

EU Air Transport Policy: Implications on Airlines and Airports

Summary:

In the last 20 years, the aviation sector in Europe has undergone a revolution that would have been unthinkable without key measures taken at EU level. Up to the late 1980s, air transport was fully controlled by State governments and overregulated by rather rigid bilateral agreements and obsolete international conventions. Since then, progressively, the European Union became a leading force and a respected policy maker in the field of air transport. Being highly successful in liberalising the aviation sector in Member States, the EU took the opportunity to pursue its action further. Other important aspects – such as competition rules, traffic management, safety, security, airport capacity, environmental protection, passenger rights and external relations – were given similar attention. Much has been achieved over the past two decades, but what are the main gains and losses for the aviation stakeholders? This paper explores and analyses the impact of the EU Air Transport Policy on major industry actors: airlines and airports.

Keywords:

European Union, transport policy, aviation, air carrier, airport, Internal Market

Transport is the subject of one of EU's foremost common policies. Before the ratification of the Lisbon Treaty, it was governed by Title V Transport, comprising Articles 70 to 80, of the Treaty establishing the European Community (TEC). As mentioned in Article 80 of the TEC, air transport (together with sea transport) had a different status compared to road, rail and inland waterway transport: the powers of the EU were limited. And according to Article 3 of Title I Common Provisions of the TEC, the competences of Member States and the EU in this domain were shared.

Since the TEC's entry into force in 1958, the Transport Policy has been focused on eliminating borders between Member States and to therefore contribute to the free movement of individuals and goods. From the very beginning, its principal aims were to complete the Internal Market, ensure sustainable development, extend transport networks throughout Europe, maximise use of space, enhance safety and promote international cooperation.

In the Council of Ministers, since the Single European Act (1987), qualified majority voting has been applied in most transport matters. And, in accordance with the provisions of the Treaty of Amsterdam (1999), EU legislation on Transport Policy began to be approved using primarily the co-decision procedure, con-

sisting in the joint adoption of Regulations and Directives by the Council of the EU and the European Parliament.

The Treaty of Lisbon, having been ratified by all 27 Member States in 2009, amended the Treaty on the European Union (TEU) and the Treaty establishing the European Community. At the same time, the TEC has been renamed Treaty on the Functioning of the European Union (TFEU). Although Lisbon Treaty brings no substantial changes to the EU Transport Policy, its importance is in abolishing all exceptions to the rule of qualified majority voting and generalising co-decision, the so-called ordinary legislative procedure.

With the Treaty of Lisbon in force, Member States and the EU continue to have shared competences in the area of transport, as indicated in the consolidated TFEU, Title I Categories and areas of Union competence, Article 4. Transport Policy is subject to Title VI Transport of the consolidated TFEU, Articles 90-100. According to Article 91, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States, the conditions under which non-resident carriers may operate transport services within a Member State, measures to improve transport safety and any other appropriate provisions.

As pointed out in Article 100 of the TFEU, air and sea transport continue to have a different status compared to road, rail and inland waterway transport. But, in reality, this does not mean that the whole process of adoption of legislative acts aimed at aviation is more complicated. In fact, it is almost the same.

The initial objective of the EU Air Transport policy was the creation of the Internal Aviation Market. However, beyond market opening, the European Commission was able to push successfully for action in regard to undistorted competition, airspace management, safety and security standards, passenger rights, environmental matters, etc. In the last 20 years, as a result of the EU Air Transport Policy, the European aviation industry went through a complete transformation. For airlines and airports, the implications are far from being only positive. In this paper, different liberalisation and regulation measures will be analysed, and their consequences examined.

In 2008, a record year that crowned a long period of growth, more than 798 million passengers were carried in the EU-27, but subsequently, as a result of the general economic slowdown, the numbers were reduced by almost 47 million in 2009.¹ It is evident that the air transport system has become a very important

¹ EUROSTAT. Data in Focus 34/2010. Passenger air transport – 2009 monthly data. Brussels: Eurostat, 2010.

economic factor for the European Union and that at the same time it is highly sensitive to – and dependent on – economic developments in other sectors. However, it should be noted that this paper does not intend to explain the impact of the global economic crisis on the EU air transport sector.

1. Air Market Liberalisation

The process of liberalisation of EU air transport started timidly in 1983 with a Council Directive concerning the authorisation of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States. The first significant opening of the market resulted from the 1987 First Air Liberalisation Package. Even more flexibility in fares setting, seat capacity sharing and route planning was enabled by the Second Air Liberalisation Package in 1990.

The Internal Air Transport Market, created progressively in the period 1993–1997, was based on three key Regulations of the Third Air Liberalisation Package, adopted in 1992. The Council Regulation No 2407 on licensing of air carriers² harmonised requirements for granting of an operating license by a Member State (the airline company must be based in the Member State, must be majority owned and controlled by a Member State or EU nationals, must provide air transport services as its core business and must prove its technical and financial fitness). The Council Regulation No 2408 on access for Community air carriers to intra-Community air routes³ opened access for all EU airlines with EU operating license to all routes within the EU, including cabotage, and the possibility for national governments to impose Public Service Obligations (PSO) on routes essential for regional development, where the open market does not provide satisfactory service. The Council Regulation No 2409 on fares and rates for air services⁴ imposed full freedom with regard to fares (passengers) and rates (cargo) and discharged airlines of their responsibility to submit their prices to the national authorities for approval.

In order to adapt the 1992 measures to the current circumstances in the aviation sector, to simplify and update the rules of the Third Air Liberalisation Package and to ensure an even more effective aviation market in the future, the Regulations No 2407–2409 were consolidated in 2008 into the “Air Services Regulation” No 1008 of the European Parliament and of the Council on common

² Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

³ Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes.

⁴ Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services.

rules for the operation of air services in the Community,⁵ providing economic framework for air transport in the EU, setting out the rules on 1) grant and oversight of air carriers' operating licenses, 2) free market access, 3) aircraft registration and leasing, 4) Public Service Obligations (in case no airline is interested in operating the route on which the obligations have been imposed, the Member State concerned may restrict the access to the route to a single air carrier and under certain conditions even compensate its operational losses resulting from the PSO, while the selection of the operator must be made by public tender at EU level), 5) traffic distribution between close airports, 6) pricing (airlines required to include all taxes and charges in their public ticket prices, price discrimination based on place of residence or nationality is banned).

European airlines have welcomed the liberalisation measures initiated by the European Commission, but there were some doubts. If, on one hand, the conditions for new entrants have been improved significantly, on the other hand, for the traditional national carriers, the changed market conditions brought a great number of determined competitors, mostly low fare carriers. Progressively, the structure of the European air transport sector has changed. Many former European flag carriers have faced – and still face – unprecedented financial and operational problems, and some of them did not – and will not – survive.

2. Trans-European Transport Network

At the end of the 1980s, in connection with the efforts to build the Internal Market, the idea of Trans-European Transport Network (TEN-T) emerged. The project of Trans-European Networks (TEN) comprises not only transportation, but also energy and telecommunications. The legal basis for establishing the TEN can be found in Title XVI Trans-European Networks of the Treaty on the Functioning of the EU, Articles 170–172. The European Union aims to promote the development of Trans-European Networks as a key element for the creation of the Internal Market and for reinforcing economic and social cohesion.⁶ The ultimate policy objective of the TEN-T is the establishment of a single, multi-modal system that would enable safe and efficient traffic. The Trans-European

⁵ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.

⁶ In the 2007 Communication from the Commission to the Council and the European Parliament “Trans-European Networks: Towards an integrated approach” – COM(2007)135, possible synergies between the three categories of networks – transport, energy and telecommunications – are examined, along with methods of funding and potential distribution. The report highlights the significant added-value of the combination of several infrastructures and underlines the potential environmental benefits of TEN integrating.

Transport Network is being established gradually by integrating land, sea and air transport infrastructure components.

The Internal Air Transport market has become a reality in the EU, strengthened by the entry of new air carriers and the multiplication of routes served. However, to adapt the airport infrastructures in Member States to the broadening of the market requires huge investments. That is why the TEN-T focuses on financial support of selected, mostly under-developed regional airports, making better use of existing capacity, reducing the environmental impact, promoting better access and developing intermodal connections.

3. Safeguarding Fair Competition

In open markets, ensuring equitable competition is crucial. Therefore, in the establishing of competition rules necessary for the functioning of the Internal Market, the European Union has been granted exclusive competence. Under the Treaty of Lisbon, fair competition is governed by the TFEU, Title VII Common rules on Competition (and taxation and approximation of laws), Chapter 1 Rules on Competition, Section 1 Rules applying to undertakings, Articles 101–106. According to Article 101, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the Internal Market, are prohibited as incompatible with the Internal Market. And Article 102 states that any abuse by one or more undertakings of a dominant position within the Internal Market – or in a substantial part of it – is prohibited as incompatible with the Internal Market in so far as it may affect trade between Member States.

EU competition rules have to be applied to air transport as well, taking account of the sector's unique features and special characteristics. Global airline alliances, for example, are a type of market practice that is generally forbidden in the EU. However, they can be declared acceptable if they do not eliminate competition, have positive economic effects and benefit the consumer. Other market practices looked at by the European Commission include abuse of dominant position, code sharing (two or more airlines using their flight designator codes on the same flight), interlining (transfer from one air carrier to another with the same ticket), Frequent Flyer Programmes (FFP), etc.

Several Regulations were adopted in order to precise and explain competition rules to be observed in European aviation. In 1987, the first two of them, the Council Regulations No 3975 and 3976,⁷ laid down the procedures for the

⁷ Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector; Council Regulation (EEC)

application of the rules on competition to undertakings and to certain categories of agreements and concerted practices in the air transport sector. These acts have been progressively amended by other Regulations, last of them being in 2009 the Council Regulation No 487.⁸

Not only illegal agreements between private companies, but also State (or public) aid negatively influencing the proper functioning of the Internal Market is forbidden. It can take a variety of forms such as State grants, interest relief, tax relief, State guarantee, provision by the State of goods and services on preferential terms, etc. Under the Treaty of Lisbon, State aid is governed by the TFEU, Title VII Common rules on Competition (and taxation and approximation of laws), Chapter 1 Rules on Competition, Section 2 Aids granted by States, Articles 107–109.

Article 107 is the most important. Accordingly, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the Internal Market. Nevertheless, there are many exceptions to this rule. Compatible with the Internal Market can be, for example, aids having a social character, aids to repair damage caused by natural disasters or exceptional occurrences, aids to promote the economic development of territories where the standard of living is abnormally low or where there is serious underemployment and unsatisfactory structural, economic and social situation, aids to promote the execution of an important project of common European interest, aids to facilitate the development of certain economic activities or of certain economic areas and aids to promote culture and heritage conservation.

In 2005, specific guidelines on State aid to airlines and airports have been issued by the European Commission.⁹ Their aim is to tackle air transport congestion, support regional development and make it easier for the European public to travel, while ensuring that the competition rules are complied with.

As far as airlines are concerned, strict enforcement of State aid rules is necessary to ensure that they operate in a level playing field. Aid can be granted only on a “first time – last time” basis, has to be linked to a restructuring plan and possibly lead to privatisation of the air carrier. Public aid granted to airlines in order to motivate them to add new routes connecting regional (smaller) airports is temporarily justifiable.

No 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.

⁸ Council Regulation (EC) No 487/2009 of 25 May 2009 on the application of Article (81)3 of the Treaty to certain categories of agreements and concerted practices in the air transport sector.

⁹ Communication from the Commission “Community guidelines on financing of airports and start-up aid to airlines departing from regional airports” – 2005/C312/91.

Financing and provision of airport infrastructure by the public authorities must be justified and notified to the European Commission which will examine its impact on competition and trade between Member States. However, funding granted to smaller airports, with fewer than 1 million passengers a year and with a mission of general economic interest, should be exempted from the notification obligation and declared compatible with State aid rules.

Airlines and airports accept the legislation in the competition area with mixed feelings. For EU air carriers, for example, mergers and acquisitions, takeovers, but also their membership in global alliances, might be delicate, as further consolidation and concentration can result in market dominance by a limited number of airlines, with the risk of abuse of market power, declared forbidden. And, unsurprisingly, many airlines and airports disapprove the strict regulation of State and public aid.

4. Urgency of Airspace Integration

The ultimate objective of the Single European Sky (SES) initiative is an integrated airspace governed by the same Air Traffic Management (ATM) and Air Traffic Control (ATC) principles and rules, organisation of sectors and establishment of routes regardless of national borders and a new division of airspace between civil and military users. This will enable Europeans to make journeys in a SES without frontiers, while maintaining the highest levels of air safety.

The SES project has been launched in 2004 by the adoption of four Regulations of the European Parliament and the Council. The “Framework Regulation” No 549¹⁰ laid down the framework for the creation of the Single European Sky (defining the main goals, enhancing current safety standards and overall efficiency for general air traffic, optimising capacity, meeting the requirements of all airspace users and minimising delay). The “Service Provision Regulation” No 550¹¹ on the provision of air navigation services in the Single European Sky established common requirements to ensure that air navigation services are provided safely and efficiently, created rules for the designation of service providers, introduced a standardised system of certification and identified transparent charging schemes. The “Airspace Regulation” No 551¹² on the organisation and use of the airspace in the Single European Sky divided at 8700 meters the upper

¹⁰ Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky.

¹¹ Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky.

¹² Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky.

airspace (dedicated to overflight) from the lower airspace (dedicated to airport approaches), restructured the upper airspace into Functional Airspace Blocks (FAB) that do not take national frontiers into account and ensured consistency between the configurations of upper and lower airspace, reducing the number of times air traffic control has to be handed over when passing from one area control centre to the next. Finally, the “Interoperability Regulation” No 552¹³ on the interoperability of the European Air Traffic Management network defined essential requirements to guarantee interoperability between different ATM systems, constituents and procedures, implemented relevant rules and harmonised the framework for specification and certification.

In 2009, during the Czech Presidency of the Council of the European Union, Regulations No 549–552 have been modified by the Regulation No 1070¹⁴ in order to improve the performance and sustainability of the European aviation system as well as to reduce the environment impact of air traffic. By this Regulation, the SES rules have been revised, creating Single European Sky II (SES II) based on 4 pillars: regulating performance, introducing single safety framework, promoting new technologies and managing airport capacity.

As the Single European Sky is based on innovative technologies, the creation of the Single European Sky ATM Research (SESAR) was decided in order to design a next generation Air Traffic Management system. This has been done by the adoption in 2007 of the Council Regulation No 219¹⁵ on the establishment of a Joint Undertaking to develop the new generation European Air Traffic Management system (SESAR), securing the appropriate funding and concentrating all relevant European R&D resources into SESAR, defining and updating the SESAR project, organising calls for tender, ensuring consistency, efficiency and technical progress on all items of the work programme and reporting on the results of different phases and preparing relevant actions for the implementation of these results. At present, the new ATM technology is in its development phase that should be followed by the deployment phase (2014–2020).

It is widely acknowledged that the EU is paying dearly the costs of fragmentation of its skies. With its Functional Airspace Blocks and the new technology developed by SESAR, the SES should deliver a seamless, safer and more performing Air Traffic Management system. Obviously, its swift implementation is in the interest of both airlines and airports.

¹³ Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network.

¹⁴ Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system.

¹⁵ Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European Air Traffic Management system (SESAR).

5. Air Safety Standards

The term air safety designates technical aspects of flying, such as rules for construction and use of aircraft. Europe has a long tradition in rulemaking co-operation in aviation safety, with the first common standards developed around 1990 within the framework of the currently no longer existing Joint Aviation Authorities (JAA). At that time, the European aviation safety authorities collaborated in the development of the Joint Aviation Requirements (JAR) and related procedures, initially in the field of aircraft manufacturing and design, and later also in respect of flight operations, maintenance and crew licensing. The current EU aviation safety system – a set of common safety rules – is based on close relations between the European Commission, the European Aviation Safety Agency (EASA), Eurocontrol, national civil aviation authorities, as well as aircraft manufacturers, airlines and other undertakings participating in the Single Aviation Market.

In 1991, the Council Regulation No 3922¹⁶ – based on JAR – on the harmonisation of technical requirements and administrative procedures in the field of civil aviation safety – commonly referred to as EU-OPS – focused, in particular, on measures applicable to the operation and maintenance of aircraft and to persons and organisations involved in those tasks. It was updated in 2006 by Regulations No 1899 and 1900¹⁷ of the European Parliament and of the Council.

In 2002, the European Aviation Safety Agency (EASA) came into being with the adoption of the Regulation No 1592¹⁸ of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency. EASA was supposed to cover all aspects related to airworthiness and environmental certification of aeronautical products, parts and appliances, building on the experiences and cooperation of the former group of European aviation regulators (JAA).

The Regulation No 1592 has been amended in 2003 by the Regulation No 1643¹⁹ of the European Parliament and of the Council and repealed in 2008 by

¹⁶ Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation.

¹⁷ Regulation (EC) No 1899/2006 of the European Parliament and of the Council of 12 December 2006 amending Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation; Regulation (EC) No 1900/2006 of the European Parliament and of the Council of 20 December 2006 amending Council Regulation (EEC) No 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation.

¹⁸ Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency.

¹⁹ Regulation (EC) No 1643/2003 of the European Parliament and of the Council of 22 July 2003 amending Regulation (EC) No 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency.

the Regulation No 216²⁰ of the European Parliament and of the Council that extended the powers of EASA to aircraft operations and crew licensing and training and also set safety rules on design, production, maintenance and operation of aircraft, certification of organisations and personnel in the aircraft sector and harmonisation and recognition of national certificates throughout the EU. The latest Regulation No 1108²¹ of the European Parliament and of the Council, which was negotiated during the 2009 Czech Presidency, amended the Regulation No 216 in the field of aerodromes, Air Traffic Management and air navigation and enlarged further the powers of EASA to cover safety aspects of airport operations and provision of air navigation services and Air Traffic Management.

The extended duties of EASA are to help the European Commission to develop common standards on safety of civil aviation in EU legislation, ensure uniform application of these standards, issue certificates to EU companies in air transport and conduct inspections. These significant powers in the fields of airworthiness, environment, flight crews, aircraft operations, third-country aircraft, airport operations, air navigation services and Air Traffic Management will be executed by a progressive adoption by 2013.

In order to improve air safety and prevent future disasters, it is essential to evaluate all aircraft accidents and incidents and come up with relevant conclusions. To this end, the Council Directive No 56²² has been adopted in 1994, establishing the fundamental principles governing the investigation of civil aviation accidents and incidents, facilitating investigations and transposing into the EU legislation a number of fundamental international principles. In 2010, the Directive No 56 has been updated by the Regulation No 996²³ of the European Parliament and of the Council on the investigation and prevention of accidents and incidents in civil aviation. The effectiveness of air accident investigations has been strengthened, cooperation between authorities facilitated and the rights of victims of air accidents and their relatives reinforced.

Due to the fact, that not only EU airlines fly the EU sky, the Regulation No 2111²⁴ of the European Parliament and of the Council established in 2005 a Com-

²⁰ Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC.

²¹ Regulation (EC) No 1108/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, Air Traffic Management and air navigation and repealing Directive 2006/23/EC.

²² Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents.

²³ Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC.

²⁴ Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005

munity list of air carriers subject to an operating ban within the Community and imposed the obligation to inform air transport passengers of the identity of the operating air carrier. The so-called European Blacklist of airlines with low safety standards, regularly updated, includes airlines banned from operating in the EU and airlines which are restricted to operating under specific conditions.

Air safety issues are mainly air carriers' concern. On one hand, airlines are in favour of achieving the highest possible safety performance and harmonising the rules across Member States. On the other hand, they complain that the European Commission does not take due account of their professional views.

6. Enhancing Aviation Security

Aviation security measures are aimed at the prevention of illegal acts and criminal matters in the field of air transport. In reaction to the terrorist attacks of 11 September 2001, strengthening and unification of security rules for both international and national flights at EU airports was considered urgent. Consequently, the Regulation No 2320²⁵ of the European Parliament and of the Council, adopted in 2002, established common rules in the field of civil aviation security for airports on the EU territory. Its provisions concern all stakeholders such as airport authorities, service providers, catering companies, cleaning and cargo parties, as well as EU and foreign airlines, imposing more rigorous screening of passengers, luggage and staff and introducing National Security Programmes and common standards for technical equipment. The Regulation No 2320 has been amended in 2004 by the Regulation No 849²⁶ of the European Parliament and of the Council and substituted in 2008 by the Regulation No 300²⁷ of the European Parliament and of the Council. The latest Regulation reformed and simplified the existing rules and mechanisms for monitoring compliance, with the aim of guaranteeing high security levels in air transport and protecting persons, mail and cargo within the EU. It further regulated access control to airports and laid down standards on in-flight security measures, staff training and security equipment.

on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC.

²⁵ Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security.

²⁶ Regulation (EC) No 849/2004 of the European Parliament and of the Council of 29 April 2004 amending Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security.

²⁷ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002.

In 2009, having in mind the growing problem of how to finance the additional and rising costs of imposed security measures, such as the liquids restrictions, the European Commission submitted a proposal for a Directive of the European Parliament and of the Council on aviation security charges, supposed to establish common principles for the levying of security charges at EU airports. The purpose of the proposed legislation is to ensure that security charges are set and collected in a non-discriminatory and transparent way throughout the EU, but not to fix the level of these fees, nor to determine other methods for financing security measures. The new framework should allow air carriers to know on what basis the charges are calculated and, in case of disagreement, to enter into a dialogue with the bodies that set them.

The main responsibility for security measures is on airports. Nevertheless, they refuse to finance them on their own. Airlines are cautiously willing to participate, but do not appreciate very much the orientation and sense of EU legislation. In general, both stakeholders support the improving of detection techniques and technologies in order to target controls on those categories of individuals who pose a greater security risk and at the same time to facilitate travel for the majority of persons passing through EU airports.

In this regard, the European Commission has issued in 2010 a communication²⁸ assessing the impact of the use of security scanners at airports in terms of detection performance and compliance with fundamental rights and health protection. The report concludes that this screening method can be considered as offering a reliable and effective way to detect not only metallic, but also non-metallic objects carried by air transport users. While many Member States already deploy security scanners at their airports using various technologies under different operational conditions, the European Commission is in favour of a joint approach resulting in common standards based on a new European Union legal framework.

7. External Action

The first steps of the EU External Aviation Policy date back to 2003, following the 2002 judgments of the European Court of Justice that pointed out the infraction of EU law in specific relations between EU and non-EU countries. Building on the success of the Single Market for Air Transport and wishing to grant similar benefits to airlines and passengers on flights to and from non-EU countries, it is based on three pillars: renegotiation of bilateral agreements and conclusion of horizontal agreements, creation of the European Common Avia-

²⁸ Communication from the Commission to the European Parliament and the Council on the Use of Security Scanners at EU airports – COM(2010)311.

tion Area (ECAA) and preparation of comprehensive “Open Skies” agreements with global partners.

Since 2004, there is practically no possibility of concluding new bilateral Air Services Agreements (ASA) with third countries. EU Member States cannot act in isolation when negotiating or renegotiating international aviation agreements and these are being progressively transformed into horizontal agreements valid for all Member States, in accordance with the Regulation No 847²⁹ of the European Parliament and of the Council on the negotiation and implementation of Air Service Agreements between Member States and third countries. The European Common Aviation Area (ECAA) came into being in 2006, with EU and Balkan countries as members, in order to expand not only market operation rules, but also traffic, safety and security standards beyond EU territory. Other countries located along its southern and eastern borders are to follow. Concerning the projected conclusion of comprehensive global agreements with major aviation powers worldwide – with the twin objective of market opening and regulatory cooperation in aviation matters such as safety, security and environmental impact – the first “Open Skies” agreement was signed by the EU and the USA in 2007. Negotiations with Canada have been achieved in 2009, other are underway (Australia, New Zealand, China, India, Brazil, Chile).

The aviation case clearly shows that for EU action, that has important consequences for national policy and policymaking, impact beyond the EU's borders can be equally far reaching. The attitude of airlines and airports towards the EU External Aviation Policy is predominantly neutral.

8. Airport Policy

The main tasks of the very specific EU Airport Policy have been summed up by the European Commission in 2006 in its Action plan for airport capacity efficiency and safety in Europe³⁰. It reported the state of play regarding airport management and emphasised the importance of airports in the air transport network. Furthermore, it suggested the course to be taken to deal with the expected “capacity crunch”: better use of airport capacity, consistent approach to airport safety, collaboration between different modes of transport, improved infrastructure planning, implementation of cost-efficient technological solutions. The Observatory on Airport Capacity, inaugurated in 2008, advises the European

²⁹ Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of Air Service Agreements between Member States and third countries.

³⁰ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions “Action plan for airport capacity efficiency and safety in Europe” – COM(2006)819.

Commission on developing measures to ameliorate the capacity of the European airport network and plays an essential role in the implementation of the Action plan. For the time being, the EU Airport Policy legislation covers mainly three areas: time slots, ground handling and charges.

Airport time slots (or take-off and landing rights) are scheduled times of departure and arrival available or allocated to aircraft movements on specific dates. Slot allocation is an important instrument for airport capacity management. Airports can be “coordinated” (with appointed coordinators to facilitate the traffic of air carriers operating or intending to operate at that airport) or “fully coordinated” (coordinated airports where, during the periods for which they are fully coordinated, it is necessary for airlines to have slots for take-off and landing allocated by slot coordinators). The Council Regulation No 95³¹ adopted in 1993 on common rules for the allocation of slots at Community airports was aimed at ensuring distribution of slots in an equitable, non-discriminatory and transparent way, establishing the right balance between the interests of incumbent air carriers (have already built up their position and have an interest to expand it further) and new entrants (have relatively small operations and need to be able to establish a competitive network) at congested airports. Due to changing market and technical conditions, this Regulation has been amended by Regulations No 894 (2002), 1554 (2003), 793 (2004) and 545 (2009) of the European Parliament and of the Council.³²

Ground handling services make an essential contribution to the efficient use of air transport infrastructure, whereas a distinction has to be made between airside services (ramp handling, fuelling operations, aircraft maintenance, provision of catering services) and landside services (passenger ticketing and baggage handling at the check-in desks). The 1996 Council Directive No 67³³ on access to ground handling market at Community airports initiated the gradual opening of ground handling services for competition which resulted in 2002 in its full liberalisation. Now, each EU airport whose annual traffic is 2 million passengers and more must have at least two suppliers of ground handling services, while at least one of these suppliers should be entirely independent of the airport authority or the dominant air carrier at that airport.

Airport charges are an important source of revenue, covering the costs of facilities and services provided to airlines and its passengers, such as the use of

³¹ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports.

³² Regulations (EC) No 894/2002, No 1554/2003, No 793/2004 and No 545/2009 of the European Parliament and of the Council of 27 May 2002, 22 July 2003, 21 April 2004 and 18 June 2009 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports.

³³ Council Directive 96/67/EC of 15 October 1996 on access to ground handling market at Community airports.

aprons, boarding bridges and terminals. They are usually established and levied in accordance with a set of principles and criteria which make up the airport charging systems, often imposed and governed by national authorities. Also, by varying certain charges, airports may increase the use of airport infrastructures in periods of lower traffic and reduce the environmental impact of aviation. According to the Directive No 12³⁴ of the European Parliament and of the Council adopted in 2009 on airport charges, the charges should be transparent and non-discriminatory, which does not necessarily mean they must be the same for all airport users. There is a possibility of having different levels of charges as long as the differences can be justified on the basis of objective criteria, with regard to the real cost of facilities and services provided.

Building or improving airport capacity, as well as redistributing take-off and landing rights, is not always in the interest of airport-based or dominant air carriers, as they may face greater competition from more new entrants. Concerning ground handling liberalisation, against were those who had the privilege to supply these services before, without facing any competition. And the airport charges legislation only tries to canalise the ever existing dispute between airport authorities and airlines about their fair level.

9. Environment Protection

Among major negative consequences of air transport are aircraft noise, that largely affects areas at and around airports, and aviation emissions, that contribute globally to the greenhouse effect and the depletion of the ozone layer and regionally and locally to air pollution. EU airlines and airports and their environmental strategies are more and more aware of this.

Paying efforts to fight civil aircraft noise emissions were made between 1979 and 1998 by adopting several Council Directives. More recently, of significant importance is the Directive No 30³⁵ of the European Parliament and of the Council, adopted in 2002, on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports. It was aimed at preventing an increase in aircraft noise and seeking how to reduce it, introducing measures to improve noise climate around airports, laying down common rules for prohibiting the noisiest aircraft from European airports and promoting development of airport capacity in harmony with the environment.

³⁴ Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges.

³⁵ Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community Airports.

In the area of limitation of aircraft emissions, the EU is pursuing mainly three streams: R&D for “greener technology”, modernisation of Air Traffic Management systems and market-based measures.

The “greener technology” should be developed by the Clean Sky Joint Undertaking, set up by the Council Regulation No 71 in 2007.³⁶ It’s a PPP research project aimed at new aeronautical technologies, to run until 2017. The main objectives are to reduce fuel consumption and hence carbon dioxide emissions by 50% per passenger kilometer, accelerate the development of clean air transport technologies, guarantee effective coordination of aeronautics research, set up an innovative and competitive air transport system and improve knowledge generation and use of research findings.

As concerns the upgrading of Air Traffic Management systems, the Single European Sky legislation reforms the way ATM will be organised and modernised in the EU, while one of the SESAR objectives is to reduce CO₂ emissions by 10% per flight.

Perhaps the most controversial of all the EU environmental and economic pressures on airlines is the idea to bring aviation into the EU Emissions Trading Scheme (ETS), as part of the market based measures. This idea has been put into practice by the Directive No 101³⁷, adopted by the European Parliament and the Council in 2008, including aviation activities in the scheme for greenhouse gas emissions trading within the Community. Consequently, carbon dioxide emissions from all flights taking off and landing at EU airports are to be traded within the EU ETS from January 2012.

Tackling aviation’s contribution to climate change seems to be one of the most important challenges facing air transport today. Even if transport in general is said to be responsible for 20 to 25% of global greenhouse gas emissions, and aviation for just about 2%, the aviation stakeholders are under great pressure to improve their environmental performance. Air carriers and the main associations representing European aircraft operators are strictly against the integration of aviation into the trading of emissions, claiming that the EU ETS means a regional approach to a global issue and therefore, by definition, distorts the market. Airlines argue that even if they do not pass an important part of the purchased allowances to their customers, the demand would be significantly reduced, resulting in further degradation of the industry’s very low profitability.³⁸

³⁶ Council Regulation (EC) No 71/2007 of 20 December 2007 setting up the Clean Sky Joint Undertaking.

³⁷ Directive 2008/101/ES of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/ES so as to include aviation activities in the scheme for greenhouse gas emissions trading within the Community.

³⁸ ERNST & YOUNG. Analysis of the EC Proposal to Include Aviation Activities in the Emissions Trading Scheme. Brussels: Ernst & Young, York Aviation, 2007.

10. Air Passengers Rights

The rights of air passengers are based on a combination of EU legislative acts and voluntary commitments of the air transport sector. First, in 1991, the Council Regulation No 295³⁹ provided basic common rules for a denied boarding compensation system in scheduled air transport. Then, in 2004, the Regulation No 261⁴⁰ of the European Parliament and of the Council established more sophisticated rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. As a result, since 2005, in cases such as overbooking, denied boarding, flight cancellations and delays, accidents and mishandled or lost baggage, travellers must be fully assisted and indemnified.

In 2006, special rights for persons with reduced mobility and handicapped passengers at European airports have been added, based on the Regulation No 1107⁴¹ of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air. The legislation – covering main aviation stakeholders and even small airports – prohibits refusing reservation or boarding to persons because of their disability and introduces free assistance in airports and on board aircraft. These services represent clear additional costs that have to be shared by airlines and airports.

Following the 2001 terrorist attacks, in order to protect air travellers, the European Commission has taken an interest in insurance matters in the aviation industry. This resulted in the adoption in 2004 of the Regulation No 785⁴² of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators. The Regulation applies to both commercial airlines and general aviation aircraft flying within, into, out of, or over the territory of an EU Member State, fosters consumer protection and fair competition between air carriers, establishes minimum level of insurance requirements in respect of passengers, baggage, cargo and third parties, covers the risks associated with aviation-specific liability, including acts of war, terrorism, hijacking, sabotage, unlawful seizure of aircraft and civil commotion.

The EU took control of the passenger rights issues without taking into account the position of the aviation sector. Generally speaking, airlines and air-

³⁹ Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport.

⁴⁰ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

⁴¹ Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.

⁴² Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators.

ports consider the EU conditions too strict, excessively favourable to customers and rather damaging for those that have to grant them.

Conclusions

Air transport is an innovative industry that drives economic and social progress. It connects people, countries and cultures, provides access to global markets and generates trade and tourism. Even if there are significant discrepancies among the evaluations of economic impact of aviation obtained by different studies, they seem to indicate that the benefits of air transport clearly outweigh its costs. In 2011, after 25 years of ambitious action, the EU Air Transport Policy's measures cover all relevant aspects of civil aviation. This was enabled also by the fact that most of the legislation was designed in the form of Regulations that are binding in their entirety and directly applicable in all Member States. On the contrary, in areas based on Directives the progress was less significant, as these acts, to be valid, have to be incorporated into the legal system of each Member State, which is often a slow and painful process.

After initial hesitations, things really began to happen in 1992 with the adoption of the Third Air Liberalisation Package, bringing new airlines, more competition and more routes served, but also important productivity gains and lower fares. Market opening was accompanied and followed by common initiatives in many other aviation domains and this enabled the EU to emerge as an important regulatory authority in a series of operational as well as technical areas. Traffic grew significantly over this period. 28 000 daily flights by 4 700 commercial aircraft are pushing airports and ATM systems to their limits.⁴³ It is obvious that an increase in economic activity, industrial production and expanding trade relations inevitably results in greater need for air transport, and, reciprocally, a decrease in the same parameters brings reduced demand. In 2008, as already mentioned, more than 798 million passengers were transported by air to, from or within the European Union. In 2009, when the effect of the economic crisis on the air transport industry became more apparent, these numbers dropped to 751 million (22% national travel, 42% intra-EU and 36% extra-EU).⁴⁴ In 2010, only a very small annual passenger growth is expected.

In this paper were treated the most important measures generated by the EU Air Transport Policy, with focus on its implications on European carriers and

⁴³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Single European Sky II: Towards more sustainable and better performing aviation" – COM(2008)389/2.

⁴⁴ EUROSTAT. Data in Focus 34/2010. Passenger air transport – 2009 monthly data. Brussels: Eurostat, 2010.

airports. From the airlines' and airports' standpoint, unsurprisingly, some rules receive standing ovation, many are just tolerated, while others are considered harmful. Among measures affecting the main stakeholders in a predominantly negative way are, in general, all provisions resulting in excessive and unnecessary regulation, and, in particular, those concerning areas such as State aid, security, environment, ground handling and passenger rights.

The achievements of the EU Air Transport Policy are immense. The Internal Air Market has allowed European airlines to expand and to engage in a process of cross-border consolidation. Many European airports have been converted from simple infrastructure providers to successful commercial businesses. However, Europe seems to be the only region worldwide where the airline sector remained unprofitable in 2010. If there is a real risk for our continent to lose in the global competition, what can the EU policymakers do about it?

Fortunately, the European Union seems to be well aware of the mentioned risk. In October 2010, the Belgian EU Presidency organised the European Aviation Summit with the predominant theme how to improve the competitiveness of this sector. Among the invited speakers were high-level representatives of European and national authorities, international organisations, airlines, airports and other important stakeholders. The Summit Declaration⁴⁵ developed key initiatives to be taken in order to strengthen competitiveness, such as building upon Europe's successful liberalisation strategy, extending the European Common Aviation Area, creating new employment opportunities, avoiding additional burdens (e.g. taxes on aviation), reforming certain common rules affecting EU airports and considering special instruments to ensure a level playing field in the global market.

The EU obviously succeeded in playing a crucial role both in the liberalisation and the regulation of air transport. But now, the European aviation industry stands at a crossroads. According to the European Commission, European citizens are entitled to the best performing air transport system.⁴⁶ Indeed, passengers, on one side, may well claim to be the real winners of the EU Air Transport Policy. For them, the outcomes are clearly positive. On the other side, there is the worrying negative impact on airlines and airports, resulting mainly in the endangered competitiveness of the European aviation industry. Further regulation and taxes might have the adverse effect of stifling the sector's ability to compete against non-European competitors and invest into modern technolo-

⁴⁵ The Declaration of Bruges, adopted by the participants of the Summit, calls for decisive action in order to re-establish European Aviation competitiveness, but also to achieve the Single European Sky, protect European citizens with the highest safety and security standards, and, more generally, ensure sustainability of aviation.

⁴⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Single European Sky II: Towards more sustainable and better performing aviation" – COM(2008)389/2.

gical solutions. Moreover, consistency is not always ensured between national air transport measures and those taken at EU level. To preserve its leadership, the EU should immediately reconsider any additional burden on airlines and airports, pave the way for a level playing field in Europe's aviation market and support – by all possible means – the continuous and balanced development of the industry. The time has come to act towards creating a smart, sustainable and inclusive EU aviation strategy.

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Abstrakt:

Letecká dopravní politika EU a její dopady na letecké společnosti a letiště

V posledních dvaceti letech prošel letecký sektor v Evropě revolucí, která by byla nemyslitelná bez přijetí klíčových opatření na úrovni EU. Až do konce 80. let byla letecká doprava plně kontrolována vládami jednotlivých zemí a nadměrně regulována značně rigidními bilaterálními dohodami a zastaralými mezinárodními úmluvami. Od těch dob se Evropská unie postupně stala vedoucí silou a uznávaným tvůrcem politik na poli letecké dopravy. Byla vysoce úspěšná při liberalizaci leteckého sektoru členských států, a tak využila příležitosti své aktivity rozšířit. Další významné aspekty – jako například pravidla hospodářské soutěže, letový provoz, letecká bezpečnost, ochrana před protiprávními činy, kapacita letišť, vliv na životní prostředí, práva cestujících a vnější vztahy – mohly být harmonizovány. Za dvacet let bylo mnohé dosaženo, ale jaké jsou nejvýznamnější zisky a ztráty zájmových stran? Tento článek zkoumá a analyzuje důsledky Letecké dopravní politiky EU pro hlavní aktéry v oboru: letecké společnosti a letiště.

Klíčová slova:

Evropská unie, dopravní politika, letectví, letecká společnost, letiště, vnitřní trh