



European Economic and Social Committee

TEN/383
Trans-Atlantic
relations in the air
transport sector

Brussels, 11 June 2009

OPINION

of the
European Economic and Social Committee
on the
Trans-Atlantic relations between the EU and North American countries in the air transport sector – a true regulatory convergence
(exploratory opinion)

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Rapporteur: **Jacek Krawczyk**
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On 15 December 2008, the Czech presidency of the European Union wrote to the European Economic and Social Committee under Article 262 of the Treaty establishing the European Community requesting an exploratory opinion on

Trans-Atlantic relations between the EU and North American countries in the air transport sector – a true regulatory convergence.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 May 2009. The rapporteur was Jacek Krawczyk.

At its 454th plenary session, held on 10 and 11 June 2009 (meeting of 11 June 2009), the European Economic and Social Committee adopted the following opinion by 143 votes to 3 with 2 abstentions.

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1. **Conclusions**

- 1.1 For intercontinental air passenger traffic, the relation between the EU and North America is by far the most important. More than 60 million passengers and over 3.1 million tons of freight were carried in 2007. This makes it by far the most significant air traffic flow between the world regions.
- 1.2 EU – Canada and EU – US have entered into negotiations on creation of Open Aviation Areas (AOO). The Open Aviation Area concept extends full freedom of the air to both parties.
- 1.3 On 30 April 2007, the Commission signed the text of a comprehensive first stage Air Transport Agreement (first stage agreement) with the United States of America.
 - 1.3.1 Even though the first stage agreement was a tremendous success it did not accomplish its prime objective – the creation of an OAA.
- 1.4 On 30 March, 2009, the Transport Council adopted a political position approving the signature of the EU – Canada Agreement. On 6 May 2009 at the EU-Canada summit in Prague the final text of this agreement has been marked.
 - 1.4.1 The EU – Canada Agreement is the first agreement of the EU which achieves a complete opening of the markets, for traffic rights and investment, and, at the same time, reaching an unprecedented level of regulatory convergence and cooperation between the authorities.

- 1.4.2 EESC welcomes the EU – Canada Air Transport Agreement as the first fully following new development of the EU external policy in line with the Council conclusions of 2005.
- 1.4.3 EESC strongly supports an effort of the Commission to achieve similar results with the EU – US second stage negotiations.
- 1.5 EU – US second stage negotiations, which started in 2008, shall by virtue of Article 21 of the first stage agreement include the following items of priority interest to one or both parties: further liberalisation of traffic rights, additional foreign investment opportunities, effect of environmental measures and infrastructure constraints on the exercise of traffic rights, further access to the Government-financed air transportation, and provision of aircraft with crew. There is an expectation from the European stakeholders, that second stage negotiations should enhance further regulatory convergence.
- 1.5.1 The EESC wishes to remind that time is of the essence and empowered representatives from the EU and US side should restart the negotiations as soon as practically possible. If no substantial progress is made by November 2010, the EU can decide to suspend certain rights granted to US airlines.
- 1.5.2 Labour issues should receive a special attention as important part of the second stage negotiations. Support of the employees is very important. EESC encourages the second Labour Forum, which will be held in Brussels in June 2009, to produce tangible results in a form of recommendations concerning important social issues.
- 1.5.3 Implementation of an Open Aviation Area will increase traffic between EU and US what may cause some negative consequences to the environment. EESC recommends to the Commission to undertake strategic environmental impact analysis of the potential agreement.
- 1.6 The EESC priorities for the second stage agreement – it should deliver the essential ingredients of an OAA:
- removal of restrictions on the ownership and control,
 - removal of all discriminatory market practices,
 - the right of establishment, so as to permit cross-border mergers, acquisitions and new entry,
 - as much regulatory cooperation, and convergence, as can sensibly be achieved,
 - removal of unnecessary travel difficulties for the EU citizens due to excessive security measures enforced by the US.
- 1.7 The EESC strongly encourages TEC to support second stage negotiations by giving them high political priority and enabling consultations through Transatlantic Labour Dialog (TALD) and Transatlantic Environmental Dialog (TAED) as well as other dialogues officially affiliated with TEC.

1.8 The UE – Canada Aviation Agreement should be the reference for the second stage EU – US Agreement. Change is possible – that is the main message from EU – Canada negotiations.

2. **Introduction**

2.1 According to EUROSTAT data for intercontinental air passenger traffic, the relation between the EU and North America is by far the most important. More than 60 million passengers were carried in 2007 (5,6% growth in relation to 2006; 22,3% of extra EU-27 traffic).

2.2 According to IATA on the North Atlantic route between North America and Europe (including Russia), passenger traffic increased in 2007 by 7,6% to 57.3 million passengers (in relation to 2006). This makes it by far the most significant air traffic flow between the world regions.

2.3 In 2007 between North America and Europe over 3.1 million tons of freight was carried, which made it one of the three main global transport routes.

2.4 The reasons for the scale of the EU – US aviation market are: geographical, cultural, as well as economic. In 2007 EU and US alone counted for 40% of the global trade and 60% of the global FDI. No doubt that aviation has contributed to the development of this largest trade and investment relationship in the world. The relationship between EU and Canada is also very strong (EU being the second largest direct investor in Canada).

2.5 Broad economic relationship between EU and North America is supported by closer regulatory cooperation. Transatlantic Economic Council (TEC) established in 2007 provides high-level forum for EU – US discussions on strategic economic matters with the aim for more regulatory convergence and enhancement of trade and investment. Preliminary talks on the possibility of a comprehensive EU – Canada trading agreement are currently under way.

2.6 This is in the context of such regulatory and economic cooperation, that EU – Canada and EU – US have entered into negotiations on creation of Open Aviation Areas (AOO). Study undertaken on behalf of the Commission (conducted before the current crisis) concluded that an EU – US Open Aviation Area would, over the first 5 years, stimulate more than 25 million additional EU – US passengers' growth, generate more than € 15 billion benefits for consumers and create 80,000 new jobs in the EU and the US combined. It would be possible due to:

- removing output constraints (existing at the time of bilateral air services agreements),
- facilitating improved cooperation between airlines through deeper alliances,
- reducing airline costs due to the increased pressure of competition.

2.6.1 Implementation of an Open Aviation Area will increase traffic between EU and US what may cause some negative consequences to environment including: higher emissions, additional waste, increased noise. These and other environmental issues have been addressed in the past but not very successfully.

2.7 An Open Aviation Area concept extends full freedom of the air to both parties, removes restrictions on investment by foreign entities and permits wet leasing of aircraft under non-discriminatory, transparent conditions. It embodies a general commitment to regulatory convergence and to harmonisation of air transport standards in the field of safety, security and environment.

3. **EU – US first-stage negotiations**

3.1 The Commission has initially started negotiating new EU – US aviation agreement on the basis of a mandate agreed at the Transport Council of 5 June 2003.

3.2 On 30 April 2007, the Commission signed the text of a comprehensive first stage Air Transport Agreement (first stage agreement) with the United States of America which is applied since 30 March 2008. This agreement replaced the existing bilateral agreements concluded by Member States.

3.3 The main elements of the EU – US air transport agreement are as follows:

3.3.1 **Market Access**

- "Community carrier" concept permitting EU airlines to operate to the US from any point in the EU;
- Removal of all restrictions on international routes between EU and US;
- Removal of all restrictions on pricing on all routes between EU and US;
- Unlimited code sharing between EU, US and third country airlines;
- Creation of new opportunities for EU airlines to wet-lease aircraft to US airlines for use on international routes between the US and any third country.

3.3.2 **Regulatory Cooperation**

- Security: US has accepted the EU's demand that, it shall take account of the security measures already applied in the EU;
- Safety: procedures for consultation in the event of safety concerns and recognition of the development of safety responsibilities at EU level;
- Joint Committee: establishment of a Joint Committee which would be responsible for resolving questions relating to the interpretation and implementation of the Agreement, including social issues;
- Competition: commitment to promote compatible regulatory approaches;

- Government subsidies and support: recognition that government subsidies can distort competition; Joint Committee should maintain an inventory of issues raised by the two sides; – Environment: recognition of the possibility that US airlines may be subject to taxation of aviation fuel on routes between Member States should two Member States exercise their rights under Community law to withdraw the existing tax exemption.

3.3.3 **Ownership and Control**

- US airlines: guarantees concerning permissible percentage ownership by EU nationals, including possibility to exceed 50% of total equity, guarantee of fair and expeditious consideration of transactions involving EU investment in US airlines;
- EU airlines: right to limit US investments in EU airlines reciprocally to 25% voting equity, acceptance by US of any EU airline owned or controlled by EU or ECAA citizens;
- 3rd country airlines: unilateral acceptance by US of EU ownership and/or control of any airline in the EEA, ECAA, and 18 African countries.

3.3.4 **Other issues**

- Ground handling: traditional provisions guaranteeing access to ground handling services;
- Doing business issues: provisions relating, for example, to the right to establish offices, to maintain staff, and to engage sales agents in the territory of the other Party;
- Computer reservation systems: the US has accepted provisions guaranteeing European CRS providers the right to operate in the US, on which the US has yet to make commitments in the context of the GATS/WTO.

3.4 First stage agreement was an important step towards an OAA. It established important principles for regulatory cooperation, and set up the Joint Committee to oversee its progress. It contributed to the removal of some barriers to market access.

3.5 Even though the first stage was a tremendous success it did not accomplish its prime objective – the creation of an OAA. In particular the first stage agreement is imbalanced in terms of market access granting US airlines unlimited 5th freedom rights within the EU, without EU airlines enjoying reciprocal rights within the US market (5th freedom rights grant airlines right to take traffic from their home country to the other Party and further to third countries). Selected market practices still favour US airlines, (i.e. the Fly America program). Finally it permits US investors to own a greater share of the voting stock of EU airlines (49%) than EU investors can of US airlines (25%).

3.6 Both sides agreed to carry on the second stage of negotiations beginning 60 days after first agreement coming into force.

4. **EU – Canada Air Transport Agreement**

4.1 After concluding the first-stage agreement with the US, Commission received a negotiating mandate from the Council in early October 2007 to launch negotiations on the EU – Canada Air Transport Agreement. After four rounds of negotiations, and following the instruction given by the 2008 EU – Canada summit in Quebec, the draft EU-Canada aviation agreement was initialled by the Commission on 30 November 2008. On 30 March 2009, the Transport Council adopted a political position approving the signature of the EU – Canada Agreement. On 6 May 2009 at the EU-Canada summit in Prague the final text of this agreement has been marked.

4.2 The main features of the draft agreement are as follows:

4.2.1 Regulatory cooperation:

- one-stop security and close cooperation,
- strong article on environment cooperation: agreement on the importance of cooperation in this field and the freedom of the parties to take measures,
- explicit agreement on the importance of social issues, cooperation on social matters through the Joint Committee,
- role of the Joint Committee to oversee implementation of the agreement,
- mutual recognition of safety standards and close cooperation,
- trade mechanism allowing for measures to be taken in case of discriminatory practices and unfair treatment.

4.2.2 Traffic rights and investment: agreement foresees a gradual opening of the traffic rights limitations and the investment and control system in four phases in:

- in the first phase, all limitations existing for traffic between the EU and Canada will be lifted,
- in the second stage Canadian side opens investment in its airlines up to 49% and then Canadian airlines will receive further traffic rights,
- in the third stage both sides allow airlines of the other party to establish in their respective territories, the airlines will receive the right to take traffic from their home country to the other Party and further to third countries (full 5th freedom rights),
- the fourth stage – right to own and control 100% of airlines of the other Party and right of Cabotage.

4.3 The EU – Canada Agreement is the first agreement of the EU which achieves a complete opening of the markets, for traffic rights and investment, and, at the same time, reaching an unprecedented level of regulatory convergence and cooperation between the authorities.

4.4 EESC welcomes the EU – Canada Air Transport Agreement as the first fully following new development of the EU external policy in line with the Council conclusions of 2005.

4.5 EESC strongly supports an effort of the Commission to achieve similar results with the EU – US second stage negotiations.

5. **EU – US second stage negotiations**

5.1 Second stage negotiations shall by virtue of Article 21 of the first stage agreement include the following items of priority interest to one or both parties:

- further liberalisation of traffic rights,
- additional foreign investment opportunities,
- effect of environmental measures and infrastructure constraints on the exercise of traffic rights,
- further access to the Government-financed air transportation, and
- provision of aircraft with crew.

5.2 As consultation process shows, there is an expectation from the European stakeholders, that the second stage should enhance further regulatory convergence.

5.3 It is possible that the parties might be able to achieve more progress in the second stage in the fields of cooperation initiated in the first stage such as:

- Security Cooperation: in this field more work is necessary to achieve full mutual acceptance of each party's security measures,
- Safety: separate draft EU – US agreement has been agreed, but delayed due to the US concerns about foreign repair stations and EASA fees and charges,
- Environment: both sides shall explore much closer alignment on environmental issues during the second stage,
- Competition: further progress is very important, but it might be difficult because of the different procedures in place in the EU and US,
- Joint Committee: in the light of the experience of the first stage agreement the Joint Committee should be given more powers to take action on regulatory matters associated with issues such as: "doing business" or government subsidies and support.

6. **Labour issues**

6.1 Labour issues should receive a special attention as important part of the second stage negotiations. In particular, the promising "EU – US Aviation Forum on Liberalisation and Labor: past, present and future" held in Washington DC in December 2008 should be further elaborated and its outcome taken into account as much as possible in areas such as: collective

agreements, individual rights as regards contracts, working time, vocational training, social benefits and trade union representation.

6.2 EESC encourages the second Labour Forum, which will be held in Brussels in June 2009, to produce tangible results in a form of recommendations concerning important social issues related to future implementation of an OAA. Support of the employees is very important for the successful implementation of second stage negotiations.

6.3 Transatlantic Labour Dialog (TALD) should become involved in the second stage negotiations. The EESC in its opinion on "Transatlantic relations: How to improve the participation of civil society"¹ expressed strong support for reestablishment of the TALD as a part of institutionalised dialogue between the EU and US. The EESC also recommended enlarging the advisory group to the TEC by adding TALD and Transatlantic Environmental Dialog (TAED).

7. **The challenge of timing**

7.1 As it was initially agreed by the parties of the first stage agreement there is a timetable for the second stage negotiations to be concluded:

- PHASE 1. (May 2008 – March 2009). Start of the negotiations;
- PHASE 2. (March 2009 – November 2010). Formulation of a functional US administration decision on the possible suspension of rights;
- PHASE 3. (November 2010 – March 2012). Decision on the possible suspension of traffic rights – possible implementation in March 2012.

7.2 If no substantial progress is made by November 2010, the EU can decide to suspend certain rights granted to US airlines. The EESC wishes to remind that time is of the essence and empowered representatives from the EU and US side should restart the negotiations as soon as practically possible.

8. **EESC priorities for the second stage agreement**

8.1 The second stage agreement should deliver the essential ingredients of an OAA:

- removal of restrictions on the ownership and control of EU and US airlines by EU and US investors. Removing the current restrictions would be entirely consistent with the Framework Agreement concluded at the EU/US summit in April 2007 which called for the removal of unnecessary investment barriers between the EU and US;
- removal of all discriminatory market practices, in particular the Fly America program;

¹ CESE 638/2009.

- the right of establishment, so as to permit cross-border mergers, acquisitions and new entry;
 - as much regulatory cooperation, and convergence, as can sensibly be achieved,
 - addressing labour issues arising as a result of the first stage agreement implementation,
 - removal of unnecessary travel difficulties for the EU citizens due to excessive security measures enforced by the US.
- 8.2 Second stage negotiations – because of its importance – should be given the highest attention by including into the agenda of TEC. The EESC strongly encourages TEC to support second stage negotiations by giving them high political priority and enabling consultations through TALD and other dialogues officially affiliated with TEC.
- 8.3 EESC recommends to the Commission to undertake (at the beginning of second stage negotiations) strategic environmental impact analysis. Strategic impact analysis identifying potential negative consequences to the environment would help to eliminate or minimize those negative effects throughout the EU – US negotiations.
- 8.4 The UE – Canada Aviation Agreement should be the reference for the second stage EU – US Agreement. Change is possible – that is the main message from EU – Canada negotiations.
- 8.5 Successful implementation of the EU – Canada agreement and successful completion of the EU – US second stage negotiations may have positive influence on further developments of EU-Latin America’s countries air transport agreements.
9. **The international aspects of the possible agreement**
- 9.1 Because of the weight of the two respective markets, EU – US Agreement has the potential to lead to a new, post-Chicago, era in aviation.
- 9.2 By forming an “oasis” of regulatory convergence and openness, also open to newcomers, the EU – US Agreement has the potential to substitute the 1944 Chicago Convention by spreading to other, like-minded, States, eventually encouraging more and more countries to revise their policies in order to benefit from the principles of this agreement.

Brussels, 11 June 2009.

The President
of the
European Economic and Social Committee

Mario Sepi
