

Measure 25: Air service agreements with third countries

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<p><i>Policy package:</i> 3A: Air transport liberalisation and harmonisation</p>
<p><i>Measure 25:</i> Negotiation and implementation of air services agreements between Member States and third countries</p>
<p><i>What is the problem being addressed ?</i> More than a decade is now passed since the adoption of the aviation measures known as the “Third Package”, which applied the principles of the Single Market programme to the aviation industry. However, although the Community aviation market is a lively and innovative place, competition in the segment of international flights to and from the EU was more limited, remaining subject to traditional bilateral aviation agreements. Existing bilateral air service agreements (ASAs) come in a variety of forms, ranging from the very liberal to the very restrictive. Some allow open competition between multiple carriers from the two parties, while others virtually eliminate competition between operators. Since the internal market was implemented in the Community, Member States have continued to conclude bilateral ASAs in the traditional mould: most have a considerable number of ASAs with foreign countries – on average there are 60-70 per Member State. Overall, the web of bilateral ASAs is highly complex and, on the whole, very restrictive compared with the international trade rules that govern other service industries such as maritime transport, telecommunications or banking. The final result is that the Commission does not have the same effective competition enforcement powers in the field of international traffic to and from the EU as it has for internal air transport.</p>
<p><i>Measure’s costs and/or benefits:</i> Additional information on the costs of the proposed Regulation is needed.</p>
<p><i>Legislative implementation at the EU level:</i> Against the background described above, the European Court of Justice on 5 November 2002 ruled in the cases against the eight Member States that have signed “open sky” type agreements with the US. The European Court of Justice judgements have implications not only for the eight specific agreements with the US, but for all other bilateral ASAs to which Member States of the European Union are party. To date, most agreements have been negotiated with the aim of securing traffic rights for a single national flag carrier. In some Member States there are one or two smaller international carriers, but few Member States have had to face the problem of allocating the traffic rights they have negotiated between different airlines. Now the rulings of the European Court of Justice have changed all this, because they confirm that there is an obligation on Member States not to discriminate between companies on the basis of ownership as long as they have an establishment of some form on their territory. In response to the judgements of the Court of Justice in the “open skies” cases of 2002, this measure establishes a legal framework for ongoing negotiations and assigns the appropriate competences to the Community and its Member States in the sphere of international aviation relations. Member States shall not enter into any arrangements that eliminate the possibility for more than one Community carrier to provide service in between its territory and a third country, either in respect of the entire air transport market between the two parties or on the basis of specific city pairs. Member States shall notify the Commission in writing their intentions of negotiation bilateral agreements and following notification the Commission shall examine whether the draft agreement is compatible with Community law and the objectives of the Community in this field. Currently the measure is still at the stage of proposal for a European Parliament and Council Regulation on the negotiation and implementation of air service agreements between Member states and third countries (COM 2003/94 final). According to the European Parliament report adopted in the plenary Strasbourg session of 1-4 September 2003, the greater part of the Commission proposal was welcomed, but the general feeling of the Members of the European Parliament (MEPs) was that the Commission was going too fast. Therefore, an amendment</p>

was adopted calling for a three-stage plan:

- in the first stage, the Commission should negotiate a Community agreement on an open aviation area with the United States;
- secondly, the Commission should enter into negotiations with third countries which have liberalised their airspace or are willing to do so;
- thirdly, negotiations should be opened with third countries which have carried out no liberalisation.

What are the objectives ?

The key objectives of the proposed Regulation are:

- To bring agreements in line with Community law, maximising the potential of the Single Market.
- To take forward an agenda to favour international reform, aimed at stimulating air services and increasing international investment in the industry.
- To ensure that effective competition is preserved and promoted in order to spread the economic benefits to consumers.
- To guarantee high standards of safety, security, environmental protection and passenger protection in the European countries and promoting them worldwide.

The overarching goal is to complete air transport market liberalisation and harmonisation, including international traffic to and from the EU, and to strengthen the market opportunities for the Community carriers, while continuing to high standards of safety, security and environmental protection. The larger Community carriers compare well with their global competitors in terms of their financial situation and their substantial long haul business. But in the global market, the absolute size of an airline's network can be important and the big US airlines are much bigger than their EU counterparts in terms of passenger numbers (40.000.000 for EU number 1 – Lufthansa – and 110.000.000 for US number 1 – American Airlines), the number of hubs they operate, and their aircraft fleets (800+ aircraft for American Airlines against 280 for British Airways – the EU's largest fleet).

The measure shall contribute to remove the most traditional ASAs which have strict clauses covering ownership and control and prevent any merger and acquisition activity involving Community carriers with international networks. They also prevent the development of Community carriers with multiple hub systems, similar to those operated by American carriers.

Interactions with other WP measures:

By providing a more flexible regulatory environment, the development of a common external policy will not only facilitate consolidation and the constitution of stronger companies, but will also facilitate a more efficient use of airport capacity. In this sense the measure will interact positively with the other White Paper measures aimed to improve the management of airport capacity (Measures 20, 21)

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Output indicators:

The output of the measure (considering ASAs as legal acts) can be monitored using the following indicators:

- Number of ASAs (new, modification or application) notified by the Member States and in line with the Community law / Total number of ASA per Member State
- Number of Community air service agreements.
- Reduction in the absolute number of Member States' ASAs (due to entering into force of Community agreements)

Outcome indicators: intermediate impacts on transport markets

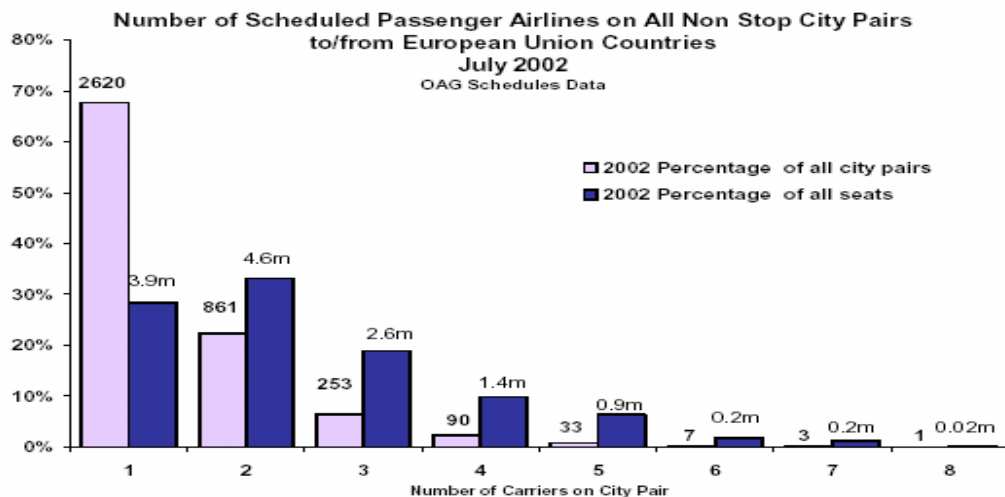
The measure is expected to have a strong impact on:

- Competition on international routes from/to the EU territory

An examination of the “number of airlines operating scheduled services on a city pair” can provide an indication of competition on single routes. The examination may include both the number of airlines and the number of available seats (the latter is a measure of airline passenger capacity and is the number of seats on an aircraft multiplied by the frequency). This analysis shall be done on the pairs between EU cities

and cities outside EU. The change in the competitive situation of EU city pairs is analysed below as example (DG TREN, 2003).

In July 2002, there were a total of 3.868 city pairs operated to, from and within the European Union. A clear majority of these routes (68%) were operated by just one carrier. However, the proportion of seats on these monopoly routes was much lower at 28,5%. This is because, typically, “thick” routes are attractive enough to sustain more than one carrier. In contrast, it may not be economic for more than one carrier to operate a “thin” route. There were 134 city pairs operated by four or more airlines. Although only around 3,5% of the total number of city pairs, these markets with a high degree of competition accounted for 19,5% of all seats.



- Airline Ownership

An impact of liberalised skies within the EU is the removal of restrictions on airlines registered in one EU country being owned by a company based in another EU country. So far a barrier to the merger/acquisition of EU airlines from different member states has been the issue of traffic rights for services outside the EU, which have been restricted to airlines whose legal entity is established in the member states. This has meant that cross-border ownership of an airline would result in traffic rights for non-EU flying being lost. Measure 25 should remove this barriers, and this aspect can be monitored observing the “number of mergers and acquisitions” between Community carriers. Nevertheless, it is likely to be some time before all bilateral agreements are renegotiated in a non-discriminatory fashion, allowing the merger to increase.

In addition to the above mentioned indicators, whenever Community agreements will enter into force covering international traffic with important world regions – as the United States or Japan and Far East – it will be interesting to monitor the trends in the averages fares and yields on the routes concerned, to show if the expected prices reductions are achieved. Finally, it may be of interest to monitor the behaviour of a specific market segment, that of parcel services, to see if the Community agreements will reduce the current unbalance in favour of American carriers.

Outcome indicators: final impacts on transport users and non users

The consolidation of the market and the enforcement of Community law on international traffic to and from EU will result in more competition, lower fares and increasing traffic volumes. This is expected to have:

- positive effects for air transport users (e.g. time savings due to the wider supply of services);
- adverse impacts on the environment, due to the higher volumes of air traffic which is by far one of the most polluting modes of transport. However, this adverse effect might be mitigated if the new ASAs contain concrete provisions allowing to counterbalance the impact from higher traffic volumes. For instance, it could be possible to change the practice of demanding aircraft fuel to be exempt from excise duties currently common in the ASA, which presently prevent the Community from achieving its objectives as regards aircraft fuel taxation, equal treatment of transport modes and of internalisation of external environmental costs. Indeed, the Community has already introduced with the new Energy

products Directive (see Measure 62) the possibility, from 1 January 2004, for Member States to introduce taxation of commercial aviation fuel used on domestic services and, for those member states that did so, bilateral taxation of fuel used for services between those countries. This provision should be extended to the new ASAs, in order to broaden the scope of air transport taxation.