, 2008)

4 <http://www.eipais.com/articulo/internacional/Estados/Unidos/Union/Europea/flirman/acuerdo/cielos/abiertos> (Consulted on March 26th, 2008)

The European Commission has to periodically review the application of the Single European Sky legislation and to report every three years to the European Parliament and the Council. The Commission may exercise its right of initiative and submit a proposal for improving the provisions of the legislation, if necessary. Member States report annually to the Commission about their efforts to implement the Single European Sky. Civil aviation is based on inter-state bilateral agreements based on the Chicago Convention of 1944, which authorized a relative reciprocal open access for the signatory countries to carry out operations into the territory of the parties. The "Single European Sky" legislation and every specific agreement entered between the EU and any other country under such legislation implies an amendment to the terms and conditions of the Chicago Convention.

Some legal precedents for the creation of the Single European Sky are the following: ⁵

- **REGULATION (CE) No. 549/2004 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL** of March 10, 2004 by which the frame is fixed for the creation of the Single European Sky. (*REGLAMENTO (CE) No. 549/2004 DEL PARLAMENTO EUROPEO Y DEL CONSEJO de 10 de marzo de 2004 por el que se fija el marco para la creación del cielo único europeo*)
- **REGULATION (CE) No. 550/2004 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL** of March 10, 2004 for the performance of services of air navigation in the Single European Sky. (*REGLAMENTO (CE) No. 550/2004 DEL PARLAMENTO EUROPEO Y DEL CONSEJO de 10 de marzo de 2004 relativo a la prestación de servicios de navegación aérea en el cielo único europeo*)
- **REGULATION (CE) No. 552/2004 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL** of March 10, 2004 relative to the interoperability of the European network of the air traffic management. (*REGLAMENTO (CE) No. 552/2004 DEL PARLAMENTO EUROPEO Y DEL CONSEJO de 10 de marzo de 2004 relativo a la interoperabilidad de la red europea de gestión del tránsito aéreo*)
- **REGULATION (CE) No. 2150/2005 OF THE COMMISSION** of December 23, 2005 by which common rules are established for the flexible utilization of the air space. (*REGLAMENTO (CE) No 2150/2005 DE LA COMISIÓN de 23 de diciembre de 2005 por el que se establecen normas comunes para la utilización flexible del espacio aéreo*)

Currently, many Latin-American airline groups have tried without success, to establish an "Open Skies" system by the execution of bilateral agreements under similar terms and conditions adopted by the "Open Skies" agreement entered by and between EU and USA. It seems that in the short term, sovereignty is still difficult to overcome; notwithstanding, this agreement constitutes a precedent for the liberalization of air traffic in the rest of the world, certainly any further agreement entered by any country, will be based on the provisions contained in the "EU-USA Open Skies Agreement".

⁵ <http://delors.bibe.uam.es/transporte/aviacion/cielo.unico.europeo/cielo.unico/>

(Consulted on March 26th, 2008)

The request of public information in the Mexican Aviation Registry | Juan Antonio Tiscareño *

As we saw in the last COELUM, to obtain documents in the Mexican Aviation Registry, citizens can use the resources provided by the Federal Law of Transparency and Access to Public Government Information¹ (*the law*).

Notwithstanding the real problems in terms of access to the public information –such as government resistance to providing information, the product of decades of opacity, and a lack of experience in the application of *the law*–,² the regulatory framework now provides specific mechanisms for citizens to know in a timely, reliable and accurate way, the actions and decisions that government authorities take with their tax money. It is also important to stress that the law requires the organization, classification and management of documents.

The requests of information can be made in three different ways:

1. Personally, through the “link unit”³ established in each government secretariat. In our case, the link unit is in the offices of the Ministry of Communications and Transport.⁴

2. Through the Information Application System.⁵ This is a very easy way to make a request through the internet.

3. Through courier or certified mail.

The Federal Institute of Access to Public Information was created⁶ to ensure compliance of *the law*. This is an institute that can even review cases in which the authority refuses to provide the requested information, and it can also determine whether the requested information is in public domain or is confidential.⁷ Thus the Institute has the power to rule on any dispute in the area of information related to the federal government.

In summary, the procedure for requesting public information is as follows:

a) The application is made. The government agencies will only be forced to supply documents that they actually have in their archives.

b) The access to the document will be given only in the way that pertains to the specific document in question.

* With Svein Azcue’s collaboration

1 Published in June 11th, 2002.

2 The topic concerning to the problems of application of the law can be found in Spanish in the article of Miguel Carbonell, “A note on the current situation of the right of access to public information in Mexico”, published in the magazine “Comparative Media Law Journal”, Instituto de Investigaciones Jurídicas, UNAM, Number 9, 2007.

3 Article 28 and subsequent of the law.

4 http://portaltransparencia.gob.mx/pot/unidadEnlace/showUnidadEnlace.do?method=begin&_idDependencia=9

5 www.sisi.org.mx/

6 Article 33 and subsequent of the law.

7 The competition and main attributions of the Institute are determined by the article 37 of the law

c) The application will be sent to the administrative unit that might have the information, in order to locate it, check how it is available and determine the cost if there is one. The response to the request will be notified to the person concerned in the shortest possible time, which should not exceed twenty working days from the filing of the application.

d) With exceptions, this period may be extended for specific reasons, but in that case the citizen that made the application will be notified.

e) The information must be delivered within ten working days after the "link unit" has confirmed the availability of the document.

f) If a citizen is notified of a refusal of access to information, or non-existence of the documents requested, that citizen should appeal within fifteen working days from the date of notification through the "link unit" which handled the matter. The "link unit" shall refer the matter to the Institute the day after receiving it.⁸

Also, the regulation⁹ of *the law* contains additional requirements and steps on the subject.

In conclusion, we can say that the creation of *the law* was a major step in terms of access to information for the general public, because it will enable a transparent government, provide access to relevant information, and tend to strengthen confidence in the government's institutions, based on the knowledge of its operation and results.

It will also increase the level of demand for public servants. It is hoped that a large number of citizens will exercise their right of being informed, and that the institutions will respond in a timely and satisfactory way.

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⁸ Article 49 of the law.

⁹ The regulation was published in the DOF, in June 11, 2003.

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Extract of Mexican Aviation News

[Pemex and ASA looking for benefits for aviation with a new fuel purchase contract.](#)

ASA's Ernesto Velasco and Jesus Reyes Heróles of Pemex reached an agreement-in-principle to modify the Purchasing Contract for the sale of aviation fuel, a topic that has been in the works for the last 10 years. The new contract and its benefits arrive at a very complicated time in Mexican aviation, since this year will be another difficult year because of the intense competition among the twelve national airlines currently operating in the national market.

El Universal, 05/ March / 2008

<http://www.eluniversal.com.mx/columnas/70282.html>

[Mexican Aviation Sector grows 24% in 2007.](#)

The Mexican aviation industry grew 24% in 2007, while at the same time the low cost operators gained a 30% market share. Mexican airlines transported 27.4 million passengers in 2007, while the low cost operators, Volaris and Avolar, doubled their size.

La Crónica, 10/ March / 2008

http://www.cronica.com.mx/nota.php?id_notas=35138

[Domestic Aviation continues growth.](#)

Between 2005 and 2007 the total number of flights in scheduled operations inside Mexico grew 31.8%. This is the period that marks the startup of the low cost airlines. In comparison international flights only grew by 8.9 percent. The domestic increase was 3.5 times greater than for international service.

Excélsior, 13/ March / 2008

<http://www.exonline.com.mx/diario/columna/158922>

[Low cost carrier increase market share.](#)

Low cost airlines, Alma, Avolar, Intejet, Click, Viva-aerobus and Volaris (whose shareholders are Televisa, Inbursa, Protego and Taca), were able to grab one third of the market share last year by increasing their fleets by 142% over 2006. Aeroméxico and Mexicana on the other hand, lost 11.3% of the market.

Milenio, 14/ March / 2008

<http://www.milenio.com/mexico/milenio/nota.asp?id=604222&sec=5>

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Extract of Mexican Aviation News

Toluca Airport expects 15 thousand passengers a day.

Toluca's International Airport (AIT) forecasts a daily movement of 15 thousand passengers over the vacation period. This is a 20% percent increase over the regular season, and it is expected that most aircraft will operate at full capacity. The airport has guaranteed the users a smooth and efficient handling of all the air terminal services. They have prepared the necessary resources to optimize the airport operation, and to work at one-hundred percent for this period.

El Financiero, 19/ March / 2008

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=110823&docTipo=1&orderby=docid&sortby=ASC>

Aviation fuel price hike.

The increment in the price of aviation fuel, of 5.32 pesos/liter in 2006 to 8.55 pesos/ liter in March of the 2008, which is caused by high international prices of the petroleum, has put the national commercial aviation industry at financial risk said Javier Christlieb, president of the National Air-transport Association (Canaero)

La Crónica, 24/ March / 2008

http://www.cronica.com.mx/nota.php?id_notas=353401

Canaero to analyze new airport rates.

The revision of the plans of the Center North and of the Pacific airport groups will be carried out in one or two years. Canaero will put together a commission to review the standards of quality of the services offered by all the airport groups. From this analysis will be derived proposals for rates and minimum standards of quality that the airport terminals will be expected to achieve.

Milenio, 25/ March/ 2008

<http://www.milenio.com/mexico/milenio/nota.asp?id=607646&sec=5>

Tourism from Europe on the increase.

The figure for January shows that, the number of international tourists grew to fifty two thousand people and, of these, some three thousand come from the four more active European countries: France, Great Britain, Italy and Spain. Seen in another way, the increase from those European countries was 3.3% compared to 4.26% from United States and a jump of 15.45% in the case of the Canadian tourists.

Excélsior, 27/ March/ 2008

<http://www.exonline.com.mx/diario/columna/171551>

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