

# EU external aviation policy

## SUMMARY

The 1944 Convention on International Civil Aviation ('Chicago Convention') is the chief regulatory framework for international civil aviation, but also the most important primary source of public international aviation law and the umbrella under which bilateral air service agreements have been developed.

While early bilateral air service agreements between states were quite restrictive, to protect their respective flag carriers, the United States proposed a more flexible model of bilateral air services agreements in the early 1990s, the 'Open Skies' agreements. Challenges to these agreements on the grounds that some of their provisions did not conform to Community law, led to the 2002 European Court of Justice 'Open Skies' judgments. These judgments triggered the development of an EU external aviation policy, leading to the conclusion of horizontal agreements and the negotiation and conclusion of comprehensive EU agreements with some neighbouring countries and key trading partners.

To tackle the challenges currently facing international air transport and, in particular, increased competition from third countries, in December 2015, the Commission adopted a new aviation strategy for Europe that places great emphasis on the EU's external dimension, which the EU has started delivering, for instance with the adoption of a new EU tool to ensure fair competition between Union and third-country air carriers and the ongoing negotiations for new air transport agreements.

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# International civil aviation framework

## Chicago Convention

Signed in 1944, the Convention on International Civil Aviation (the '[Chicago Convention](#)') is the most important [primary](#) source of public international aviation law.<sup>1</sup> It is binding upon its 193 [signatory](#) states, which have pledged not to enter into any obligations or understandings that are inconsistent with the terms of the Convention.

Since the end of World War II, international air transport relations have thus been promoted by means of bilateral air services agreements between nations under the umbrella of the Chicago Convention.

The Chicago Convention created the International Civil Aviation Organization (ICAO), and entrusted it, in its Article 44, with the objectives of developing the principles and techniques of international air navigation, and fostering the planning and development of international air transport, so as notably to 'insure the safe and orderly growth of international civil aviation throughout the world', 'meet the needs of the peoples of the world for safe, regular, efficient and economical air transport', and 'insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines'.

Highlighting the importance of developing international air transport and of economic efficiency, the Chicago Convention also places great emphasis on safety and security considerations, hinting that, according to some [authors](#), air transport is not solely 'a conventional economic activity', but that it also possesses 'the characteristics of a public utility'. This is reflected in the wording of the preamble and the importance attached to the principle of national sovereignty.

The preamble does indeed underline that 'the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security'. It also adds that 'international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically'. Article 1 of the Convention mentions that 'The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory', and Article 6 on scheduled air services states that, 'No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization'.

In the first decades following the adoption of the Convention, bilateral air service agreements were quite [restrictive](#), as they were written to protect the flag carriers of the contracting countries and were very detailed. In particular, they [traditionally](#) covered route selection, that is, the freedoms of the air that they intended to grant (see box), from basic bilateral air traffic rights<sup>2</sup> to more complex patterns involving transit to or from third countries, and the origin, destination and intermediate airports concerned; the designation of the airline(s) serving the agreed routes; provisions on capacity, that is, the number and frequency of flights, type of aircraft on the agreed routes, and pricing.

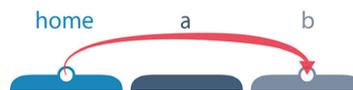
## US 'Open Skies' initiative

In the wake of internal liberalisation, with the 1978 Airline Deregulation Act that eliminated the regulation of fares, routes and schedules in the US domestic market, the United States wished to apply the same approach to international aviation. In 1992, the USA launched its 'Open Skies' initiative whose purpose was to liberalise international civil aviation further, by proposing a more flexible or 'open' model of bilateral air services agreements between itself and, initially, European countries.

## Freedoms of the air

The [freedoms](#) of the air are traffic rights granting an airline of one country the privilege to enter another country's airspace and land in its territory. Negotiating international air services agreements implies determining which freedoms of the air are granted. There are a total of nine [freedoms](#) of the air.

The **first freedom** of the air is, according to ICAO, 'the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing'.



The **second freedom** refers to the right or privilege granted by one state to another state or states to land in its territory for technical and maintenance purposes, without picking up or dropping off any passengers.



These first [two](#) freedoms, covering overflight and non-commercial landing, are widely accepted around the world.

The **third freedom** is the right or privilege, granted by one state to another state 'to put down, in the territory of the first State, traffic coming from the home State of the carrier'.



The **fourth freedom** is the right or privilege, 'to take on, in the territory of the first State, traffic destined for the home State of the carrier'. The third and fourth freedoms are granted together.



The **fifth freedom** is the right or privilege 'to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State'. Under the fifth freedom, a carrier can transit passengers between two foreign countries, provided the flight either begins or ends in the carrier's base country.



The **sixth freedom** (which combines the third and fourth freedoms) is the right or privilege 'of transporting, via the home State of the carrier, traffic moving between two other States'.



The **seventh freedom** is the right or privilege 'of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e. the service need not connect to or be an extension of any service to/from the home State of the carrier'.



The **eighth freedom** is the right or privilege 'of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State'. It is also referred to as 'consecutive cabotage'.



The **ninth freedom** is the right or privilege 'of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State'. It is also referred to as '**stand-alone**' cabotage.



The [typical](#) 'Open Skies' agreement aimed to allow services between any points in the two contracting states, with no restrictions on the number of carriers, frequency or capacity. The remaining principles underpinning the 'Open Skies' agreements included, in particular, 'Unrestricted route and traffic rights, that is, the right to operate service between any point in the United States and any point in the European country, including no restrictions as to intermediate and beyond points ..., or the right to carry Fifth Freedom traffic'; flexibility on setting fares, liberal charter and cargo arrangements, and open code-sharing<sup>3</sup> opportunities.

The first 'Open Skies' agreement was signed in 1992 between the USA and the Netherlands. By the end of the 1990s, the USA had concluded such agreements with several more European countries. Some authors consider<sup>4</sup> that the conclusion of 'Open Skies' agreements, in particular with 'smaller' states, was a strategy to divide the European states and lead the 'bigger' ones, which were initially rather reluctant to liberalise their markets and inclined to protect their national carriers, to conclude such agreements. For example, air carriers designated by Belgium within the context of its 'Open Skies' agreement were granted unlimited access to US cities, while carriers designated by France could only access a limited number. Companies from Member States that had signed an 'Open Skies' agreement could thus offer a wider range of destinations in the United States, in principle at more advantageous prices, which translated into an increase in their traffic volumes.<sup>5</sup>

## 'Open Skies' judgments

Completion of the single market for aviation pushed the European Commission to [challenge](#) bilateral air service agreements before the European Court of Justice. While Member States had moved towards the adoption of a unified set of regulations, leading to the recognition of Community air carriers within the internal market, the Community's relations with third countries still appeared fragmented. That was because bilateral air services agreements giving access to third countries' markets contained [nationality](#) clauses that allowed a given state to designate only majority-owned airlines or those controlled by that state or its nationals. This meant, for example, that a German airline established in France could not benefit from the traffic rights granted to French airlines within the context of the bilateral agreement between France and the United States.

Conscious of the [increasing](#) conflicts between provisions of bilateral air services agreements and Community law, the Commission initiated legal action against the eight Member States that had signed 'Open Skies' agreements (Belgium, Denmark, Germany, Luxembourg, Austria, Finland, Sweden and the United Kingdom). The Court's judgments of 5 November 2002,<sup>6</sup> in particular considered that the nationality clauses in the agreements constituted a clear violation of the right of establishment enshrined in Article 43 of the EC Treaty. [Discrimination](#) based on nationality was thus considered illegal within the Community, as all Community carriers, as long as they have an establishment in a Member State, must be able to fly international routes from there, regardless of where their principal place of business is located in the Community, or of where in the Community their owners originate. As laid down in [Regulation 2407/92](#) on licensing of air carriers and [Regulation 2408/92](#) on access for Community carriers to intra-Community routes, the beneficiaries

### EU internal aviation market

The liberalisation of the EU [internal aviation market](#) was carried out gradually with the adoption of three packages of measures covering air carrier licensing, market access and fares. Covering intra-EU traffic, the **first package (1987)** limited the right of governments to reject the introduction of new fares and provided some flexibility concerning seat capacity-sharing. The **second package (1990)** further opened up the market, notably allowing greater flexibility over fares and capacity-sharing. It also allowed all EU carriers to carry an unlimited number of passengers or cargo between their home country and another EU country. The **third package (1993)** completed the process by allowing, from April 1997, the freedom to provide 'cabotage', that is, 'the right for an airline of one Member State to operate a route within another Member State' (and later, through [treaties](#), also in Iceland, Norway, and Switzerland). The third package also [provided for](#) Community-owned airlines to be 'Community air carriers' with equal rights of access to the internal market, irrespective of the Member State in which they are legally established. Full freedom concerning fares and rates was also introduced. In 2008, the Commission simplified the legal framework for the internal air transport market ([Regulation 1008/2008](#)), by updating and modernising certain key concepts. Pricing freedom was confirmed for air services within the EU and extended to air services to third countries on the basis of reciprocity, dependent on the bilateral agreements [concluded](#).

of international air transport agreements at Community level are 'Community carriers'. Clarifying the distribution of powers between the EU and the Member States regarding the regulation of international air services, the 'Open Skies' judgments confirmed the need to devise a [comprehensive](#) aviation policy at Community level and triggered such a development.

## Development of EU external aviation policy

### Outline and principles of EU external aviation policy

Shortly after the 'Open Skies' judgments of November 2002, the Commission adopted a [communication](#), outlining their consequences for European air transport policy. Highlighting that the major objective of the Community was to promote 'safe, secure and efficient air transport for the benefit of European citizens', the Commission notably underlined the importance of bringing existing bilateral agreements into line with Community law. For this purpose, two [methods](#) were devised:

- bilateral [negotiations](#) between each EU Member State concerned and its partners, amending each bilateral air service agreement separately, on the basis of the common principles covered by Regulation [847/2004](#) and standard clauses issued by the Commission; or
- bilateral [negotiation](#) of single horizontal agreements, with the Commission acting on a mandate from the Member States. The purpose of each horizontal agreement would be to amend the relevant provisions of all existing bilateral air service agreements in a single negotiation with a third country.

In June 2003, the Council authorised the Commission to negotiate a comprehensive air transport agreement with the United States, and to negotiate horizontal agreements with all other third countries, so as to bring their bilateral agreements with EU Member States into line with EU law.

In 2005, the Commission presented a [communication](#) on 'Developing the agenda for the Community's external policy', and together with the Council, it further defined EU external aviation policy in a three-pillar [roadmap](#):

- Bringing existing bilateral air services agreements between EU Member States and third countries into line with EU law. This implied, in particular, negotiating horizontal agreements with the aim of replacing 'national designation' clauses with 'EU designation' clauses, while keeping the volume of air traffic rights unchanged. In other words, 'while the number of airlines which an EU Member State may consider for [designation](#) will increase, the number of airlines which can be designated, provided that they are established, will remain subject to the provisions of existing bilateral Agreements';

- The creation of a true [Common Aviation Area](#) with the EU's southern, south-eastern and eastern neighbours. This would [imply](#) gradual market opening and regulatory harmonisation, starting with progressively implemented safety requirements, and technical assistance for third countries in their implementation;
- The conclusion of comprehensive aviation agreements with key strategic partners, [combining](#) market opening, removal of investment barriers, regulatory cooperation and convergence. On top of market access, such [agreements](#) would seek to reform international civil aviation and promote European regulations and industry.

The [scope](#) of the comprehensive EU agreements goes beyond liberalising traffic rights, as they contain provisions aiming to achieve regulatory convergence in matters such as open and fair competition, safety, security, environment and economic regulation. Through such agreements, the EU is also trying to put a process of liberalisation of airline ownership in [place](#). Comprehensive EU agreements [supersede](#) the bilateral agreements of EU Member States with third countries. However, until the Council gives the European Commission authorisation to negotiate comprehensive EU agreements, Member States can still negotiate bilateral air services agreements. In its 2005 [conclusions](#), the Council highlighted the conditions under which it may grant such authorisation, pointing out, in particular, that 'before granting mandates for the negotiation of any further comprehensive agreements with third countries, the added value of any resulting Community-level agreement should be clearly demonstrated in each case, notably with regard to the prospects of obtaining significant new opportunities for EU industry and users and achieving greater levels of regulatory convergence with a view to ensuring a competitive level playing field'.

Taking stock of the progress achieved since 2005 within the context of the three pillars, in 2012 the Commission adopted another [communication](#) on EU external aviation policy, highlighting the emerging challenges in international aviation. It notably referred to the 'Member States' apparent intent to continue to grant bilateral air traffic rights to third countries without commensurate return, or account taken of the EU-level implications'.

In 2012, the Council adopted [conclusions](#) on the 2012 communication, calling for a more ambitious and robust EU external aviation policy, based on the principles of reciprocity and open and fair competition in a level playing field. Recognising that 'market access and commercial opportunities available to carriers may vary under the different bilateral aviation arrangements between individual EU Member States and partner countries', it emphasised 'that stronger coordination, unity and solidarity at EU level can contribute to achieving equality of treatment and improving the competitive position of the EU aviation sector'.

In particular, it considered that a tailored EU approach was appropriate in relation to a number of key partners and invited ICAO to play a leading role in modernising the global aviation market.

## New challenges and recent developments

### State of play regarding agreements

By 2015, 50 horizontal [agreements](#)<sup>7</sup> modifying bilateral air services agreements between Member States and third countries had been concluded to replace the national with the EU designation.

Since 2006, the EU has concluded 'neighbourhood [agreements](#)' with Western Balkan partners (the 'European Common Aviation Area (ECAA) agreement') and Morocco in 2006, with Georgia and Jordan in 2010, with Moldova in 2012 and with Israel in 2013. In the end, the wider ECAA could cover over 50 states with a total population of 1 billion inhabitants.

[Comprehensive agreements](#) with key trading partners were concluded with the United States in 2007 and 2010 (also called 'first' and 'second stage' agreements), and with Canada in 2009. While the EU-US agreement's ultimate objective was to create a transatlantic Open Aviation Area – that is, a single market with free flows of investment and no restrictions on air services, including access to

the domestic markets of both regions – it allowed airlines to fly without restrictions from any point in the EU to any point in the USA. A comprehensive agreement was finalised with Brazil in 2011 but is currently being renegotiated. Negotiations with other major partners worldwide are ongoing (for the update see section on the new EU aviation strategy and its implementation).<sup>8</sup>

While the [Commission](#) points out that EU external aviation policy has brought about significant results leading to growth in passenger numbers, the number of direct 'city pairs' served, competing carriers, benefits for consumers, and opportunities for the EU industry, as well as recognition of the EU as a key global player in aviation, some authors give a much more [mixed](#) assessment of the results achieved. In particular, they underline that it is difficult to link market growth with most neighbourhood agreements and that little progress has been achieved in terms of reciprocal investments in air carriers within the context of comprehensive agreements with key partners, notably the USA, or in terms of regulatory convergence. They also highlight that liberalisation without sufficient convergence of the conditions for competition implies mostly that non-EU carriers gain access to EU markets, and therefore that future EU aviation policy should further elaborate on how EU agreements can generate added value for the EU economy and EU airlines.

## An evolving global market

While European [aviation](#) represents still 26 % of the world market, projections show that scheduled passenger traffic in the Asia-Pacific [region](#) is expected to grow faster than in other regions until 2034, when it will account for 40 % of world air traffic. China is expected to become the largest [market](#) in the world, overtaking the United States in terms of number of transported passengers from 2023. The shift in the world's economic centre to the east is leading to the rise of competitors in the Gulf countries and in Turkey, whose geographical position enables them to benefit from that growth. New companies and hubs emerging are competing directly with EU carriers and European hubs. This new situation has led to a growing [debate](#), both in the [United States](#) and the EU, regarding the 'fairness' of competition with these new players. The argument is that carriers from some third countries which have virtually no domestic markets, have been receiving billions in 'unfair' government subsidies and are diverting global traffic to their hubs. The issue is not limited to subsidies but also relates to practices that may be compelling European carriers to cut costs and practise social dumping. European airlines were quite [divided](#) on the issue, while the 'accused' [airlines](#) refuted such allegations, pointing out that US and EU airlines have also benefitted from government subsidies.

## A new aviation strategy

On 7 December 2015, the Commission adopted a new [aviation strategy](#)<sup>9</sup> for Europe which aims at strengthening the competitiveness and sustainability of the entire EU air transport value chain, and places strong emphasis on the external dimension. Referring to the challenges stemming from the emergence of new third-country airlines and airports, the [strategy](#) underlines that 'Europe must be a leading player in international aviation' and that 'growth in air traffic in Europe and worldwide needs to be reconciled with maintaining high standards of aviation safety and security, as well as reducing aviation's environmental footprint and contributing to the fight against climate change'.

Recalling that there is no limitation on traffic rights for EU airlines in Europe, provided they have been granted an EU operating licence, the strategy underlines that there are still many obstacles and restrictions when it comes to international services with third countries. European airlines still have limited access to third-country markets, and difficulties in accessing different sources of investment (in particular foreign investments) as well as in merging and creating large fully integrated airline groups without their traffic rights being called into question.

To overcome these difficulties, the strategy advocates the negotiation of comprehensive agreements to improve market access and investment opportunities, to increase Europe's international connectivity and to ensure fair and transparent market conditions for EU airlines. To reach a level playing field on market access, the strategy considers different routes: within the

context of negotiating EU comprehensive air transport agreements (the Commission explicitly says it will negotiate [effective](#) fair competition provisions in the context of the negotiation of such agreements); through action at ICAO; as well as through proposing new EU measures to address unfair practices, in particular by revising Regulation 868/2004 on protection against subsidisation and unfair pricing practices.

The strategy highlights that the EU should also expand bilateral aviation safety agreements (BASA) aiming to achieve mutual recognition of safety certification standards, to promote worldwide trade in aircraft and related products.

On ownership and control provisions, the strategy recalls that global investors are increasingly interested in airlines, while the current international framework contains nationality and control provisions that may hinder investment by non-nationals. In the EU, foreign investment cannot exceed 49 % of ownership of an EU airline, that is, EU Member States or nationals must own more than 50 % of the undertaking, and control must remain in EU hands. In the USA, provisions are much more restrictive, as foreign ownership of voting shares of any [US airline](#) may not exceed 25 %. Considering the financial needs of airlines, the Commission is of the view that the relaxation of ownership and control rules on the basis of effective reciprocity should be pursued, in particular through bilateral air services and trade agreements. It will also look at existing EU provisions, that is, [Regulation 1008/2008](#) on common rules for the operation of air services, to ensure that the application of these provisions is in line with EU law and to bring about more legal certainty for investors and operators.

In the [strategy](#), the Commission specifically proposes:

- that the Council issues authorisations to negotiate comprehensive EU-level air transport agreements with China, the Association of South-east Asian Nations (ASEAN), Turkey, Saudi Arabia, Bahrain, the United Arab Emirates (UAE), Kuwait, Qatar, Oman, Mexico and Armenia;
- that the EU negotiates further bilateral aviation safety agreements with important aeronautical manufacturing countries such as China and Japan; and
- to launch new aviation dialogues in 2016-2017 with important aviation partners, such as India.

In the area of safety and security, the EU will continue to promote high international standards and the Commission will launch an in-depth evaluation of certain existing legislation.<sup>10</sup> It will try to lighten the burden of security checks on passengers through the use of new technology and by applying a risk-based approach.<sup>11</sup>

On the environmental side, while the EU has set up an Emissions Trading Scheme (EU ETS) to address greenhouse gas emissions across its territory, it will continue to push for a global solution to greenhouse gas emissions from international aviation within the framework of ICAO. The EU will, in particular, fully support ICAO's activities on safety and security standards, air traffic management and the environment. It will endeavour, through Single European Sky research work (SESAR),<sup>12</sup> to gain an influential role at a global level, in particular in the ICAO's harmonisation activities.

## Implementation of the aviation strategy

Since the publication of the strategy, the EU has moved forward in delivering some of the actions contemplated in the external field, whether in terms of negotiations or adoption of new legislation. In March 2016, the Council authorised the Commission to open negotiations with China and Japan to conclude Bilateral Air Safety Agreements ([BASA](#)), and in June 2016 to open negotiations with ASEAN, Turkey, Qatar and the UAE to conclude EU-level [aviation agreements](#).

By the end of 2017, the EU had concluded the negotiations for a new aviation agreement with [Armenia](#) which was [initialled](#) on 24 November 2017, and with [Tunisia](#), [initialled](#) on 11 December 2017. Both agreements should improve market access and connectivity, bring about

more choices and lower fares and establish a common regulatory framework, notably in the area of safety and security.

In March 2019, the European Commission and [Qatar](#) initialled an aviation agreement<sup>13</sup> – the first of its type between the EU and a Gulf country. The agreement, goes beyond traffic rights, and will provide a single set of rules, high standards and a platform for future cooperation on issues such as safety, security or air traffic management. It also commits both parties to improve social and labour policies.

More specifically, the agreement notably includes:

- A progressive market opening over a period of five years to Member States without fully liberalised direct connections for passengers (i.e. Belgium, Germany, France, Italy and the Netherlands).
- Provisions on fair competition with enforcement mechanisms to avoid distortions of competition and abuses that negatively affect the operations of EU airlines in the EU or in third countries.
- Transparency provisions in line with international reporting and accounting standards.
- A forum for meetings addressing all issues, plus mechanisms to quickly resolve any disputes.
- Provisions facilitating business transactions, including the removal of existing obligations for EU airlines to work through a local sponsor.

In May 2019, the EU and [China](#) signed a BASA and a horizontal aviation agreement. The main objective of the former is to boost worldwide trade in aircraft and related products by removing unnecessary duplication of evaluation and certification activities for aeronautical products. The BASA will also support cooperation between the two parties in terms of a high level of civil aviation safety and environmental compatibility.

The horizontal agreement implies China's recognition of the principle of EU designation and that all EU airlines will be able to fly to China from any EU Member State with a bilateral air services agreement with China under which unused traffic rights are available. (See section on horizontal agreements). To conclude the agreement, both parties must now to proceed with their respective internal procedures.

In July 2019, the EU also reached an agreement with [Japan](#) on civil aviation safety.

In the field of air security, on 6 February 2018, the EU and Singapore signed a [One-Stop Security](#) (OSS) arrangement that will allow passengers, their cabin luggage and hold baggage, coming from Singapore (Changi) airport to transfer onto a connecting flight in the EU/ European Economic Area (EEA) airports, without being compelling to undergo security checks for a second time. This mutual recognition of security screening rules should allow for smoother travel and less duplication.

### **Aviation CO<sub>2</sub> emissions**

In October 2016, the ICAO reached an [agreement](#) to tackle international aviation emissions. Its key component is the establishment of a global market-based measure in the form of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), to offset CO<sub>2</sub> emissions from international civil aviation above 2020 levels. Voluntary during the pilot and first phase (until 2026), participation will become mandatory for all states in phase II (as of 2027), though some exemptions would apply. The EU has pushed for the adoption of the ICAO global scheme, underlining the need for international civil aviation to contribute to achieving the goals of the 2015 [Paris Agreement](#) on climate change. In [June](#) 2018 and [March](#) 2019, ICAO bodies adopted rules to operationalise the agreement. The EU continues to push its international partners to join the scheme and start offsetting emissions when the voluntary phase begins in 2021. The EU also adopted a [regulation](#) in 2017, extending the existing rules regarding aviation activities in the EU's ETS<sup>14</sup> and preparing to implement a global market-based measure from 2021.

On 8 June 2017, the Commission presented its '[Open and Connected Aviation](#)' package, which included four initiatives, including a legislative proposal for a regulation on safeguarding competition in air transport, repealing Regulation 868/2004 and interpretative guidelines on [ownership and control](#) of EU air carriers. The purpose of the package was to deliver on the European aviation strategy and more precisely to maintain leadership in international aviation, by safeguarding competition and facilitating foreign investment into EU airlines.

Regarding international agreements, the [communication](#) urges the Council to allow the opening of negotiations for further EU comprehensive aviation agreements (Bahrain, China, Kuwait, Mexico, Oman and Saudi Arabia), and to swiftly decide on the signing of the EU Comprehensive Aviation Agreement with Ukraine.

The legislative proposal, aiming to ensure fair competition between Union air carriers and third country air carriers, consists of a tool for ensuring that airlines can compete on the basis of equal opportunities and that EU connectivity can be safeguarded. The scope of the proposal therefore goes beyond existing Regulation 868/2004, which aimed to protect only against subsidisation and unfair pricing practices, evidence of such pricing practices being very difficult to demonstrate. A new major element of the proposal is that it takes account of the obligations contained in international air transport or air services agreements with third countries while Regulation 868/2004 failed to provide for a dedicated EU internal procedure with respect to obligations contained in such agreements.

Interinstitutional (trilogue) negotiations resulted in a provisional agreement on 20 November 2018. According to this [agreement](#), the Commission will be empowered to launch investigations and take a decision on redressive measures if a practice that distorts competition has caused injury or poses a clear threat of injury to an EU air carrier. The redressive measures cannot enter into force before the threat of injury has developed into actual injury. Whether financial or operational, any such measure must be adopted through a Commission implementing act, though operational measures are subject to a stricter procedure. The agreed text was formally adopted by [Parliament](#) on 14 March 2019 and then by [Council](#) on 29 March 2019.<sup>15</sup> This new [regulation](#) entered into force on 30 May 2019. It endows the EU with an effective [tool](#) to address unfair practices and competition from non-EU carriers, securing a wide choice of flights and affordable prices.

## Views of the European Parliament and Economic and Social Committee

Parliament has adopted several resolutions<sup>16</sup> on the external dimension of EU aviation.

In its 7 June 2011 [resolution](#) on international air agreements under the Lisbon Treaty, Parliament underlined the criteria and procedure to be followed for it to give its consent.<sup>17</sup> It pointed out that it would, when assessing comprehensive agreements, focus on the extent to which 'restrictions on market access and investment opportunities are relaxed in a balanced manner; incentives are provided to maintain and enhance social and environmental standards; adequate safeguards are provided for data protection and privacy; mutual recognition of safety and security standards are included; and a high level of passenger rights is ensured'. Regarding the procedure, Parliament stressed that it needs to follow the process from the beginning.

Parliament considered, in its [resolution](#) of 2 July 2013, 'that bilateral air service agreements are not always the most appropriate solution to combat market restrictions or unfair subsidies', and that a comprehensive EU external aviation policy has not been achieved despite recent efforts.

It also underlined, in a [resolution](#) of 11 November 2015 on aviation, the strategic importance of negotiating comprehensive aviation agreements with major EU trading partners, and urged 'the Commission to seek comprehensive mandates from the Member States as soon as possible, giving priority to the Gulf Cooperation Council countries'. Highlighting the loss of competitiveness of EU airlines and airports vis-à-vis subsidised third country carriers and airports, Parliament called for a

proactive policy to ensure a level playing field on ownership and encouraged Member States 'to improve their national infrastructure to allow their airlines to compete on more favourable terms'. It also recommended global environmental solutions to reduce CO2 emissions from international aviation.

In its [resolution](#) of 16 February 2017, Parliament welcomed the Commission's proposal to revise Regulation 868/2004 but also stressed 'that neither an unacceptable trend towards protectionism, nor, on their own, measures to ensure fair competition can guarantee the competitiveness of the EU aviation sector'. It also welcomed the initiative to negotiate air transport agreements and bilateral aviation safety agreements with third countries at EU level, recalling that new agreements should be correctly implemented and enforced by all parties and should include a fair competition clause on the basis of international standards (ICAO, International Labour Organization).

The European Economic and Social Committee (EESC), in its [opinion](#) on an integrated EU aviation policy of 17 September 2015, followed the same lines as the Parliament, underlining that 'the Commission's strategy for EU aviation should be driven by a compelling vision of how best to promote European competitiveness without distorting competition or undermining the social and labour relations', and urged the Commission 'to ensure that comparable international norms and standards will be applied to EU and non-EU competitors'.

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## ENDNOTES

- <sup>1</sup> The 'Chicago system' included, in particular, the International Air Services Transit Agreement ('two freedoms agreement') and the International Air Transport Agreement ('five freedoms agreement'), which was only signed by a very limited number of states.
- <sup>2</sup> [Traffic rights](#) are market access rights that are expressed geographically in the freedoms of the air relating to traffic (see box).
- <sup>3</sup> A code-share [agreement](#) allows for a flight operated by one carrier also to be marketed by another carrier, under that other carrier's code and flight number. The carrier operating the flight is known as the 'operating carrier', while the carrier marketing the flight under its own code is known as the 'marketing carrier'. Many major airlines have code-sharing partnerships. [Code-sharing](#) is a means to strengthen their market and is also widely used within the context of airline alliances.
- <sup>4</sup> [L'Union européenne et le droit international de l'aviation civile](#), V. Correia, 2014, p. 99.
- <sup>5</sup> V. Correia, 2014, op. cit, pp. 111-112.
- <sup>6</sup> Cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98, and C-476/98 against the United Kingdom, Denmark, Sweden, Finland, Belgium, Luxembourg, Austria and Germany.
- <sup>7</sup> This includes a 'bloc to bloc' agreement with one regional organisation, the West African Economic and Monetary Union (UEMOA) covering eight [States](#).

- <sup>8</sup> For details on EU international air transport agreements, see the European Commission, DG MOVE, [Atlas of the Sky](#) website, which displays a map with the type and status of the agreement concerned by country.
- <sup>9</sup> The new aviation strategy consists mainly of a [communication](#) on 'An Aviation Strategy for Europe' (accompanied by a Commission [staff working document](#)); a [proposal](#) for a revision of the Aviation Safety Regulation, including the introduction of provisions on drones; and recommendations to the Council to [issue](#) authorisations to negotiate further agreements with third countries.
- <sup>10</sup> [Regulation 2111/2005](#) and [Regulation 996/2010](#).
- <sup>11</sup> The EU will push for a one-stop security approach with key trading partners to reduce the cost of security. The one-stop security concept allows passengers to undergo security controls at the point of origin and then no further security controls are required at transfer points.
- <sup>12</sup> [SESAR](#) is the technological pillar of the [Single European Sky](#) initiative that seeks to modernise and harmonise air traffic management systems through innovative technological and operational solutions.
- <sup>13</sup> By [September](#) 2019, negotiations on comprehensive agreements were ongoing with the Association of Southeast Asian Nations (ASEAN), Azerbaijan, Oman, and Turkey (though in this latter case negotiations were suspended by the Council in July 2019) as well as pending signature with Armenia, Qatar, Tunisia and Ukraine.
- <sup>14</sup> While in the EU, [emissions](#) from all flights from, to and within the European Economic Area (EEA) are included in the EU emissions trading system (EU ETS), the EU ETS requirements for flights to and from non-European countries were suspended to allow time for international negotiations with a view to the setting up of a global solution for international aviation. To avoid a [legal](#) gap, the EU adopted a [regulation](#) that maintains current limitations to the scope of the EU ETS, notably by prolonging the derogation for extra-EEA flights until 31 December 2023.
- <sup>15</sup> [Greece](#) could not support the final compromise and voted against.
- <sup>16</sup> In particular, the [resolution](#) of 7 June 2011 on international air agreements under the Treaty of Lisbon; [resolution](#) of 2 July 2013 on EU external aviation policy – Addressing future challenges; [resolution](#) of 11 November 2015 on aviation; [resolution](#) of 15 December 2016 on international aviation agreements; [resolution](#) of 16 February 2017 on an aviation strategy for Europe.
- <sup>17</sup> In line with [Article 218](#) TFEU, Parliament's [consent](#) is required for the conclusion of international agreements covering fields where the ordinary legislative procedure applies, whereas prior to the entry into force of the Lisbon Treaty, Parliament was only consulted.

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