

DEVELOPMENT OF THE EU'S EXTERNAL AVIATION POLICY

International aviation has traditionally been governed by bilateral agreements between individual countries which have typically restricted the number of airlines that may fly as well as the routes on which they can operate and with what capacity (e.g. how many weekly frequencies). Bilateral agreements have also traditionally been restricted in the sense that a given State is only allowed to designate airlines which are majority owned and controlled by that State or its nationals.

➤ **In 2002**, the European Court of Justice ruled that bilateral aviation agreements of Member States with third countries were in breach of fundamental provisions of the EU Treaty ("freedom of establishment") as they did not allow airlines from other Member States to benefit from the provisions of those agreements. For example, a German airline established in France could not benefit from the traffic rights accorded in the agreement between France and the United States. These rights were only available to French airlines.

Following the court's judgement, the EU developed an external aviation policy to restore legal certainty to the bilateral agreements including by negotiating at EU-level so-called Horizontal Agreements with partner countries which has allowed amending all bilateral agreements that EU Member States have with a third country.

➤ **In 2005**, the EU took further steps to extend its external aviation policy beyond its internal borders. This policy has been based on three pillars.

First, the bilateral agreements that are not in line with EU law need to be amended to ensure legal certainty and to put all EU airlines on an equal footing for flights to countries outside the EU. Since 2002, some 50 Horizontal Agreements have been negotiated while many more third countries have amended their bilateral agreements with EU Member States directly with individual Member States. Today, more than 120 countries in the world recognises the principle of EU designation and a total of more than 1000 bilateral air services agreements between Member States and third countries have been brought into conformity with EU law.

Second, the EU is working to develop a Common Aviation Area with neighbouring countries to the South, South-East and East of the EU through a parallel process of gradual

market opening and regulatory harmonisation towards the EU aviation legislation and regulation.

Third, the EU is negotiating comprehensive agreements to integrate the EU aviation market with those of its key international trading partners by enhancing and normalising aviation relations through a combination of market opening, removal of investment barriers (airline ownership), regulatory cooperation and convergence and resolving "doing business issues".

➤ **In 2012**, the European Commission issued a Communication on the "*EU's external aviation policy – addressing future challenges*" in which stock was taken of progress in implementing the EU's external aviation policy and new challenges in the global aviation market were described and measures to address them were proposed including proposals for a more ambitious EU external aviation policy.

The 2012 Communication, which has been endorsed by the Council, stressed the importance of aviation for the EU's economy, growth and jobs and recovery after the financial crisis and serves as guidance for policy-making, action and external aviation relations both at EU and Member State level. Its main aims are to liberalise market access to third countries while ensuring regulatory convergence and a level playing field for open and fair competition in international aviation.¹

*European Commission - DG MOVE.E.1
(November 2015)*

¹ "The EU's External Aviation Policy - Addressing Future Challenges", COM(2012) 556 final; Council conclusions on The EU's External Aviation Policy of the 3213th TTE Council meeting, 20 December 2012.