

**TOWARDS THE COMMON AVIATION AREA  
OF THE EUROPEAN UNION:  
HARMONIZATION OF UKRAINIAN LEGISLATION**

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*'Whatever action a great man performs, common men follow.  
And whatever standards he sets by exemplary acts, all the world pursues.'*  
*Bhagavad Gita, 3.21*

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## **ABBREVIATIONS and ACRONYMS**

AA	Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand
A/C	Aircraft
ACU	Air Code of Ukraine
AEA	The Association of European Airlines
AMCU	The Antimonopoly Committee of Ukraine
ANS	Air Navigation Services
ANSP	Air navigation service providers
API	Advance passenger information
ARS/GDS	Automated reservation system / global distribution system
ATM	Air Traffic Management
BASA	Bilateral Air Service Agreement
BIA	Boryspil International Airport State Enterprise
BSP	Billing and Settlement Plan
CAA	Civil Aviation Authority
CAA	Common Aviation Area
CJEU	The Court of Justice of the European Union
CMU	The Cabinet of Ministers of Ukraine (Government of Ukraine)
EaP	The Eastern Partnership
ECAA	The European Common Aviation Area
EC	European Council
ECAC	European Civil Aviation Conference
ECJ	The European Court of Justice
EMAA	The Euro-Mediterranean Aviation Agreement
EMS	The environmental management system
ENP	European Neighborhood Policy
EU	The European Union
EUROCAE	The European Organization of Electronic Civil Aviation Equipment
EUROCONTROL	The European Organization for the Safety of Air Navigation
FAB	Functional airspace block
IATA	The International Air Transport Association
IATAN	The International Travel Agents Network



IAC	The Interstate Aviation Committee
ICAO	International Civil Aviation Organization
IGO	International intergovernmental organization
JAA	Joint Aviation Authorities
JAR	Joint Aviation Requirements
MTOM	Maximum Take-Off Mass
NAAs	National aviation authorities
NATO	The North Atlantic Treaty Organization
NSA	National Supervisory Authority
OSAs	Open Skies Agreements
PNR	Passenger name record
PRB	Performance review body
SAP	The Stabilization and Association Process
SARPs	Standards and Recommended Practices
SDR	Special Drawing Rights
SEA	Single European Act
SES	Single European Sky
SES I	The first SES legislative package
SES II	The second SES legislative package
SESAR	Single European Sky ATM Research
TEEC	Treaty establishing the European Economic Community
TFEU	Treaty on the Functioning of the European Union
TRAN	The European Parliament's Committee on Transport and Tourism
TWA	Trans World Airlines
UN	The United Nations
USA	The United States of America
USSR	The Union of Soviet Socialist Republics
WTO	The World Trade Organization

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Council Decision (EU) 2021/1404 of 28 June 2021 on the signing, on behalf of the Union, of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Republic of Tunisia, of the other part.

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The procedure for granting and canceling rights to operate air lines № 607 dated 04/08/17

The procedure for notification of events in the field of civil aviation, consideration of received information, its analysis and taking appropriate measures № 1817 dated 27/12/19.

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# INTRODUCTION

'Close the sky!' These words were a plea shouted loudly to world peace organizations and the entire world, starting on February 24, 2022, in response to an aggressive, illegal, and insidious attack on a sovereign country. With the protection of a closed sky over its territory, Ukraine could swiftly expel aggressive invaders from its land. Unfortunately, it did not happen: the sky was not closed, and Ukraine was forced into a protracted defensive war, resulting in the loss of its citizens' lives.

By signing the Memorandum on Security Guarantees in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons in 1994, Ukraine undertook an obligation to destroy its nuclear arsenal, which at that time was the third largest in the world after the US and the other country (Ukraine's northern neighbor). In return, Ukraine received guarantees regarding the respect for its independence, sovereignty, and existing borders<sup>1</sup>. Furthermore, the other parties to the so-called 'Budapest Memorandum'—the United Kingdom of Great Britain and Northern Ireland, the USA, and another country—reaffirmed their commitment to refrain from using or threatening force against Ukraine's territorial integrity or political independence. They also pledged that none of their weapons would be employed against Ukraine, except in self-defense or as permitted under the Charter of the United Nations.

Ukraine fulfilled its obligations under the 'Budapest Memorandum' within two years of its signing, dismantling approximately 2,000 strategic nuclear warheads inherited from the USSR. By June 1, 1996, Ukraine had delivered its last missile launcher to the receiving country in the north<sup>2</sup>.

The introduction to this dissertation currently starts with these thoughts as the focal point of this extensive research is the examination of international treaties, their legal validity, complete implementation, and primarily, the 'Open Skies' treaty.

The research topic aligns with the strategic course of Ukraine's foreign and domestic policies. Since the early days of Ukraine's independence, the realm of domestic diplomacy has been likened to 'a tunnel with a single shining light at its end – Europe'<sup>3</sup>. Integration into European and Euro-Atlantic structures (European choice) is not only a foreign economic vector, but also a benchmark of values for the entire Ukrainian society.

The first framework agreement between Ukraine and the EU (then still the European Communities) was the Partnership and Cooperation Agreement<sup>4</sup> signed in 1994. In 2008, the

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<sup>1</sup> Memorandum on Security Guarantees in Connection with the accession of Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons. <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280401fbb>

<sup>2</sup> What is the Budapest Memorandum, which never gave Ukraine security guarantees. 21 February 2022. <https://www.bbc.com/ukrainian/news-60462767>

<sup>3</sup> Zlenko, A. (2003). Diplomacy and politics: Ukraine in the process of dynamic geopolitical changes. Kharkiv: Folio (In Ukrainian).

<sup>4</sup> Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine - Protocol on mutual assistance between authorities in customs matters - Final Act - Joint Declarations

EU proposed and subsequently launched the EaP initiative in 2009, which included Ukraine as one of its participants. The initiative aimed to 'create conditions for accelerating political association and economic integration'<sup>5</sup>.

The next step involved conducting negotiations on the AA, which aimed to deepen relations and establish an association between Ukraine and the EU.<sup>6</sup> Despite the completion of negotiations by the end of 2011 and the initialing of the entire text of the AA in 2012, then-President of Ukraine, V. Yanukovich, who was under significant influence of the Ukraine's northern neighbor and pressure at the time, ultimately refused to sign the AA. This refusal caused protests by citizens known as the 'Euromaidan'<sup>7</sup> in Kyiv. After an attempt to suppress them by force, at the beginning of 2014, the protests evolved into the Revolution of Dignity, which, at the cost of hundreds of lives, resulted in the overthrow of V. Yanukovich's regime and the restoration of a democratic constitutional order.<sup>8</sup> Hence, the AA has become a symbol of Ukraine's European democratic choice.<sup>9</sup> In 2014, the AA between Ukraine and the EU was signed and ratified<sup>10</sup> by both the Verkhovna Rada<sup>11</sup> and the European Parliament simultaneously.

An integral aspect of Ukraine's European integration process involves the country's participation in the 'European open sky' through a CAA. In June 2021, the Council of the EU agreed to sign an Agreement on the CAA between Ukraine and the EU, which provides for the opening of the air transport market and new opportunities for both consumers and operators. The Agreement was signed on October 12, 2021. The purpose of this Agreement is to gradually establish a CAA between the EU, its Member States, and Ukraine. This agreement is based on harmonized rules in various areas, including safety, security, air traffic management, environmental standards, consumer protection, computerized reservation systems, and social aspects. The Agreement establishes the rules, technical requirements, administrative procedures, basic work standards, implementation rules that apply between the Parties and the conditions for their implementation.<sup>12</sup>

The process of European integration for Ukraine necessitates a comprehensive analysis and comparison of legislative, economic, and social dimensions, among others, with the parameters set by the EU. It also requires an assessment of the country's alignment with

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- Exchange of Letters in relation to the establishment of companies - Declaration of the French Government, OJ L 49, 19.2.1998, p. 3–46

<sup>5</sup>Joint Declaration of the Prague Eastern Partnership Summit, 7 May 2009:

[https://www.consilium.europa.eu/media/31797/2009\\_eap\\_declaration.pdf](https://www.consilium.europa.eu/media/31797/2009_eap_declaration.pdf)

<sup>6</sup> Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part, OJ L 161, 29.5.2014, p. 3–2137

<sup>7</sup> Euromaidan. Revolution from the beginning to its end. <https://ua.krymr.com/a/ukraina-ce-evropa-euromaidan-timeline/29615328.html>

<sup>8</sup>Revolution of Dignity. <https://www.maidanmuseum.org/uk/storinka/revolyuciya-gidnosti> (In Ukrainian)

<sup>9</sup> Integration within the Association: Dynamics of the Implementation of the Agreement between Ukraine and the EU. Analytical Report. Civil society platforms Ukraine — EU. [https://www.slideshare.net/IER\\_Kyiv/ss-250483634](https://www.slideshare.net/IER_Kyiv/ss-250483634). P. 8

<sup>10</sup> Law of Ukraine. On the ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand No. 1678-VII of 16 September 2014. Official Gazette of Ukraine, official edition of September 26, 2014 — 2014, No. 75, Volume 1, p. 82, article 2125, act code 73970/2014

<sup>11</sup> The Parliament of Ukraine. Literally is translated as Supreme Council of Ukraine.

<sup>12</sup> Common Aviation Area Agreement Between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part, OJ L 387, 3.11.2021, p. 3–57

European integration principles. An objective analysis of such compliance is equally relevant for both Ukraine and the European Community. The expansion of the EU system, even in its physical sense, introduces complexities that demand new additional regulatory measures, each with limited capabilities. From the point of view of controllability of the system, its expansion should have reasonable limits. In essence, the economic aspect of integration involves incorporating new elements into the existing established system and collaborating with these elements to enhance its own vital operations. In light of this, it is necessary to present compelling evidence that showcases the role of new candidates, such as Ukraine, in the respective process, as well as their level of alignment and adaptability to the key dimensions of sustainable development observed in EU countries. In accordance with the clauses of Annex XXII of the AA, Ukraine undertakes to progressively approximate its legislation to the EU standards and requirements.<sup>13</sup>

It is important to highlight that the implementation and negotiation processes in Ukraine took place concurrently. Hence, the gradual integration of the requirements and standards of EU legislation in areas such as flight safety, aviation security, air traffic management, environmental protection, consumer rights protection, computer reservation systems, and social aspects into Ukrainian legislation took place well before the official signing date of the CAA Agreement. Even amidst wartime conditions following the invasion of Ukraine by an aggressor country with a regime classified as terrorist, this process continues.

The author hopes that the results of this research will be valuable and contribute to Ukraine's restoration, the harmonization of its national legislation, its integration into the EU as a full partner, and its continued development.

*The aim* of this research is to identify the primary directions, tasks, and challenges involved in implementing EU requirements and standards related to the liberalization of civil aviation into Ukraine's national legislation. This is crucial for Ukraine's aspirations to become a full member of the CAA of the EU.

*The research objectives and legal questions* in this thesis are driven by the following aims:

1. Investigating the process of airspace sovereignty formation in international aviation law and its influence on the concept of 'open skies.'
2. Determining the key international organizations and bodies responsible for managing civil aviation worldwide, including Europe.
3. Conducting a legal and historical analysis of international conventions, bilateral, and multilateral aviation agreements that form the basis of cooperation in international civil aviation.
4. Establishing the essential aspects of aviation area liberalization, the creation of a single European sky, the CAA, its development and expansion.
5. Identifying trends and peculiarities in the relationship between the EU and Ukraine regarding civil aviation, including their expectations.
6. Studying the current state of Ukraine's legislative framework for policy and regulation of civil aviation and assessing the incorporation of EU standards.
7. Assessing the role of stakeholders in Ukraine's accession to the CAA and determining their obligations in aligning with EU standards.

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<sup>13</sup> Supra note 6. Annex XXII of the AA.

8. Identifying and justifying methods to improve effective harmonization of Ukraine's legislation with EU directives and regulations in the field of air transport, with the goal of expedited progress towards the second transition period defined by the CAA Agreement.

*The structure* of the thesis correlates with the process of finding out answers for research and legal questions and objectives. Thus, Chapter 1 opens with an analysis of historical aspects and an overview of prerequisites of the European CAA since the beginning of the European aviation liberalization, which includes an analysis of the US-European aviation internationalization progress, the conclusion of Open Sky Agreements between the US and the EC members, and further development of the 'Open Skies' policy between the EU and the US. Moreover, the first chapter outlines the evolution of air traffic liberalization in Europe, stages of creation and main pillars of the Single European Sky.

Chapter 2 is dedicated to the comprehensive research of the CAA policy of the EU, which covers the investigation of the Public international law and European law correlation in the dual nature of the CAA and legal analysis of CAA Agreements: ECAA (with the Western Balkans countries), EMAA (with the Kingdom of Morocco, the Hashemite Kingdom of Jordan, Israel, and Tunisia), and the CAA agreements within the EaP (with Georgia, Moldova, Armenia, Azerbaijan, and Ukraine).

Mirroring how the first chapter is devoted to the prerequisites of the European CAA development, Chapter 3 study determines the main pillars of the foundation for the CAA implementation in Ukraine. For this purpose, prerequisites and conditions for the implementation of the CAA in Ukraine and the retrospective analysis of the preliminary implementation of CAA regulations are studied in Chapter 3 of this dissertation. Moreover, this chapter gives answers to questions about legal aspects of the current progress in approximation of the Ukraine's national legislation towards the CAA of the EU.

The aim of the next chapter is to conduct a comprehensive legal analysis, comparing the current compliance of Ukrainian legislation with EU requirements. Therefore, Chapter 4 provides a detailed description of the achievements and successes already attained by Ukraine, as well as outlining the future steps towards the implementation of European standards. This chapter presents a comprehensive analysis of the regulation of various sectors of civil aviation, including aviation safety, aviation security, environmental protection, licensing, certification, consumer protection, competition protection and pricing control, access to airport infrastructure, and computer reservation systems.

*Literature review.* This research builds upon the significant scholarly contributions of renowned scholars who have successfully studied issues related to the establishment of legal frameworks for the CAA from its inception. It also draws upon the analysis of international bilateral and multilateral aviation agreements, practical case studies, and comparative studies of air transportation policies across different regions of the world. These scholarly works provide valuable insights into the tasks, challenges, and the process of aligning national legislation with international standards. The research was conducted based on publications that provide a comprehensive analysis and historical perspective of aviation law fundamentals, bilateral air transport agreements, the concept of the Single European Sky, and the European CAA. The main background of the research involves discussions and comparative studies of 'open skies' policies in the context of a new era in international

aviation. This research is motivated by Ukraine's aspiration to become a full-fledged and active member of the CAA.

While conducting research for this thesis and seeking answers to the questions it raises, a thorough study was undertaken of the works of renowned scientists and practical analysts in the field of international and European air and aviation law. Notably, theoretical aspects of civil aviation have been extensively explored by esteemed individuals such as Stephan Hobe, Ruwantissa Abeyratne, Santiago Ripoll Carulla, Daniel Calleja Crespo, John Cobb Cooper, Federico Nicolás, Videla Escalada, Elmar Maria Giemulla, Andrew R. Goetz, Brian F. Havel, Boakye Danquah, Kofi Henaku, Rene H. Mankiewicz, Albert I. Moon Jr., Pablo Mendes de Leon, Marc Mölders, Gabriel Sánchez, Henning Sichelschmidt, Ludwig Weber, Hartmut Wolf, and numerous other outstanding scientists and legal analysts.

The publications of European and Ukrainian scientists and specialists, including Anatolii Halchynskii, Michael Emerson, Veronika Movchan, Roman Petrov, Iryna Solonenko, Lmytro Chernickov, Iryna Kosse, Kateryna Kulchytska, Sandra Lavenex, Kostyantyn Yeliseev, Oksana Holovko-Havrysheva, and others, have addressed the issue of EU-Ukraine relations, participation in integration processes, and cooperation with the EU in various spheres, including civil aviation. They studied the problems of Ukraine's integration and cooperation with the EU, considered the problem of regional integration and the issue of Ukraine's accession to the EU. The integration of Ukraine into the European CAA raises important questions about the country's position in European integration processes and the study of trends and methods for harmonizing national legislation.

However, the long-term delay in the signing of the CAA Agreement and the ways to speed up its signing caused the great concentration of the European community, as well as Ukrainian scientists, lawyers, and stakeholders. Therefore, there is a current need to comprehensively and fundamentally develop the theoretical and practical legal foundations for implementing the Agreement into national legislation.

The need to establish a comprehensive basis for implementing European norms and standards into Ukraine's national aviation legislation is a key factor driving the scientific and legal-practical interest of this research. Therefore, the author's goal is to provide a comprehensive theoretical and legal analysis, practical guidance for civil aviation stakeholders, and a study guide for law students specializing in air and aviation law.

*Methodology.* The research is based on a combination of general philosophical, general scientific, theoretical, empirical, and specialized (juridical) scientific approaches. The second and third chapters of the thesis employed the historical, legal interpretation, and system-structural methods during the research process. In the fourth chapter, the author utilized the comparative legal method, the specific sociological method, and conducted an analysis of legal norms. The fifth chapter of the work is based on the application of historical, legal interpretation, and system-structural methods. The sixth chapter employed general methods of legal scientific cognition, including theoretical formalization, idealization, axiomatic approach, hypothetic-deductive reasoning, descent from abstract to concrete, and case study analysis. The conclusions in the last two chapters of this research are drawn using the formal legal method, legal forecasting, and interpretation of legal norms. The author employed general scientific methods such as analysis, synthesis, analogy of abstraction and concretization throughout the whole research.

Data collection for this study involved conducting interviews in the form of *surveys* to collect public opinion. The survey was conducted from December 2020 to May 2021 and targeted various stakeholders, including passengers, employees of Boryspil International Airport, representatives of Ukrainian airlines, and companies involved in ground handling services for passengers. Additionally, experts in the field of civil aviation were interviewed to gather insights for developing recommendations in the process of harmonizing national legislation prior to the signing of the CAA Agreement. The survey methodology employed a combination of oral surveys and documentary analysis.

The survey employed interviews, information gathering, and statistical analysis as its methodology. The findings revealed a generally positive attitude towards the European CAA and Ukraine's participation. The majority of respondents perceived the European CAA as an appealing framework, highlighting its numerous achievements and advantages for the national civil aviation sector. However, interviewees also expressed concerns regarding the practical implementation of the CAA Agreement's provisions and the time required for successful implementation.

The objectives of the survey were to determine the main positions of stakeholders regarding changes for Ukraine after the signing of the Agreement on CAA with the EU.

The analysis of documents was used to research the regulatory framework of the current state of policy in the field of air transportation and airspace regulation. The oral survey was conducted in several stages. First, lists of questions were developed based on the respondents' profiles and their primary areas of interest.

After that, an oral survey of different groups was conducted in the form of an interview with the help of a previously developed guide.

In total, between December 2020 and May 2021, interviews were conducted with:

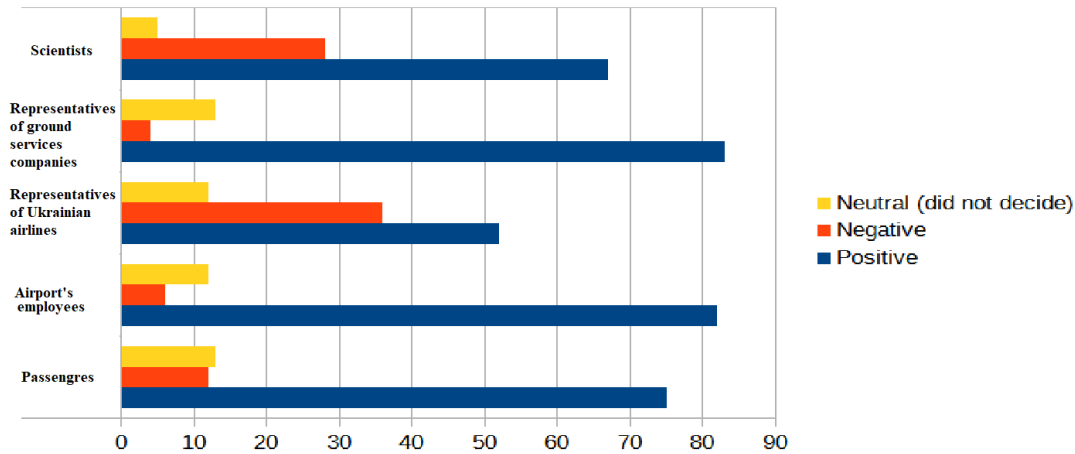
- 250 passengers of BIA,
- 120 employees of BIA,
- 18 representatives of Ukrainian airlines,
- 12 representatives of ground handling companies at BIA's territory,
- 14 scientists in the field of aviation, international, administrative, constitutional, financial law and international relations and social policy.

The main objective of the survey was to assess the respondents' attitudes towards the signing of the CAA Agreement and its potential impact on the future of civil aviation in Ukraine. The results indicated that representatives of ground handling companies (83%) and airport employees (82%) exhibited the highest level of positive attitude. Passengers (75%) and scientists in the field of aviation and international relations (67%) expressed slightly lower levels of optimism, while representatives of Ukrainian airlines demonstrated the greatest degree of pessimism (52%).

Passengers expressed optimism regarding the anticipated decrease in air ticket prices, while representatives of ground handling companies expressed optimism about the expected growth in passenger traffic, an increase in the number of flights, and the arrival of new airlines in the Ukrainian market.

**Figure 1.1 Survey's short results**

	Positive	Negative	Neutral
Passengers	75	12	13
Airport's employees	82	6	12
Representatives of Ukrainian airlines	52	36	12
Representatives of ground services companies	83	4	13
Scientists	67	28	5



The respondents expressed concerns regarding their expectations from Ukraine signing the CAA Agreement. They cited the examples of neighboring countries in the EaP, such as Georgia (2010) and Moldova (2012), which had previously signed similar agreements with the EU. The respondents observed that the signing of the CAA Agreement does not guarantee the automatic arrival of low-cost carriers, as evidenced by the experience of Georgia and Moldova, which managed to attract only one classic European low-cost carrier, WizzAir. Furthermore, airline representatives highlighted that the 'Open Skies' policy does not automatically orient the market towards the EU, and the increase in competition coupled with the lack of state support can result in significant economic losses for airlines.

Scientists specializing in aviation, international, administrative, constitutional, financial law, international relations, and social policy expressed a level of pessimism (28%). Their concerns are centered around doubts regarding the swift harmonization of national legislation with EU norms and the anticipated lengthy implementation period of the agreement. This skepticism leads them to believe that the 'open sky mechanism' will not be fully operational in the near future.

The author presented interim research results at scientific and legal conferences and published them in specialized law journals. Throughout the author's enrollment in the Doctorate program at the University of Cologne, a total of 17 papers were published, documenting the research process related to the dissertation topic.

# CHAPTER I

## PREREQUISITES OF THE EUROPEAN COMMON AVIATION AREA

### A. The Beginning of European Aviation Liberalization

#### 1. US-European aviation internationalization process

Air transportation has experienced rapid expansion in recent decades. The average annual growth in passenger traffic was approximately nine percent between 1960 and 2000<sup>14</sup> and five percent between 2000 and 2005<sup>15</sup>. The main reason for this rapid expansion is the gradual decrease in the cost of air transport. This decrease was made possible not only by the widespread use of jet engines between 1955 and 1972 but also by changes in the regulatory framework, particularly the liberalization of aviation services through bilateral and multilateral air service agreements. These agreements gave rise to the 'open sky policy' in the form of Open Skies Agreements (OSAs). For example, according to the report by Micco and Serebriski<sup>16</sup> (2006), the introduction of OSAs in the United States between 1990 and 2003 reduced the nominal cost of air travel by nine percent and increased the share of imports arriving by air by seven percent within three years of signing the OSA.

The international liberalization processes of air transport, in general, and passenger flow, in particular, play a decisive role not only in the development of the aviation industry and other sectors of the economy but also in the development of the EU's internal aviation market and integration processes between the EU and applicant countries, as well as neighboring countries.

The gradual liberalization of the EU's internal aviation market led to an open internal market in 1993, triggering a series of supply-side responses that are partly comparable to the changes seen in the deregulated US domestic air transport market. However, the starting points in these two markets were quite different.

The process of air transport liberalization in the USA began with private operators in a heavily regulated market. Recognizing the importance of internationalizing its liberalization

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<sup>14</sup> Hanlon, P. (2006). *Global Airlines: Competition in a Transnational Industry*. Third Edition. The Netherlands: Elsevier, p. 36.

<sup>15</sup> World Trade Organisation (WTO) (2007a) *Six Decades of Multilateral Trade Cooperation: What Have We Learnt?*, Geneva: WTO, p. 32.

<sup>16</sup> Micco, A., and T. Serebrisky (2006) 'Competition Regimes and Air Transport Costs: The Effects of Open Skies Agreements', *Journal of International Economics* 20, p. 26.



policy, the US adopted various measures. These measures were proposed as a triple strategy. First, formulating a new position in international forums related to the planning and management of air transport. Second, applying its recently adopted regulations to foreign airlines operating in its territory. And finally, reviewing the bilateral treaties concluded regarding air navigation<sup>17</sup>.

The internationalization of the liberalization process was reflected in the Bilateral Air Service Agreements (BASAs) concluded between the US and other states.

The most remarkable illustration is the treaty between the US and the United Kingdom (UK), which was concluded in 1946<sup>18</sup>. In fact, so-called freedoms of the air are restrictions on aerial activity, which must be removed at a price<sup>19</sup>. The Bermuda I Agreement was the result of a compromise between the 'freedom of the air' U.S. position and the 'order in the air' United Kingdom position and never fully removed these restrictions. On a limited and carefully negotiated bilateral basis, the Bermuda Agreement merely suspended them subject to certain conditions with enforcement by ex post facto review of the conduct of the respective airlines by the parties. Thus, the Bermuda Agreement offers not freedom of the air, but only a 'liberal' rather than a 'protectionist' approach to the subject of capacity control<sup>20</sup>. The real basis in all bilateral negotiations for the exchange of commercial air rights is being economic.

Therefore, the Bermuda I Agreement has been defined as a sort of compromise between the liberal wave promoted by the US and a predetermination approach invoked by the United Kingdom.

The Bermuda I Agreement was the result of a compromise between the 'freedom of the air' U.S. position and the 'order in the air' United Kingdom position and never fully removed these restrictions. On a limited and carefully negotiated bilateral basis, the Bermuda Agreement merely suspended them subject to certain conditions with enforcement by ex post facto review of the conduct of the respective airlines by the parties. Thus, the Bermuda Agreement offers not freedom of the air, but only a 'liberal' rather than a 'protectionist' approach to the subject of capacity control<sup>21</sup>.

The Bermuda I Agreement was replaced by the Consolidated Air Services Agreement between the Government of the USA and the Government of the United Kingdom of Great Britain and Northern Ireland signed on July 23, 1977<sup>22</sup>, so-called Bermuda II<sup>23</sup>.

The most relevant aspects of the Bermuda II Agreement contemplate, among others:

1) *predetermined capacity*<sup>24</sup>: carrier assignment on specific routes and a frequency control formula.

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<sup>17</sup> Ripoll Carulla, S (2009). The international law of air navigation. At 60 years of the Chicago Convention. Madrid: Universidad a Distancia de Madrid (In Spanish), p. 65.

<sup>18</sup> Air Services Agreement with the United Kingdom, Feb. 11, 1946, 60 Stat. 1499, T.I.A.S. No. 1507 (Bermuda I). Available at: <https://2009-2017.state.gov/e/eb/rls/othr/ata/g/gy/114284.htm>

<sup>19</sup> Diamond, B.R. (1975). 'The Bermuda Agreement Revisited: A Look at the Past, Present and Future of Bilateral Air Transport Agreements'. 41 J. AIR L. & COM. 419, pp. 419-469

<sup>20</sup> Wheatcroft, S. (1964). Air Transport Policy. London: M. Joseph, p. 68.

<sup>21</sup> Wheatcroft S (1964) Air Transport Policy. London, M. Joseph.

<sup>22</sup> Consolidated Air Services Agreement between the Government of the United States Of America and the Government of the United Kingdom of Great Britain and Northern Ireland. (Bermuda II). (1977) - U.S.T. - T.I.A.S. No. 8641.

<sup>23</sup> Stevens, H. (2018). The Life and Death of a Treaty: Bermuda II. Berlin: Springer, p. 38.

2) *it drastically reduced fifth freedom rights*<sup>25</sup>. The previously liberal U.S. fifth freedom rights beyond London were severely limited, except with respect to one carrier's 'round-the-world' service and various points in Germany<sup>26</sup>.

3) *only two US carriers were designated to provide services under the agreement*<sup>27</sup>.

Bilateralism has been variously described as 'protectionist,' 'outmoded,' and 'keeping the aviation field in the stone age.' On the other hand, bilateral air agreements continue to be negotiated every day<sup>28</sup>.

## 2. Open Sky Agreements between the US and the EC members

Although the signing of the Bermuda II Agreement marked the first break with the conventional bilateral regime that had existed since the 1950s, the approval of the Protocol to the Bilateral Agreement with the Netherlands<sup>29</sup> was the first expression of the so-called 'Open Skies Agreements'.

This Protocol reduced the role of both governments in deciding matters such as capacity, frequency of flights, and airfares. In March 1978, on the day of its conclusion, the US began negotiations with Belgium and the Federal Republic of Germany to revise their respective bilateral treaties<sup>30</sup>. These were two states which, given their geographical proximity to the Netherlands, feared the consequences of maintaining a less liberalized air transport regime with the US. They feared that this circumstance would lead to the concentration of all transoceanic air traffic at Amsterdam airport.

Thus, in 1980<sup>31</sup>, Belgium signed a bilateral air transport treaty similar to the one the Netherlands had with the US<sup>32</sup>. Under these agreements, market access ceased to be controlled by governments and began to be structured based on the capabilities of airlines. Therefore, while in the bilateral treaties of the 1950s governments, in an attempt to benefit their airlines, established route parity, the treaties with the Netherlands and Belgium established that any North American airline could access any destination in another participating state<sup>33</sup> from certain points in the US. This concession was not reciprocal, as Belgian and Dutch aircraft could only fly to certain airports in North America.

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<sup>24</sup> Wassenbergh, A. (1976). *Public International Law in a New Era*. Berlin: Springer, p.154.

<sup>25</sup> Scott, B. I., and A. Trimachi (2020). *Fundamentals of International Aviation Law and Policy*. The Netherlands: Routledge.

<sup>26</sup> *Ibid*, p. 41.

<sup>27</sup> *Supra* note 22, Art. 3 of Bermuda II.

<sup>28</sup> Henaku, B. D. K. (1993). *Regionalism in International Air Transport Regulation*. Leiden: Koma Publishers Foundation, p. 23.

<sup>29</sup> *Supra* note 23, p. 40.

<sup>30</sup> Varsamos, S. (2016). *Airport Competition Regulation in Europe*. The Netherlands: Kluwer Law International B.V., p. 64.

<sup>31</sup> U.S.-Belgium Air Transport Agreement of October 23, 1980. *Treaties and Other International Acts Series*, 9903. <https://2009-2017.state.gov/e/eb/rls/othr/ata/b/be/114265.htm>

<sup>32</sup> Nash, M. L. (1978). *Cumulative Digest of United States Practice in International Law*. USA: Office of the Legal Adviser. Department State, p. 12.

<sup>33</sup> Cheng-Jui Lu, A. (2003) *International Airline Alliances: EC Competition Law/US Antitrust Law and International Air Transport*. The Netherlands: Kluwer Law International B.V, p. 51.

These treaties generally extended the recognition of the fifth freedom between the two states and included full freedom of access for charter flights<sup>34</sup>. Airlines allowed to operate in both states must either be primarily owned or controlled by citizens of both states (which violates the nationality principle). There was no regulation of flight frequency or aircraft capacity, and for rates, there was a principle of double disapproval, meaning that rates set by companies would, in principle, be applicable tariffs unless both governments rejected them<sup>35</sup>.

Thus, in the early 1980s, four member countries of the European Community (Belgium, the Netherlands, Germany, and Great Britain, and later France, Ireland, and Luxembourg)<sup>36</sup> agreed to a regime of free access to their markets for North American companies and vice versa. Therefore, it is not surprising that these states sought to transfer such a regime to their mutual relations.

These treaties established the principle of multiple designation of carriers, which, as a basic requirement for operation, must be primarily owned or controlled by nationals of the respective states. They did not provide for any type of capacity control, and as far as tariffs were concerned, they established the principle of double deflection. However, the European OSAs contain a greater degree of freedom: freedom of market access is absolute, as companies from both countries can fly to any destination of the other party. This regime mainly reflects the relations of equality that exist between the participating states.

The effects of the open skies treaties in Europe were immediate. Thus, as noted by R. Doganis, the agreement between Great Britain and Ireland allowed the consolidation of new companies, mainly Ryanair airlines, which in May 1986 revolutionized the sector by offering very low fares, and the average number of passengers on the London-Dublin route doubled<sup>37</sup>. Something similar happened between the Netherlands and Great Britain: the number of companies connecting Amsterdam with London increased from 5 to 10, the frequency of flights increased significantly, and the fares decreased<sup>38</sup>. The spread of bilateral treaties between European states meant a process of accelerated changes in the air transport market in the Community, which required an immediate response from the Community institutions, especially when it was not a homogeneous process, both in terms of participation and development levels, as reflected in bilateral agreements on air transport.

By October 1, 2022, the United States had concluded open skies agreements with 131 countries worldwide, according to data provided by the Bureau of Economic and Business Affairs<sup>39</sup>.

Hence, the 'Open Sky' policy has permeated air transport relations in such a way that today, air service agreements include a number of certainly liberal yet typical elements

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<sup>34</sup> Shane, J. N. (1988). *Challenges in International Civil Aviation Negotiations*. US Department of State. Bureau of Public Affairs. Washington DC.

<sup>35</sup> Stadlmeier, S. (1998). *International commercial aviation: from foreign policy to trade in services*. Paris: Atlantica Séguier Frontières, p. 295

<sup>36</sup> Murias de, R.. (1988). *The Economic Regulation of International Air Transport*. USA: McFarland, p. 266.

<sup>37</sup> Doganis, R. (1993). *The bilateral regime for air transport: Current position and future prospects*. OECD: *International Air Transport: The Challenges Ahead*.

<sup>38</sup> Milusheva, S. (2020). *Open Skies Cases of the European Union. An Annotation*. Manchester: Grin, p. 52.

<sup>39</sup> *Current Air Transport Agreements*. Available at: <https://www.state.gov/air-transport-agreements/>

identified as 'Open Skies ASAs', characterized by the core element of competition<sup>40</sup>. The main common elements of these agreements are:

- No limitations with regard to capacity.
- Opening of all routes.
- Unlimited exchange of third and fourth freedom rights, occasionally including fifth freedom rights, subject to approval from the third country involved.
- Multiple (unlimited) designation.
- Pricing subject to rules of competition.
- Fair and equal opportunity for airlines to compete.

Therefore, the liberalization of national air transport was undertaken during the 1980s. However, we are not facing a homogeneous process in terms of the techniques used for liberalization or its results. Ph. Shearman has explained from an economic perspective the difficulties of air liberalization<sup>41</sup>. In his opinion, this process is only viable if the State in question has a competitive aeronautical industry, for which its air market must have the following elements: a very large geographical area, a population with a tendency to move and travel, and an economically developed society<sup>42</sup>. In principle, he adds, only the US and the United Kingdom meet these characteristics, as other states that could also be thought to possess them lack at least one: Japan lacks sufficient geographic extension, Canada's population does not respond to the described profile, and Brazil, China, or India do not have a sufficient level of economic development.

The states of Western Europe, which compartmentalized their markets by borders and later by the concept of air transport as an essential public service, could not independently develop a successful process of liberalizing their respective airspaces. Only by operating on a regional scale, under the direction of the institutions of the European Community, would they meet the essential market conditions to act along these lines<sup>43</sup>.

### **3. 'Open Skies' between the US and the EU**

After 1992, the US had concluded separate liberal bilateral agreements with a number of EC members. Sixteen individual bilateral agreements that the US had concluded with various European countries were already of the 'open skies' type<sup>44</sup>.

In 1994, the EC Commission claimed external competence, which meant that the new bilateral agreements would be illegal<sup>45</sup>. Since most of the governments of the EU Member States did not share that view, the EC Commission requested the ECJ to declare the bilateral

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<sup>40</sup> Cordes, J. H. (1992). 'Flying The Open Skies: An Analysis and Historical Perspective of the U.S.-Netherlands Bilateral Air Transport Agreement of September 4, 1992.' *Global business and Development Law Journal* 6, 14, p. 319.

<sup>41</sup> Shearman, P. (1992). *Air Transport Strategic Issues in Planning and Development*. London: Pitman Publishing, p. 36.

<sup>42</sup> *Ibid*, p. 86.

<sup>43</sup> *Ibid*, p. 87.

<sup>44</sup> Mendelsohn, A. I. (2008). 'The United States and the European Union in International Aviation'. *Issues in Aviation Law and Policy* 13, pp. 36-44.

<sup>45</sup> *International and EU Aviation Law. Selected Issues*. Ed. By Elmar M. Gjemulla, Ludwig Weber. The Netherlands: Kluwer Law International (2011).

agreements null and void. The genesis of contention, as far as the European Commission was concerned, occurred in 1992 when the Member States of the EU jointly agreed to create a single European market in air transport<sup>46</sup>. In its judgment issued on November 5, 2002<sup>47</sup>, the ECJ held that:

- The bilateral agreements are only illegal insofar as they provide fifth freedom rights to US carriers and other EC members with conditions contrary to EC law.
- Article 80, paragraph 2 of the EC Treaty grants the Commission external competence in air transport only if expressly mandated by the Council.

‘The Council may, acting by a qualified majority, decide whether, to what extent, and by what procedure appropriate provisions may be laid down for sea and air transport.’ All existing bilateral agreements with third countries remain in force as long as they are not overruled by an EC bilateral<sup>48</sup>.

In 2003, the Council gave the Commission the mandate for negotiations with the US.

Therefore, the new Open Skies Agreement USA/EC was signed in March 2007. It replaced and superseded previous open skies agreements between the US and individual European countries. The agreement was signed in Washington, D.C., on 30 April 2007 and became (provisionally) effective on 30 March 2008. It forms a regulatory framework for a market covering more than 60% of global air traffic<sup>49</sup>.

Since Open Skies bilateral agreements do not mean entirely open markets in the conventional economic sense, there are 'nationality clauses' that affect the carriers that may enter markets. In the US case, they must be 'substantially and effectively controlled' by nationals of the designated state or by its nationals. While outwardly aimed at preventing third parties from entering the bilateral, *de facto* nationality clauses act to impede the full functioning of international air transportation capital markets. Linked with this, foreign ownership of carriers operating in US and intra-European markets is also limited, both in terms of the share ownership permitted and the voting power of these shares<sup>50</sup>.

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<sup>46</sup> Abeyratne, R. I. R. (2003). 'The Decision of the European Court of Justice on Open Skies - How Can We Take Liberalization to the Next Level'. *Journal of Air Law and Commerce* 68, 3, p.489.

<sup>47</sup> Case C-466/98 Commission v. United Kingdom [2002] O.J. (C323/1); Case 467/98 Commission v. Kingdom of Denmark [2002] O.J. (C323/2); Case 468/98 Commission v. Kingdom of Sweden [2002] O.J. (C323/3); Case C-469/98 Commission v. Republic of Finland [2002] O.J. (C323/4); Case C-470/98 Commission v. Hellenic Republic [2002] O.J. (C259/3); Case C-471/98 Commission v. Kingdom of Belgium [2002] O.J. (C323/5); Case C-472/98 Commission v. Grand Duchy of Luxembourg [2002] O.J. (C323/6); Case C-475/98 Commission v. Republic of Austria [2002] O.J. (C323/7); Case C-476/98 Commission v. Federal Republic of Germany [2002] O.J. (C323/8)

<sup>48</sup> Consolidated Version of the Treaty Establishing the European Community. *Official Journal of the European Communities*, (97/C 340 /03).

<sup>49</sup> Mayor, K., and R. S. J. Tol (2007). *The impact of the EU-US open skies agreement on international travel and carbon dioxide emissions*. Working Paper. Dublin: The Economic and Social Research Institute (ESRI).

<sup>50</sup> Button, K (2009) 'The impact of US-EU 'Open Skies' agreement on airline market structures and airline networks'. *Journal of Air Transp Management* 15 (2):59-71, pp-13-14.

## B. Evolution of air traffic liberalization in Europe

The increase in the number of bilateral agreements on open skies was simultaneously combined with the process of gradual liberalization of the internal European market.

As stipulated in the ICAO Report on European Experience of Air Transport liberalization<sup>51</sup>, in Europe, liberalization was not entered into lightly. Arriving at workable and acceptable liberalization measures took many years and much negotiation. Air transport is an industry of strategic importance, and all governments are keen to ensure that levels of air service are preserved and that their national industry is as healthy as possible<sup>52</sup>.

The goal of the liberalization policy in the European Community is the gradual creation of a truly single market based on the freedom to provide services throughout the Community under uniform rules.

The structuring of the air transport policy of the Community can be conventionally divided into two phases.

### 1. The first phase

The first phase (1974-1987) was characterized by the application of competition legislation in the aviation sector and the search for a legal basis on which Community action would be based. At the time when these treaties threatened its spread in Europe, the Community had already taken the first steps towards the organization of air transport. In general, there are two stages in this process<sup>53</sup>. During this period, the EU adopted almost no regulations on air transport. The main reason was that the transport sector, regulated by Title IV of the Treaty of Rome (TEEC)<sup>54</sup>, was considered from the outset as a separate sector (characterized, for example, by the pronounced intervention of the public sector) that also deserved its own regulatory regime, to which competition rules should not apply. This circumstance was even more evident in air transport, subject to a market control mechanism. In addition, the crisis situation that affected the airline market made the process of liberalization of companies in the sector extremely difficult<sup>55</sup>. The Council adopted the Decision of 20 December 1979, setting up a consultation procedure on relations between Member States and third countries in the field of air transport and on action relating to such matters within international organizations (80/50/EEC)<sup>56</sup>, in order to coordinate their activities in various international organizations (in particular, ICAO and IATA). Along with

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<sup>51</sup> ICAO. Report. European Experience of Air Transport Liberalization. Available at: [https://www.icao.int/sustainability/casestudies/statesreplies/europeliberization\\_en.pdf](https://www.icao.int/sustainability/casestudies/statesreplies/europeliberization_en.pdf)

<sup>52</sup> Ibid, Para 1.3.

<sup>53</sup> García Villalobos J.C. and G. Lejarriaga Pérez de las Vacas (1990) 'Road Transport Cooperative Societies before the Liberalization of Cabotage in the European Union'. *Revista de Estudios Cooperativos* 6. (In Spanish), p. 113-114.

<sup>54</sup> Supra note 48, Art. 74-87.

<sup>55</sup> Pudiere. R., and A. Chemel (1981) 'General implementation of Community transport law (1979 and 1980)'. *RTDE* 3 (In French) 6 pp. 543.

<sup>56</sup> Council Decision of 20 December 1979 setting up a consultation procedure on relations between Member States and third countries in the field of air transport and on action relating to such matters within international organizations (80/50/EEC). *Official Journal L* 18, 24.1.1980, p. 24-25

this, other special rules and a single general provision were approved: the Council Directive of July 25, 1983, on the authorization of regular interregional air services for the transportation of passengers, mail, and cargo between member states<sup>57</sup>. The Directive aims to develop regional air transport and create an air transport network within the Community. To this end, it establishes authorization for scheduled services provided that flights originate and terminate in the European territory of the Member States on routes of more than 400 km or, in exceptional cases, with aircraft with a capacity equivalent to or less than 70 seats and between category 2 airports or 3, open to scheduled international air traffic. An application for an operating permit may be refused for various reasons, including the fact that there is already a regular service between two airports located less than 50 km apart<sup>58</sup>.

*The first phase culminated in the presentation by the Commission of a Memorandum on Civil Aviation, one of the most important proposals of which concerns capacity-sharing agreements between airlines: these agreements would be permitted, although they could not be binding. The Memorandum, in turn, proposed to apply the competition rules contained in the Treaty to air transport. This question was undoubtedly one of the most problematic that the Community had to solve. Moreover, the activity of the European Court was decisive (as in many cases). The founding treaties referred to air transport in some provisions, notably in Article 3<sup>59</sup>, which sets out the principles of the Community, and in Chapter IV of Part II of TEEC, which deals with transport<sup>60</sup>. However, the interpretation of these provisions has been controversial given the traditional configuration of air transport as a sector to be left under the sovereignty of Member States. As noted, the ECJ has clarified the scope of the TEEC rules on air policy. It was done fundamentally through several decisions, but especially in 'Nouvelles frontières' (1986)<sup>61</sup>. In this decision, the Court found that air transport is not an issue that remains outside the scope of Community legislation, but, on the contrary, the application of the general rules of the Treaty to it becomes mandatory. All provisions of the Treaty, including those relating to competition law, apply to the aviation sector as a whole. Thus, Articles 85 and 86 apply notwithstanding the special status that Member States wish to grant to companies, national airlines which they usually grant certain exclusive rights. The Court also considered the obligation of Member States not to apply tariff agreements, as this practice, developed by national authorities, is contrary to the competition rules, as it implies a restriction of competition similar to any price agreement achieved in any other sector<sup>62</sup>. Thus, the Court proceeded to the final clarification of the scope of application of Art. 84.2 TCEE (Article 80 TCE). And at the same time, it encouraged community authorities to act in accordance with the obligations imposed by the Treaty, as the previous interpretation required the inclusion in the future community air policy of the basic economic freedoms of*

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<sup>57</sup> Council Directive 83/416/EEC of 25 July 1983 concerning the authorization of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States. Official Journal of the European Communities L 237, 26.8.1983, p. 19–24.

<sup>58</sup> *Ibid.*, Art. 1.

<sup>59</sup> *Supra* note 48, Art. 3 TEC.

<sup>60</sup> *Supra* note 48, Chapter IV of Part II TEC.

<sup>61</sup> Commission Decision of 26/08/2002 declaring a concentration to be compatible with the common market (Case No COMP/M.2691 - TUI / NOUVELLES FRONTIERES) according to Council Regulation (EEC) No 4064/89. Official Journal C 246, 12.10.2002, p. 21–21

<sup>62</sup> *Supra* note 53, p. 501.

the Treaty of Rome, i.e., freedom of establishment of companies, freedom of movement of workers and capital, and unconditional application of the rules of non-discrimination of the Treaty as the ultimate goal of Article 84.2<sup>63</sup>.

The Single European Act made two important changes: on the one hand, it established the procedural provisions of Articles 75.1 and 3 for air transport, and on the other hand, it replaced the unanimity required by Article 84.2 with the qualified majority rule<sup>64</sup>.

Thus, the integration of air transport into the single market became a legal obligation of the member states. From this moment and after clarifying the legal basis on which the actions of the community will be based, the EU institutions were able to structure a common air transport policy<sup>65</sup>. The decision to 'take appropriate measures to regulate rates, capacity, and market access' with a view to creating a common air transport market by 1 January 1993 was clearly stated in the 1986 European Council Conclusions.

## **2. The second phase: three Liberalization Packages**

*During the second phase* of the air transport planning process of the community (1987-2003), the single market of air transport was structured, and the policy of liberalization of the sector was carried out. This stage is generally characterized by the adoption of rules aimed at the dual goal of structuring the single air transport market and liberalizing civil aviation in the Community<sup>66</sup>. Thus, in order to create a true single air transport market and open it to competition, an intensive regulatory activity was carried out, which the EU developed in three successive stages defined by the adoption of three 'Liberalization Packages'<sup>67</sup>.

### ***a) The first package***

The first package (1987) included several legal instruments, the purpose of which was to promote competition between EU airlines. In particular, regarding fares, even without removing all the restrictions, it introduced a scheme of fare zones within which the airlines were allowed to act freely.

On December 17, 1987, the Council of Ministers adopted a package of measures (the main regulations were Council Regulation No 3975/87<sup>68</sup> and Council Regulation No 3976/87<sup>69</sup>), effective on January 1, 1988, which represented a major step in the history of

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<sup>63</sup> Kaplan, N., and M. Moser (2016). *Jurisdiction, Admissibility and Choice of Law in International Arbitration*. The Netherlands: Kluwer Law International, p. 57.

<sup>64</sup> Swann, D. (1992). *The Single European Market and Beyond: A Study of the Wider Implications of the Single European Act*. The Netherlands: Routledge, p. 79.

<sup>65</sup> Schmauch, M. (2014). 'EU Law on State Aid to Airlines: Law, Economics and Policy'. *European State Aid Law Quarterly* 13 2, p. 383.

<sup>66</sup> Young, A. R. (2002). *Extending European Cooperation: The European Union and the 'new' international trade agenda*. Manchester: Manchester University Press, p. 38.

<sup>67</sup> Wolf, H., P. Forsyth, D. Gillen, K. Hüscherlath, and H.-M. Niemeier. (2016). *Liberalization in Aviation: Competition, Cooperation and Public Policy*. The Netherlands: Routledge, p. 78.

<sup>68</sup> 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. *Official Journal L 374*, 31.12.1987, p. 1–8.

<sup>69</sup> Council Regulation (EEC) 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. *Official Journal L 374*, 31.12.1987, p. 9–11



European aviation policy. The package consisted of two Council Directives: No 87/601 and 87/602.

The two regulations dealt with the application of the competition rules to air transport and the procedures for exemptions allowed by Article 85(3) of the Treaty of Rome<sup>70</sup>. The directive dealt with scheduled air fares, and the decision dealt with capacity sharing and market access. These last two agreements represent major new steps towards a common air transport policy by utilizing the powers given to the Council of Ministers under Article 84(2) of the Treaty<sup>71</sup>. The two regulations are different in that they were actions taken under Article 87 to give effect to the principles of the competition rules which, as noted earlier, the European Court had ruled were applicable to air transport.

The contents of the four measures can be summarized as follows:

Council Regulation No 3975/87<sup>72</sup> laid down the procedure for the application of the rules on competition to undertakings in the air transport sector:

- Sets out detailed rules for the application of the competition provisions in Articles 85 and 86 to air transport, including procedures for complaints, objections, decisions, and liaison with the authorities of member states.
- Empowers the Commission to obtain information, undertake investigations, issue directives, and impose fines.
- Establishes an Advisory Committee on Agreements and Dominant Positions to be consulted by the Commission when exercising certain of its powers.
- Exempts from the provisions of Article 85(1) of the competition rules certain technical agreements such as arrangements for interlining, clearing and settling of accounts.

Council Regulation No 3976/87<sup>73</sup> stipulated principles on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector:

- Authorizes the Commission to issue 'implementing regulations granting block exemptions under Article 85(3) to certain types of agreements such as consultations for joint preparation of proposals on passenger fares, airport scheduling, joint purchasing, and the development and operation of CRSs.

Council Directive 87/601<sup>74</sup> regulated fares for scheduled services between member states:

- Allows airlines to file fares for approval by aeronautical authorities either individually or following consultations with other airlines.
- Provides for the automatic approval of discount fares falling within 90 per cent and 65 per cent of a reference fare, and deep discount fares falling within 65 per cent and 45 per cent of the reference fare.
- Establishes simplified procedures for consultation and arbitration when a state concerned is not satisfied with a proposed fare.

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<sup>70</sup> Supra note 48, Art. 85 (3) TEC.

<sup>71</sup> Supra note 48, Art. 84 (2) TEC.

<sup>72</sup> Supra note 68.

<sup>73</sup> Supra note 69.

<sup>74</sup> Council Directive 87/601/EEC of 14 December 1987 on fares for scheduled air services between Member States. Official Journal L 374, 31.12.1987, p. 12–18

Council Decision 87/602<sup>75</sup> stipulated principals on the sharing of passenger capacity between carriers on scheduled air services between member states and on access for air carriers to scheduled air service routes between member states:

- Allows third and fourth freedom airlines to modify, without government intervention, the traditional 50-50 sharing of capacity on a route to 55-45 until September 30, 1987, and to 60-40 thereafter, subject to Commission review if a carrier has suffered serious financial damage under the 55-45 regime.
- Allows multiple designation of carriers on a country pair basis and on a city pair basis on routes which, in the first year, have traffic of more than 250,000 passengers, in the second year have more than 200,000 passengers or more than 1,200 round-trip flights a year, and in the third year have more than 180,000 passengers or more than 1,000 round-trip flights.
- Provides, subject to many exceptions and limitations, for third and fourth freedom operations between hub airports in one state to regional airports in another state, combination of points, and the grant of fifth freedom rights under specific conditions.

The Council, having reached these agreements, terminated the proceedings it had initiated against 13 European airlines and outlined the principles it would follow in reviewing certain airline cooperative activities. Three conditions were established concerning tariff coordination and the role of IATA. Firstly, participation in tariff consultations by airlines must be voluntary. Secondly, agreements made in tariff consultations must be non-binding, and all airlines should have the right to make unilateral fare filings. Thirdly, the Commission should have the right to send observers to all meetings related to tariff consultations. These conditions have been accepted by IATA<sup>76</sup>.

The next step in the development of European aviation policy was taken in July 1988 when the Commission, after reviewing existing agreements between airlines, issued three implementing regulations granting exemptions to certain categories of agreements, as empowered by the December 1987 Council Regulation. These new regulations provided block exemptions for inter-airline agreements<sup>77</sup>.

#### ***b) The second package***

*The second package*, agreed upon in July 1990, took into consideration commercial aspects such as fares, introducing the double disapproval system, access to the market and capacity. However, it was only with the adoption of the third package, consisting of three regulations, that the single Aviation Market in Europe was guaranteed<sup>78</sup>.

- Regulation 2342/90/EEC provided rules on fares for scheduled air services<sup>79</sup>, revoking Directive 87/601/EEC<sup>80</sup>.

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<sup>75</sup> Council Decision No 87/602/EEC of 14 December 1987 on the sharing of passenger capacity between air carriers on scheduled air services between Member States and on access for air carriers to scheduled air-service routes between Member States. Official Journal L 374, 31.12.1987, p. 19–26

<sup>76</sup> Schmauch, M. (2014). 'EU Law on State Aid to Airlines: Law, Economics and Policy'. *European State Aid Law Quarterly* 13 2, pp. 382-384.

<sup>77</sup> Finger M., and K. Button (2017) *Air Transport Liberalization: A Critical Assessment*. London: Edward Elgar Publishing, p. 40.

<sup>78</sup> *Ibid.*, p. 41.

<sup>79</sup> Council Regulation (EEC) No 2342/90 of 24 July 1990 on fares for scheduled air services. Official Journal L 217, 11.8.1990, p. 1–7.

<sup>80</sup> *Supra* note 74.

- Regulation 2343/90/EEC established access for air carriers to scheduled intra-Community air service routes and rules on the sharing of passenger capacity between air carriers on scheduled air services between Member States,<sup>81</sup> revoking Decision 87/602/EEC<sup>82</sup>.
- Regulation 2344/90/EEC<sup>83</sup> amended Regulation 3976/87/EEC<sup>84</sup> on the application of Article 85(3) of the EC Treaty to certain categories of agreements and concerted practices in the air transport sector. In January 1991, the UK Government filed a complaint with the European Commission regarding a number of fares charged by airlines during 1990. At the end of November 1991, the Commission ruled that approximately 40 fares were excessively high, but those fares remained in place, and airlines were not required to refund money to passengers.

The Second Aviation Liberalization Package comprised three Council regulations on fares, market access, and the application of Article 85 of the EC Treaty<sup>85</sup>. It built upon the First Package by introducing an element of 'double disapproval' for fares, allowing a fare set by an airline for a route between Member States to be permitted unless both States disapproved it. This applied to applications for fare increases above five percent. The Second Package also opened up routes between almost all European Community airports, relaxed restrictions on fifth freedom services, and eased restrictions on multiple designation of airlines on specific routes<sup>86</sup>.

A report by the House of Commons Transport Select Committee, published in December 1991, explained the changes in the Second Package as follows:

'The 'Second Package' of three Council Regulations on fares, market access, and the application of Article 85 of the Treaty of Rome was agreed upon by the Council in June 1990 and built upon the first set of measures. It introduced an element of 'double disapproval' into fare setting, opened up routes between almost all European Community airports, relaxed restrictions on fifth freedom services within the Community, and eased the restrictions on multiple designation of airlines on particular routes.

'Under 'double disapproval,' a fare set by an airline for a route between Member States is permitted unless both States disapprove it. At present, on most routes, fares can be blocked by the governments of either State connected by the route. From January 1, 1993, full double disapproval will apply, and airlines will be able to charge the fares they consider appropriate unless the fare has been disapproved by both States. In the Department of Transport's view, the new system will remove barriers to the introduction of cheaper fares and allow airlines to respond to the market more freely.

'The proposals on market access and capacity sharing refer to the adoption of 'further measures including cabotage... by June 30, 1992' and contain a commitment, in Article 3(2),

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<sup>81</sup> Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States. Official Journal L 217, 11.8.1990, p. 8–14

<sup>82</sup> Supra note 75.

<sup>83</sup> Council Regulation (EEC) No 2344/90 of 24 July 1990 amending Regulation (EEC) No 3976/87 on the application of article 85 (3) of the treaty to certain categories of agreements and concerted practices in the air transport sector. Official Journal L 217, 11.8.1990, p. 15–16

<sup>84</sup> Supra note 69.

<sup>85</sup> Supra note 48, Art. 85 TEC.

<sup>86</sup> Butcher, L. (2010). *Aviation: European liberalisation, 1986-2002*. London: House of Common. Business and Transport.

to adopt '(for implementation not later than July 1, 1992)... rules governing licensing of air carriers and route licensing.' This would oblige a Member State to grant an operating license to any carrier in that State, without discrimination, if it met the necessary technical and financial standards<sup>87</sup>.

Although the details are still to be worked out, the commitment to applying uniform criteria in deciding whether to grant operating licenses to airlines marks an important step towards the goal of ensuring that Member States do not give undue preference to their 'flag carriers.'

Additionally, the Commission aims to make it easier for airlines to offer new services on existing routes. To this end, the thresholds for multiple designation are to be lowered to 100,000 passengers from 1992. At the same time, the Commission proposes a gradual reduction of capacity controls on routes between Member States. The complete abolition of both bilateral capacity sharing, and multiple designation thresholds is envisaged for January 1, 1993<sup>88</sup>.

In January 1991, the UK Government lodged a complaint with the European Commission regarding a number of fares charged by airlines during 1990. At the end of November 1991, the Commission ruled that around 40 fares were excessively high, but those fares remained unchanged, and airlines were not required to refund money to passengers<sup>89</sup>.

Therefore, on July 17, 1991, the Commission presented drafts of three regulations, marking the introduction of the third and final phase of air traffic liberalization in the EC. These regulations aimed to complete the EC air transport policy concerning the domestic market. After examining these drafts and addressing related questions on non-scheduled air services, market access, operating licenses, and more, the Council of Transport Ministers convened on March 24, 1992, and agreed on the fundamental suggestions. Subsequently, on June 22, 1992, the transport Ministers of the EC Member States adopted the so-called 'Third Package of Liberalization,' leading to a substantially liberalized internal Community market<sup>90</sup>.

### *c) The third package*

The third package comprises the following elements:

1) Common rules on the licensing of air carriers, established in Council Regulation (EEC) No 2407/92/EC<sup>91</sup>.

Regulation 2407/92/EC (the Licensing of Air Carriers Regulation) provided common specifications and criteria for carrier licensing and the issuance of a Community air transport certificate, effective from January 1, 1993. The regulation mandated that air carriers hold insurance covering liability for passengers, luggage, cargo, mail, and third parties in case of accidents. Governments were prohibited from discriminating against airlines seeking licenses except for technical or economic reasons such as financial solvency. Any airline

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<sup>87</sup> Ibid., p. 3.

<sup>88</sup> Parliament of United Kingdom. Transport Committee (1991). Developments in European Community Air Transport Policy (first report of session 1991-92). London: HC 147, paras 3-6.

<sup>89</sup> Supra note 86, p. 4.

<sup>90</sup> Communication from the Commission to the Council And the European Parliament. Impact of the Third Package of Air Transport Liberalization Measures. Commission of the European Communities. Brussels, 22.10.1996. COM(96) 514 final. Available at: <http://aei.pitt.edu/6282/1/6282.pdf>

<sup>91</sup> Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers. Official Journal L 240, 24.8.1992, p. 1-7

meeting common safety, nationality, and fitness criteria was entitled to an operating license anywhere in the Community. Restrictions on charter airlines and limits on the number of 'seat only' sales were abolished. Separate rules were established for airlines operating light aircraft.

2) Rules on access for Community air carriers to intra-Community air routes, defined in Council Regulation (EEC) No 2408/92<sup>92</sup>.

Regulation 2408/92/EC (the Route Access Regulation) outlined the rules on access for Community air carriers to intra-Community air routes. Starting from January 1, 1993, airlines would have full access to all routes between Member States and the right to offer services between airports in two other Member States, also known as the seventh freedom of the air. Full and unrestricted access to all routes within the Community commenced on April 1, 1997, for both scheduled and charter services, known as the eighth freedom of the air (also referred to as 'consecutive cabotage'). Article 6 included safeguards for new interregional services, and Article 10 prohibited capacity limitations except for environmental and/or air traffic reasons<sup>93</sup>.

3) Rules on fares and rates for intra-Community air services, established in Council Regulation (EEC) No 2409/92<sup>94</sup>.

Regulation 2409/92/EC (the Fares Approval Regulation) provided additional rules on fares and rates for air services. From January 1, 1993, airlines would be able to set their own fares on services within and between Member States, subject to safeguards against unfair pricing, including notification to the Commission.

4) The full application of the competition rules of the Treaty to the liberalized air transport market, in accordance with Council Regulations (EEC) No 3975/87<sup>95</sup> and (EEC) No 3976/87<sup>96</sup> (as amended).

Regulation 2410/92/EC<sup>97</sup> amended Regulation 3875/87/EEC<sup>98</sup> regarding the procedure for applying competition rules to undertakings in the air transport sector, while Regulation 2411/92/EC<sup>99</sup> amended Regulation 3936/87/EEC on the application of Article 85(3) of the EC Treaty to certain categories of agreements and concerted practices in the air transport sector.

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<sup>92</sup> Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes. Official Journal L 240, 24.8.1992, p. 8–14

<sup>93</sup> European Commission. Commission of the European Communities (1996) Communication from the Commission to the Council and the European Parliament. Impact of the Third Package of Air Transport Liberalization Measures. COM(96) 514. Brussels.

<sup>94</sup> Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services. Official Journal L 240, 24.8.1992, p. 15–17

<sup>95</sup> Supra note 68.

<sup>96</sup> Supra note 69.

<sup>97</sup> Council Regulation (EEC) No 2410/92 of 23 July 1992 amending Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on

<sup>98</sup> Council Regulation (Euratom, ECSC, EEC) No 3875/87 of 18 December 1987 adapting the representation and special-duty allowance for the President and Members of the Commission and the President, Judges, Advocates-General and Registrar of the Court of Justice. Official Journal L 363, 23.12.1987, p. 66–66.

<sup>99</sup> Council Regulation (EEC) No 2411/92 of 23 July 1992 amending Regulation (EEC) No 3976/87 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector.

## C. Single European Sky: stages of creation and main pillars

### 1. The SES initiative

Based on the provisions of the third package, the stage was set for air transport as of 1993, with three key elements: rate control, general cabotage (allowing companies to operate in any Member State and enjoy traffic rights), and the introduction of common rules throughout the Community. In that year, Commissioner A. Matutes initiated the creation of the Committee of Wise Men for air transport, serving as a body for reflection on the future of aviation in Europe and the formulation of proposals<sup>100</sup>. Since then, the Commission has focused its efforts mainly on two directions: organizing external relations in the air transport sector to establish the Common European Aviation Area (CAA) Agreement and configuring the Single European Sky (SES)<sup>101</sup> within the intra-community sphere.

The Single European Act, which took effect on July 7, 1987, amending and supplementing the EEC Treaty, aimed to realize the internal market within the EEC, including air transport. Furthermore, the Council no longer required unanimous decisions, as a qualified majority became sufficient<sup>102</sup>.

The SES initiative was launched in response to the increasing delays in air navigation that peaked in Europe during the late 1990s. Its goal is to reduce fragmentation in European airspace, encompassing Member States, civil and military usage, and technologies, to enhance capacity and the efficiency of air traffic management and navigation services. The initiative is pan-European and open to neighboring countries for implementation<sup>103</sup>. The expected outcomes of the SES include shorter flight times, fewer delays, reduced flight costs, and decreased aircraft emissions.

The SES initiative was launched by the European Commission in 2000 following significant flight delays in Europe in 1999. A High-Level Group was established, and based on its recommendations, the Commission developed a legislative package at the end of 2001. The package was adopted by the European Parliament and Council in March 2004 and took effect one month later<sup>104</sup>.

The High-Level Group advises the European Commission on the future aviation regulatory framework, particularly regarding SES implementation. It is composed of Directors General of Civil Aviation Administrations from European states, representing

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<sup>100</sup> Böckstiegel, K.-H. (1993). *The New Legal Framework for Aviation in the European Community: Proceedings of the International Colloquium in Paris on 17 June 1993, with the Major Regulatory Texts*. UK: ICC Publishing. p. 27.

<sup>101</sup> European Commission, Directorate-General for Energy and Transport, Office for Official Publications of the European Communities (2001). *Single European Sky: Report of the High-level Group*. London: Longmans, Green and Co.

<sup>102</sup> Single European Act. Official Journal L 169, 29.6.1987, p. 1–28. Art. 16.

<sup>103</sup> Zeilhofer-Ficker, I. (2009). *Single European Sky (SES): Weniger Umwege im europäischen Luftraum*. GBI Genios Wirtschaftsdatenbank GmbH., p. 38.

<sup>104</sup> Ibid. p. 42

ECAC and EASA, the Director General of EUROCONTROL, and senior representatives of aviation industry associations<sup>105</sup>.

The SES package aims to:

- Enhance safety and efficiency of air transport in Europe.
- Reduce delays by optimizing the use of limited airspace and airport resources.
- Improve services and reduce costs for air transport passengers by reducing fragmentation in air traffic management in Europe.
- Enhance the integration of military systems into the European air traffic management system.

Despite efforts to modernize and streamline it, Europe's air traffic management system remains safe but relatively costly. It is hindered by diverse working practices and constrained by air route networks primarily based on national borders rather than air traffic flows. The SES initiative proposes a legislative approach to address these issues and enable ATM to meet projected future traffic demands.

The legal basis of the SES consists of two major packages of legislation: SES-I (2004) and SES-II (2009), along with numerous specific and detailed supplementary implementing rules adopted by the European Commission with the assistance of the Single Sky Committee<sup>106</sup>.

## 2. The SES-I (2004)

The legislative package adopted in 2004 (SES-I) comprises four fundamental regulations that strengthen safety and facilitate the restructuring of European airspace and air navigation services. These regulations establish the framework for creating additional capacity and improving the efficiency and interoperability of the ATM system in Europe<sup>107</sup>. SES-I consists of four Regulations of the European Parliament and the Council:

- SES Framework Regulation (EC) No. 549/2004<sup>108</sup>
- Air Navigation Services Regulation (EC) No. 550/2004<sup>109</sup>
- Airspace Regulation (EC) No. 551/2004<sup>110</sup>
- Interoperability Regulation (EC) No. 552/2004<sup>111</sup>

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<sup>105</sup> Crespo D. C. and P. M. de Leon (2011). *Achieving the Single European Sky: Goals and Challenges*. The Netherlands: Kluwer Law International B.V.

<sup>106</sup> Kern, J.-H., and P. Kamm (2010). *Luftverkehrspolitik der Europäischen Union: Deskriptive Analyse des Projektes 'Single European Sky'*. GRIN Verlag.

<sup>107</sup> Augsberg, S., K. Baumann, and D. Benrath. (2019). *Besonderes Verwaltungsrecht*. Ulm: Müller GmbH. p. 1174

<sup>108</sup> 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 (the framework Regulation) (Text with EEA relevance) - Statement by the Member States on military issues related to the single European sky. Official Journal L 96, 31.3.2004, p. 1–9

<sup>109</sup> 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 (the service provision Regulation). Official Journal L 96, 31.3.2004, p. 10–19

<sup>110</sup> 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 (the airspace Regulation) (Text with EEA relevance) - Commission statement. Official Journal L 96, 31.3.2004, p. 20–25

SES-I defines the general framework, while specific and detailed implementing rules, adopted by the European Commission with the assistance of the Single Sky Committee, are designed to support and complement the main Regulations.

**Table 5.1. SES-I Regulation and supplementary implementing rules<sup>112</sup>**

	<b>SES-I Regulation</b>	<b>Supplementary implementing rules</b>
1	Regulation 549/2004 SES Framework	Regulation 2020/1627 Exceptional measures due to COVID-19 Regulation 2019/317 Performance and Charging Scheme in the SES Regulation 390/2013 Performance Scheme for Air Navigation Services and Network Functions
2	Regulation 550/2004 Provision of Air Navigation Services in SES	Regulation 716/2014 Establishment of the Pilot Common Project Supporting the ATM Master Plan Regulation 448/2014 Amending Regulation 1035/2011 Regulation 391/2013 Common Charging Scheme for Air Navigation Services Regulation 409/2013 Common Projects, Governance and Incentives Supporting the ATM Master Plan Regulation 176/2011 information to be provided before establishing a FAB
3	Airspace Regulation (EC) No. 551/2004 on the organization and use of the airspace in the SES	Decision 2019/709 Appointment of the Network Manager Regulation 2019/123 Implementation of ATM network functions Regulation 2017/2160 amending Regulation 1079/2012 as regards references to ICAO provisions Regulation 2017/2159 amending Regulation 255/2010 as regards references to ICAO provisions Regulation 2016/2345 amending Regulations 262/2009 and 1079/2012 as regards references to ICAO provisions Regulation 2016/1006 amending Regulation 255/2010 as regards ICAO provisions Regulation 970/2014 Detailed Rules for the Implementation of ATM Network Functions Regulation 677/2011 Detailed Rules for the Implementation of ATM Network Functions Decision on the Nomination of the Network Manager for the ATM Network Functions Regulation 255/2010 Common Rules on Air Traffic Flow Management Regulation 2150/2005 Common Rules for the Flexible Use of Airspace (FUA)
4	Interoperability Regulation (EC) No. 552/2004 on the interoperability of the European Air Traffic Management network	Regulation 2020/587 amending Regulation No 1206/2011 and Regulation No 1207/2011 Regulation 2020/208 amending Regulation 29/2009 on data link services for the SES Regulation 2019/1070 amending Regulation 29/2009 on data link services for the SES

<sup>111</sup> 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 (the interoperability Regulation) (Text with EEA relevance). Official Journal L 96, 31.3.2004, p. 26–42

<sup>112</sup> SES Implementing Rules. <https://www.skybrary.aero/safety-regulations/single-european-sky/ses-implementing-rules>



Regulation 2018/139 amending Regulation 1033/2006 as regards references to ICAO provisions  
Regulation 2017/386 Requirements for the Performance and the Interoperability of Surveillance for the SES  
Regulation 2016/2120 amending Regulation 1033/2006 as regards the provisions  
Regulation 310/2015 amending Regulation 29/2009 on data link services for the SES  
Regulation 1029/2014 Requirements on the Quality of Aeronautical Data and Aeronautical Information for the SES  
Regulation 1028/2014 Requirements for the Performance and the Interoperability of Surveillance for the SES  
Regulation 441/2014 Requirements on Data Link Services for the SES  
Regulation 657/2013 Requirements for Voice Channels Spacing for the SES  
Regulation 428/2013 amending Regulation 1033/2006 as regards the ICAO provisions referred to in Article 3(1)  
Regulation 1079/2012 Requirements for Voice Channels Spacing for the SES  
Regulation 1207/2011 Requirements for the performance and the interoperability of surveillance for the SES  
Regulation 1206/2011 Requirements on Aircraft Identification for Surveillance of the SES  
Regulation 73/2010 Quality of Aeronautical Data and Aeronautical Information  
Regulation 262/2009 Allocation and Use of Mode S Interrogator Codes  
Regulation 30/2009 Requirements for Automatic Systems for the Exchange of Flight Data Supporting Data Link Services  
Regulation 29/2009 Data link services for the SES  
Regulation 633/2007 Flight Message Transfer Protocol for Use by ATC Units  
Regulation 1033/2006 Procedures for Flight Plans in the Pre-Flight Phase  
Regulation 1032/2006 Exchange of Flight Data Between ATC Units

Main provisions of SES-I (2004) are as follows:

1) SES Framework Regulation (EC) No. 549/2004<sup>113</sup> establishes the framework for creating the SES:

- It formulates principles and sets up organizational and procedural rules for establishing the SES.
- Member States are required to establish independent national supervisory authorities separate from air navigation service providers.

2) Air Navigation Services Regulation (EC) No. 550/2004 governs the provision of air navigation services for the SES<sup>114</sup>:

- It establishes general minimum standards for conducting air navigation services.
- Introduces a common system of certification for air navigation service providers.
- Sets principles for imposing air navigation fees on airspace users.

3) Airspace Regulation (EC) No. 551/2004 regulates the organization and use of airspace in the SES<sup>115</sup>:

- It promotes the optimization of traffic flow by defining Functional Airspace Blocks (FABs) based on traffic flow rather than national boundaries.
- The definition of FABs requires mutual agreement among all affected Member States.

4) Interoperability Regulation (EC) No. 552/2004 focuses on the interoperability of the European ATM network<sup>116</sup>:

- It addresses the technical and organizational fragmentation of air traffic services by establishing standard requirements for systems, components, and procedures related to air traffic service provision.
- Member States are required to establish independent national supervisory authorities separate from air navigation service providers.

Thus, this legislative package consists of four elements: the ‘Framework regulation,’ the ‘Service provision regulation,’ the ‘Airspace regulation,’ and the ‘Interoperability regulation.’<sup>117</sup>

Article 12(2) of the ‘Framework regulation’ mandates the European Commission to review the implementation of the Single Sky legislation periodically and report to the European Parliament and the Council. In line with this requirement and the need for further development of the SES, the ‘First Report on the implementation of the Single Sky Legislation: achievements and the way forward’ was published on December 20, 2007<sup>118</sup>. The report assesses the SES, highlighting achievements, ongoing development areas, and key areas with insufficient progress. It identifies the new challenges faced by the European ATM network and outlines the strategy for accelerating SES implementation<sup>119</sup>.

The Report outlined the following achievements of the implementation of SES-I (2004):

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<sup>113</sup> Supra note 108.

<sup>114</sup> Supra note 109.

<sup>115</sup> Supra note 110.

<sup>116</sup> Supra note 111.

<sup>117</sup> Commission of the European Communities (2004). *The Single European Sky: Implementing Political Commitments*. Brussels. Office for Official Publications of the European Communities, p. 13.

<sup>118</sup> Commission of the European Communities (2007) *Communication from the Commission. First Report on the implementation of the Single Sky Legislation: achievements and the way forward*. Brussels: COM, p. 845.

<sup>119</sup> *Ibid.*

- Establishment of the institutional framework for Community action, providing a structure for partnership with all interested parties: States, European Commission, EUROCONTROL, the industry, and the military.
- Separation of air navigation service provision from regulation by establishing a National Supervisory Authority (NSA) responsible for certifying air navigation service providers.

However, the Report also identified several challenges, including:

- Reducing the environmental impact of civil aviation and addressing climate change by significantly decreasing flight times, fuel consumption, and costs through network architecture improvements, more efficient route utilization, and new operational procedures.
- Improving the economic efficiency of air navigation service provision and flight efficiency.

Therefore, important areas for expected results include the integration of airspace in Functional Airspace Blocks (FABs) and the enhancement of cost-efficiency in the European ATM network.

The Single Sky legislation needs to be enhanced to address performance and environmental challenges, while ensuring that air traffic management contributes to sustainable aviation. This includes enabling aircraft to follow the shortest routes with optimized flight profiles and integrating en-route and airport operations through a holistic network approach to reduce unnecessary noise and emissions<sup>120</sup>.

There is also a need to further enhance safety levels in parallel with increasing air traffic by implementing a consistent safety approach across all aviation sectors.

### 3. SES-II and SES-II+

Therefore, in June 2008, the revision of the SES regulations was adopted under the name of the Second SES legislative package, also known as SES II. In March 2009, the second SES package was endorsed by EUROCONTROL and EU Transport Ministers, following its adoption by the European Parliament. The legal basis for this was Regulation (EC) No 1070/2009<sup>121</sup>, which amended Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004, and (EC) No 552/2004, with the aim of further improving the efficiency of the air traffic management system in Europe. The primary objective of SES-II is to enhance the economic, financial, and environmental performance of Air Navigation Services in Europe<sup>122</sup>.

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<sup>120</sup> Environmental Information Systems: Concepts, Methodologies, Tools and Applications. Management Association, Information Resources (2018). IGI Global, p. 310

<sup>121</sup> 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. Official Journal L 300, 14.11.2009, p. 34–50.

<sup>122</sup> European Commission, Directorate-General for Energy and Transport (2002). A Single European Sky: broadening horizons for air travel. Publications Office.

The implemented amendments are based on four pillars, as presented in Table 5.2. It is important to note that all these pillars have a crucial overarching element: the human factor<sup>123</sup>.

**Table 5.2. Pillars of SES II**

<b>Performance</b>	<b>Safety</b>	<b>Technology</b>	<b>Airports</b>	<b>Human factor</b>
Performance scheme Performance Review Body Functional Airspace Blocks Network Manager National Supervisory Authorities	EASA: ATM Competence Crisis coordination cell	SESAR ATM Master plan SESAR Joint Undertaking Common projects	Airport observatory	Specific sectorial dialogue Committee Consultative expert group on social dimension of the SES

Under *the first pillar* - Regulating performance - three measures have been agreed:

1) Driving the performance of the air traffic control system: An independent PRB monitors and assesses the system's performance and proposes Community-wide targets for delays, cost reduction, and route shortening. These objectives are approved by the Commission and communicated to national supervisory authorities, who conduct consultations to establish binding national and regional objectives.

2) Facilitating the integration of service provision: The aim is to transform current initiatives for functional airspace blocks into effective instruments of regional integration to achieve performance targets<sup>124</sup>.

3) Strengthening the network management function: This function completes the performance framework and encompasses various tasks, including European route network design, slot coordination and allocation, and management of the deployment of SESAR technologies, to be carried out by different entities.

*Second pillar: a single safety framework.*

The growth in air traffic, airspace and aerodrome congestion, and the utilization of new technologies justify the need for a unified approach to the development and application of harmonized regulations, enhancing safety levels in air transport. Accordingly, the EASA's competence has been expanded to include the remaining critical safety fields: aerodromes, ATM, and air navigation services<sup>125</sup>.

*Third pillar: opening the door to new technologies.*

The current air traffic control system is strained, operating with outdated technologies and experiencing fragmentation. Consequently, Europe must expedite the implementation of

<sup>123</sup> Supra note 121.

<sup>124</sup> Supra note 105, p. 254.

<sup>125</sup> Supra note 77, p. 349.

SESAR to enhance safety levels, increase traffic control capacity, and achieve environmental benefits<sup>126</sup>.

*Fourth pillar: Managing capacity on the ground.*

The European Commission emphasizes the necessity of investment to ensure alignment between airport capacity and air transport management capacity, preserving overall network efficiency. Airports should be fully integrated into the EU's ATM performance scheme to facilitate gate-to-gate performance improvements. To monitor and exchange data on airport capacity and offer guidance on EU transport legislation, the European Commission has established an observatory comprising Member States, relevant authorities, and stakeholders<sup>127</sup>.

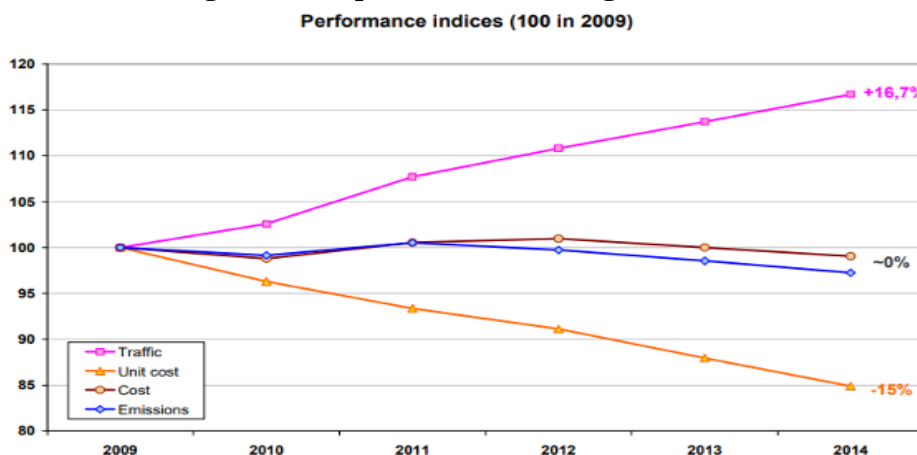
*Fifth pillar: the human factor.*

However, the most crucial aspect is the human factor. Without the commitment and full involvement of the skilled professionals in Europe's aviation sector, no progress can be made. These professionals will benefit from SESAR technological advancements and the freedom provided by the Community license, enabling them to offer services in other Member States within a true internal market. It is essential to strengthen social dialogue to ensure their active participation in the process<sup>128</sup>.

In 2011, the PRB of the SES conducted an independent assessment of individual plans and presented its findings in the report 'SES II Performance Scheme Assessment of National / FAB Performance Plans with Performance Targets for the period 2012-2014'<sup>129</sup> (hereinafter referred to as 'the Report').

The report served as a basis for further planning and provided insights into performance targets that required attention.

**Figure 5.1. Impact of EU-wide targets for RP1**



<sup>126</sup> Electronic Navigation Research Institute (2014). Air Traffic Management and Systems: Selected Papers of the 3rd ENRI International Workshop on ATM/CNS EIWAC 2013. London: Springer Science & Business Media.

<sup>127</sup> Gjemulla, E. M., and L. Weber (2011). International and EU Aviation Law. Selected Issues. The Netherlands: Kluwer Law International B.V., p. 56.

<sup>128</sup> Supra note 105, p. 218.

<sup>129</sup> Performance Review Body (PRB) of the Single European Sky (2012). SES II Performance Scheme Assessment of revised National / FAB Performance Targets 1st Reference Period: 2012-2014.

The Report states that the performance scheme is a fundamental element of SES II, adopted by the EU in 2009, with the aim of improving the operational, environmental, and financial efficiency of European Air Navigation Services (ANS) while ensuring safety and optimizing where possible. In February 2011, the European Commission adopted EU-wide targets for the first reference period (RP1: 2012-14) covering three key Performance Areas: Environment, Capacity, and Cost-Efficiency<sup>130</sup>.

While the report highlights significant dynamic changes in the aviation industry as a result of the implementation of the second set of regulations (as shown in Figure 5.1), it also underscores the need for further improvement.

The decrease in unit costs is positive news for airlines; however, the total cost to airspace users must consider inefficiencies in the system. According to the PRB report (2011), the inefficiencies in air navigation services still result in an additional annual cost of over €5 billion for airspace users:

- En route delays (€900 million)
- Route extensions (€1,930 million)
- Airport delays (€550 million)
- Arrivals holding and sequencing (€950 million)
- Taxi out (€850 million)<sup>131</sup>

Additionally, the cost of air navigation services provision exceeds €8 billion per year (en route and terminal services). Full implementation of SES aims to minimize delays to 1 minute, allowing airlines to save costs and enhance their image, making the aviation industry more competitive<sup>132</sup>.

However, certain issues require attention. The first is the unsatisfactory level of ANS provision efficiency in terms of cost, flight efficiency, and capacity. This is largely due to deficiencies in setting up and enforcing the performance scheme, ineffective supervisory authorities, and an excessive number of support staff employed by service providers. The second key problem is the fragmented ATM system, with 27 national authorities and over one hundred ANSPs each operating different systems and procedures. To address fragmentation, the SES introduced the concept of cross-border Functional Airspace Blocks (FABs) and a centralized Network Manager to oversee specific network-level services<sup>133</sup>.

The general objective of the Commission proposal is to enhance the competitiveness of the European aviation system and advance the SES initiative. Specific objectives include accelerating ATS reform implementation, improving efficiency, and optimizing ATM capacity utilization. Several operational objectives are outlined, such as strengthening the role of National Supervisory Authorities, strategically redirecting FABs, and enhancing the governance and operational scope of the Network Manager.

Therefore, SES II aims to revise the Regulation implementing the SES (recast), combining Framework Regulation (EC) No. 549/2004, Air Navigation Services Regulation (EC) No. 550/2004, Airspace Regulation (EC) No. 551/2004, and Interoperability Regulation (EC) No. 552/2004 into a single piece of legislation.

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Hartman, N., and B. Mircea (2015). 'Single European Sky – the transformation of the aviation industry based on the dynamic capabilities'. INCAS BULLETIN. 7, p. 101.

<sup>133</sup> Supra note 118.

The independence of national supervisory authorities will be reinforced, ATS will be separated from support services to facilitate competition, and the responsibilities of the Network Manager will be expanded.

According to the initial assessment of the European Commission Impact Assessment on the SES II+ proposal presented by the European Parliament, significant delays have occurred in implementation, particularly in achieving performance goals and deploying basic elements like FABs or NSAs. The planned recast of the legislative package, merging the four SES Regulations into one and amending the EASA Regulation, has provided an opportunity to evaluate the effectiveness of existing legal provisions in light of these implementation delays. This revision of the SES legal framework is known as SES II+<sup>134</sup>.

The main elements of the package presented in 2013 include the reinforcement of NSA's independence, strengthening of the performance scheme, and opening up certain support services to competitive tendering under normal procurement rules<sup>135</sup>. More flexible rules may be established for FABs, allowing for better cooperation among service providers and the potential for industrial partnerships. The role of the network manager is also set to be reinforced.

In March 2014, the European Parliament adopted its first reading position on the Commission's 2013 proposal. In its legislative resolution on March 12, 2014, the European Parliament tightened provisions regarding the independence of NSAs, confirming their need to be legally distinct and independent. The Parliament also requested the Commission to conduct a comprehensive study on the impacts of introducing market principles to the provision of support services, including operational, economic, safety, and social impacts. The study was to be submitted by January 1, 2016. The European Parliament emphasized the importance of Union-wide performance targets that allow sufficient flexibility for each functional airspace block to achieve optimal results. The Parliament was also in favor of establishing FABs<sup>136</sup>.

In December 2014, the Council reached a partial general agreement on the Commission's 2014 proposal. The Council introduced more flexibility in the process of setting EU-wide and local performance plans, as well as in the introduction of FABs. The Council suggested that opening support services to competition should remain voluntary, and ANSPs could continue bundling support services with core air navigation services. However, due to disagreement between the United Kingdom and Spain, the Council did not decide whether the text should apply to Gibraltar airport.

In September 2020, the Commission proposed an upgrade to the SES regulatory framework to address recent developments and compromises achieved on this file. The proposal aimed to merge the existing SES Regulations into a single regulation and eliminate overlaps with the EASA Basic Regulation. The objective of the initiative remained broadly the same, with revised priorities taking recent developments into account. The amended proposal no longer included provisions on the mandatory use of FABs. Instead, it proposed integrating a separate EU body called PRB into the EASA to assess and approve performance plans and targets for en-route air navigation services. The proposal excluded the

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<sup>134</sup> Öberg, M.-L. (2020). *The Boundaries of the EU Internal Market: Participation without membership*. Cambridge: Cambridge University Press, p. 28.

<sup>135</sup> Govaere, I., and S. Poli (2014). *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises*. The Netherlands: Martinus Nijhoff Publishers, p. 257.

<sup>136</sup> Pozzo dal, F. R. (2014). *EU Legal Framework for Safeguarding Air Passenger Rights*. London: Springer, p. 22.

application of the text to Gibraltar airport<sup>137</sup>. The Commission also introduced the possibility of implementing a common unit rate for en-route services across the SES airspace.

The file was assigned to the Parliament's Committee on Transport and Tourism (TRAN). The TRAN committee generally welcomed the Commission's proposal, considering it necessary for modernizing the EU's air traffic management. In February 2021, the TRAN committee published its draft report, suggesting several amendments to the Commission's proposal. Specifically, some committee members proposed changes to the structure and functioning of the PRB. On June 17, 2021, the TRAN Committee adopted its mandate for negotiations with the Council<sup>138</sup>, with 39 votes in favor, 7 against, and 2 abstentions. In this mandate, the Parliament called for the rationalization of the airspace management system and supported the creation of a separate EU body (PRB) within the EASA<sup>139</sup>. However, finding a compromise with the Council on this point is necessary. In its general approach adopted on June 3, 2021, the Council expressed the desire for Member States to remain responsible for the performance planning of air traffic service providers and opposed the creation of a new structure within the EASA. Trilogue negotiations between the co-legislators began in July 2021 based on the mandate approved in the TRAN committee. Due to significant differences in views on issues such as national responsibility and the role of the network manager (EUROCONTROL), the negotiations have been challenging, and an agreement has not yet been reached. In July 2022, Member States assessed the main points of disagreement, such as the independence of national supervisory authorities and the certification of air navigation service providers<sup>140</sup>.

The Commission's 2021 Work Programme identified this proposal as a priority pending proposal. It was initially placed under the priority of 'A Europe Fit for the Digital Age'<sup>141</sup> but was later moved to 'A European Green Deal.' The latest industry data reflects a deepening crisis in the sector due to the COVID-19 pandemic, with air traffic continuing to decline, and recovery to 2019 levels not expected until 2024-2025 according to EUROCONTROL forecasts<sup>142</sup>. Given the severe impact on the aviation sector and its role in societal and economic recovery, future SES policies must guarantee and support the competitiveness of the European aviation sector. It is crucial to avoid regulatory overlap or double incentivizing, promote new and efficient business models for service provision, and explore new ways of financing. Furthermore, these policies should enable passengers, the environment, employees, and the industry to benefit from digitalization. Despite the unresolved issues, such as the necessary updates to the SES regulatory framework, the SES 2+ Regulation remains a critical element that will shape the operational and business environment for aircraft operators and ANSPs for potentially decades to come<sup>143</sup>.

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<sup>137</sup> Levie, H. S. (2019). *The Status Of Gibraltar*. The Netherlands: Routledge, p. 27.

<sup>138</sup> Cini, M., and N. Pérez-Solórzano Borragán. *European Union Politics*. Oxford: Oxford University Press, p. 241.

<sup>139</sup> Croucher, P. (2015) *EASA Enroute Instrument Rating*. USA: Create Space Independent Publishing Platform, p. 42.

<sup>140</sup> Ozgur, N. (2022). *Global Governance of Civil Aviation Safety*. UK: Taylor & Francis, p. 13.

<sup>141</sup> European Commission. *A Europe fit for the digital age*. Available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age_en)

<sup>142</sup> Forecasting. EUROCONTROL. Available at: <https://www.eurocontrol.int/forecasting>

<sup>143</sup> Supra note. 140, p. 19.



## D. Appraisals

The gradual liberalization of the EU's internal aviation market led to an open market in 1993, triggering a series of supply-side responses that are partly comparable to the changes seen in the deregulated US domestic air transport market. Although the starting points in these two markets were different, they nevertheless had the same aim: the internationalization of their liberalization policies, namely ensuring the internationalization of air travel through the exclusive application of competition rules and giving birth to Open Skies Agreements.

The increasing number of Open Skies agreements was simultaneously combined with the process of gradual liberalization of the internal European market. The process from regulation to deregulation and then to the liberalization of the EU internal aviation market consists of two main phases: 1) the application of competition legislation in the aviation sector and the search for a legal basis on which Community action would be based, and 2) the adoption of three main regulatory packages.

Based on the provisions of the third package, the stage was set for air transport as of 1993, with three key elements: control of rates, general cabotage (which means that companies can operate in any Member State and enjoy traffic rights), and the introduction of common rules for the entire Community.

The SES is a European Commission initiative designed to remove boundaries in the air due to the necessity to cope with the continuous growth of air traffic and operations over Europe. Its initiative aims to increase the efficiency of ATM and ANS by reducing the fragmentation of European airspace in terms of safety, capacity, cost, efficiency, and the environment. By its nature, this ongoing initiative is pan-European and open to neighboring countries. The main goal of the SES is to reform the architecture of European air traffic control to meet future capacity and safety needs.

The legislative package adopted in 2004 (SES-I) comprises four basic regulations, which reinforce safety and foster the restructuring of European airspace and air navigation services. The main pillars of SES-II Performance are: Safety, Technology, Airports, and the Human factor.

Therefore, the long process of the formation of the European 'single' sky, which has passed from the stage of the formation of the fundamental principles of aviation law, based on the general basic principles laid down in international agreements, under the guardianship of international and European organizations and institutions, through the stage of the conditions of bilateral 'open sky' agreements development, up to the formation of clear common rules and regulations of the single sky over Europe for the purpose of creating an internal market, including the aviation sector.

Liberalization processes of the internal market, in particular in the aviation sector, not only took hold in the EU countries but also caused the need to expand influence outside the EU in the form of CAA creation, which will be analyzed in detail in the next section.

## CHAPTER II

### COMMON AVIATION AREA POLICY OF THE EU

European Community legislation in the sphere of CAA is extended in areas relating to market access and ancillary issues, competition rules, air traffic management, safety, environmental protection, social aspects, and consumer protection<sup>144</sup> to neighboring countries.

After the creation and development of a CAA between the countries of the European community, it became necessary to expand the sphere of influence of the 'open sky' into neighboring countries both within the framework of integration processes and for the purpose of ensuring flight safety, defining unified rules of air transportation, etc.

Hence, on June 9, 2006, a multilateral agreement, known as the ECAA Agreement, between the EU Member States and the countries in the Western Balkan region was signed. It came into force on December 01, 2017, and from the other side includes partners from South-Eastern Europe: Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, and Kosovo<sup>145</sup>.

This ambitious external aviation strategy of the EU has also given rise to a similar accord, the European Mediterranean Aviation Agreement (EMAA), which has gradually included Morocco, Jordan and Israel. Negotiations in this regard are being conducted to also include Tunisia, Algeria, and Lebanon<sup>146</sup>.

Moreover, since EU policy is aimed at deepening political and economic relations with the countries of the EaP, the program also offers deeper integration of partner countries into the aviation market. Hence, within the EaP policy few CAA Agreements were signed to deepen the cooperation based on EU standards.

Current chapter of this dissertation is dedicated to analysis of valuable experience of a single air transport market between the EU and neighboring countries and main legal pillars of agreements, which were concluded within a framework of the ECAA, EMAA and within the EaP.

The purpose of this chapter (which is reflected in the content of the selected epigraph to it) is, on the one hand, to study the general principles of the experience of expanding the influence of the 'open skies' rules on neighboring countries, and, on the other hand, to

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<sup>144</sup> Abeyratne, R. I. R. (2003). 'The Decision of the European Court of Justice on Open Skies - How Can We Take Liberalization to the Next Level'. *Journal of Air Law and Commerce* 68 3, p. 504

<sup>145</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

<sup>146</sup> ECAA. Available at: [https://transport.ec.europa.eu/transport-modes/air/international-aviation/status-aviation-relations-country/ecaa\\_en](https://transport.ec.europa.eu/transport-modes/air/international-aviation/status-aviation-relations-country/ecaa_en)

determine the unique features of the development of relations with individual states, caused by geographical, political, economic, and other factors.

The study of such experience, as well as the legal analysis of individual provisions of the concluded agreements, is important not only for conducting a comparative characterization of the development of relations between the EU and Ukraine, but also for obtaining the possibility of forecasting the further development of events and relations, which will make the process of convergence of the Ukrainian national legislation more understandable and speed it up.

Moreover, such an analysis of the previous experience of spreading the conditions of the 'open sky' to neighboring countries will allow to determine the differences and unique features inherent in relations with various states with the aim of developing relations between the EU and Ukraine based on the principle of individuality.

However, before starting the legal and historical analysis of the concluded treaties, the essence of the CAA should be investigated, since it has a unique nature that includes, on the one hand, the features of a public international legal treaty, and on the other hand, has the character of a regulatory document of European law.

## **A. The dual nature of the CAA: Public international law and European law correlation**

This section considers the essence of the CAA as it is from the perspective of analysis of the dual nature of the CAA agreements between the EU Member States and neighbor countries. On the one hand, using a dogmatic and formal-logical method, it should be proved that the form of CAA agreements meets all the features of international agreements as a source of international law, in particular, aviation law, since this type of agreement expresses a form of legal establishment, consolidation and expression of prescriptions (rules, norms). Since the transnational essence of aviation cannot be delineated only by national level rules, the majority of aviation law consists of international norms, and therefore, international law is a legal system that regulates relations between countries, international organizations and individuals<sup>147</sup>. Therefore, such a type of agreement as the CAA between the EU and other neighboring countries is a source of international law, the features of which will be described in more detail below.

On the other hand, the purpose and internal tasks of the CAA agreements determine the gradual progressive incorporation in national legislation of the requirements and standards of the European Union acts listed in these treaties. Such incorporation of rules, regulations and predominance over national legislation is inherent in European law, the subjects of which are the member states of the European Union. The countries, which are other parties of the concluded CAA agreements are not members of the European Union, so a logical and simple question arises: what is the legal nature of the CAA and its agreements?

In order to answer this question, we start with the analysis of such type of agreement as a source of international law within the framework of interpretations of the 1969 Vienna

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<sup>147</sup> Garner, B.G. (2014). Black's Law Dictionary. St. Paul, MN: Thomson Reuters, p. 975

Convention on the Law of Treaties (the Vienna Convention), the provisions of which will be presented and analyzed in this section.

The Vienna Convention in its Article 2(1) defines a treaty as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation<sup>148</sup>.

The International LAW Commission (ILC) said:

‘In addition to a ‘treaty,’ ‘convention,’ and ‘protocol,’ one not infrequently finds titles such as ‘declaration,’ ‘charter,’ ‘covenant,’ ‘pact,’ ‘act,’ ‘statute,’ ‘agreement,’ ‘concordat,’ whilst names like ‘declaration,’ ‘agreement,’ and ‘modus vivendi’ may well be found given both to formal and less formal types of agreements. As to the latter, their nomenclature is almost illimitable, even if some names such as ‘agreement,’ ‘exchange of notes,’ ‘exchange of letters,’ ‘memorandum of agreement,’ or ‘agreed minute,’ may be more common than others .... there is no exclusive or systematic use of nomenclature for particular types of transaction.’<sup>149</sup>

Treaties in the sphere of liberalization of aviation services to create a CAA between EU Member States and neighboring countries (ECAA Agreement, Euro-Mediterranean aviation agreements and CAA Agreements within the EaP with 6 Eastern neighbors) have been concluded in the form of ‘agreements’.

The Vienna Convention also does not require that a treaty be in any particular form or include any particular elements, so that if a dispute arises as to the status of a document, an objective test with applicable requirements is used to determine the issue taking into account its real conditions and specific circumstances under which it was made.

Such test with requirements, applicable towards concluded CAA international agreements as a source of Public international law could be as follows: parties of agreements; authority to conclude them; expression of consent to be bound and entry into force; the scope of legal obligation (the principle *pacta sunt servanda*<sup>150</sup>) and responsibility under the international law.

#### **(a). Parties**

States and international organizations remain the dominant international actors in the creation, interpretation and implementation or observance of international law, in particular, the creation of sources of international public law in the form of concluding treaties<sup>151</sup>. Treaties may be concluded between States, States and international organizations, and between international organizations. The multilateral Agreement on the establishment of a European Common Aviation Area (the ECAA Agreement) was concluded between the EU and a group of countries, connected by a conditional geographical area – Western Balkans: the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former

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<sup>148</sup> United Nations (2005). The Vienna Convention on the Law of Treaties 1969. Treaty Series, vol. 1155, p. 331-362. Art. 2.1 (a).

<sup>149</sup> YBILC (1966), vol II (part two), p. 188.

<sup>150</sup> [Latin: pacts must be respected]. Agreements are to be kept; treaties should be observed. A Dictionary of Law Enforcement (1 ed.) Ed. by Graham Gooch and Michael Williams. Oxford University Press. 2007

<sup>151</sup> Murphy, S. B. (2018). Principles of International Law. Second edition. USA: West Academic Publishing, p. 33.

Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia, and the United Nations Interim Administration Mission in Kosovo.<sup>152</sup> However, Euro-Mediterranean aviation agreements were concluded separately between EU Member States and each neighbor country from the Mediterranean region, which includes Kingdom of Morocco, Jordan, Israel, and Tunisia. Agreements within the EaP were also concluded with each of the six neighbors individually.

**(b) Authority to conclude treaties**

Articles 7 and 8 of the Vienna Convention deal with the authority of Parties' representatives, which is crucial for the validity of treaties. Hence, the most important issue is the authority, the owner of which is authorized to approve and certify the text of the contract and to express the state's consent to its binding by the contract. The general rule expressed in the Vienna Convention<sup>153</sup> is that a person is deemed to be a representative of the State for the purpose of expressing the consent of the State to be bound by this provision if he provides the appropriate full authority or it follows from the practice of the States concerned, or from other circumstances that they intended to regard the person as a representative of the State for such purposes and to waive the authority. Since a creation and enlargement of the CAA is directly connected to international aviation policy, access to states' air transport infrastructures and to the air transportation market, it is natural that authorized representatives of the countries-parties of the CAA Agreements were the ministers of transport and infrastructure of the signatory countries. However, the legal effect of signature of a treaty depends upon whether or not it is subject to ratification, acceptance, or approval.

**(c) Expression of consent to be bound and entry into force**

Treaties are voluntary in the sense that no state can be bound by a treaty without having given its consent to be bound by one of the methods recognized as effective in international law for this purpose (e.g. signature, ratification, accession). The Vienna Convention, while recognizing treaties as a source of law, accepts free consent, good faith and the *pacta sunt servanda* as universally recognized elements of a treaty<sup>154</sup>. Article 11 of the Vienna Convention provides that the consent of a state to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means agreed upon. 'Ratification,' 'acceptance,' 'approval' and 'accession'<sup>155</sup> generally mean the same thing, i.e., that in each case the international act so named indicates that the state performing such act is establishing on the international plane its consent to be bound by a treaty<sup>156</sup>.

The general conception concerning the entry into force is mainly equal in all CAA Agreements, which is the following: the Agreement shall be subject to ratification or approval by the signatories in accordance with their own procedures. Instruments of ratification or approval shall be deposited with the General Secretariat of the Council of the EU

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<sup>152</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

<sup>153</sup> Supra note 148, Art. 7 paras. 1(a) and (b).

<sup>154</sup> Supra note 148. Preamble.

<sup>155</sup> UN Treaty Collection. Glossary of terms relating to Treaty actions.

[https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1\\_en.xml](https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml)

<sup>156</sup> Fergusson, R. (1986). *The New Nuttall Dictionary of English Synonyms and Antonyms*. Viking, Michigan University, p. 442.

(depository), which shall notify all other signatories as well as the ICAO thereof. This Agreement shall enter into force on the first day of the second month following the date of deposit of the instruments of ratification or approval by the European Community and the EC Member States and at least one Associated Party. For each signatory which ratifies or approves this agreement after such date, it shall enter into force on the first day of the second month following the deposit by such signatory of its instrument of ratification or approval<sup>157</sup>.

Due to political, economic or other reasons the procedure of the entry into force could be accompanied by some complications. For example, several left-wing fractions of the EU had tried to postpone the vote for the ratification of the CAA Agreement with Israel until after Israel's apparently imminent annexation move<sup>158</sup>, but their motion was defeated in a preliminary technical vote and so the agreement moved to the EP plenary, where it was approved together with similar agreements with Jordan, China, and Georgia. On Israel's part the ratification procedure was accompanied by the opposition from the Israeli airline workers<sup>159</sup>.

It took Ukraine 4 months to ratify the CAA Agreement<sup>160</sup>, which was signed on October 12, 2021. On February 17, 2022, just 7 days before the large-scale invasion of Ukraine began, the Verkhovna Rada of Ukraine ratified the CAA Agreement by Law of Ukraine No. 2067-IX<sup>161</sup>.

The above-mentioned 'own procedures' by which the CAA agreement is a subject to ratification or approval are generally determined by the constitutional law of each sovereign state - Party of the treaty. Thus, according to Article 9 of the Constitution of Ukraine<sup>162</sup> current international treaties, the binding consent of which was given by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international agreements, which contradict the Constitution of Ukraine, is possible only after making appropriate changes to the Constitution of Ukraine.

Interpreting this constitutional norm, the Constitutional Court of Ukraine emphasizes in its decisions<sup>163</sup> that the constitutional norm is higher than the international one according to the hierarchical arrangement. According to Decision No. 9 of the Supreme Court of Ukraine dated November 1, 1996, 'the court cannot apply the law regulating legal relations, except

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<sup>157</sup> Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area. OJ L 285, 16.10.2006, p. 3–46 (Art. 29).

<sup>158</sup> Means: possible Israeli annexation of parts of the West Bank.

<sup>159</sup> Ahren. R. (2020). 'EU okays landmark Israel 'Open Skies' aviation deal, despite annexation tensions'. The Times of Israel 18.

<sup>160</sup> Supra note 12, Art. 38 Para 2.

<sup>161</sup> Law of Ukraine. On the ratification of the Agreement between Ukraine, on the one hand, and the European Union and its member states, on the other hand, on CAA dated February 17, 2022 No. 2067-IX. The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 13.05.2022 - 2022 p., No. 37, page 28, article 1976, code of act 111164/2022.

<sup>162</sup> Constitution of Ukraine (1996). The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), No. 30, Art. 9.

<sup>163</sup> Decision of the Supreme Court of Ukraine No. 9 dated November 1, 1996 'On the application of the Constitution of Ukraine in the administration of justice' Retrieved from: <https://zakon.rada.gov.ua/laws/card/v0009700-96>

for an international agreement. At the same time, international agreements are applied if they do not contradict the Constitution of Ukraine'.<sup>164</sup>

**(d) *Pacta sunt servanda***

A state demonstrates its adherence to a treaty by means of the *pacta sunt servanda*, whereby Article 26 of the Vienna Convention reflects the fact that every treaty in force is binding upon the parties and must be performed by them in good faith<sup>165</sup>. The validity of a treaty or of the consent of a state to be bound by a treaty may be impeached only through the application of the Vienna Convention<sup>166</sup>.

States or international organizations which are parties to such treaties have to apply the treaties they have signed and therefore have to interpret them. Although the conclusion of a treaty is generally governed by international customary law in accordance with accepted rules and practices of a constitutional law of the signatory states, the application of treaties is governed by principles of international law. If a state faces difficulties in applying or fulfilling a requirement outlined in an international treaty, the courts of that state would apply its constitutional law to resolve the issue. Article 27 of the Vienna Convention states that states should not use provisions of their internal laws as an excuse for non-compliance with treaty provisions. However, states are permitted to select their preferred methods of implementation based on their traditions and political structure. The overriding rule is that treaties are juristic acts and must be performed<sup>167</sup>.

It has been argued that a treaty is better understood as a source of *obligation*, and that the only rule of law in the matter is the basic principle that treaties must be observed (Fitzmaurice, 1958)<sup>168</sup>. If it is axiomatic that a party to a treaty is committed to what has been agreed in the treaty, it is equally axiomatic that a State which is not a party to a treaty is under no such obligation<sup>169</sup>. The principle *res inter alios acta nec nocet nec prodest*<sup>170</sup> is as valid as *pacta sunt servanda* and can in fact be considered as a consequence of that principle. Moreover, the Vienna Convention (Article 34) stipulates, that a treaty does not create either obligations or rights for a third State without its consent<sup>171</sup>.

After the state expressed its consent to the agreement, it is obligated to fulfill its terms in relation to all other participants of this agreement. According to the general norm of international law, treaties are a source of binding law exclusively for the parties in their relations and do not create obligations for a third state. However, this simple picture is complicated by the fact that treaties may codify or develop customary law (for example, the Vienna Convention on the Law of Treaties itself), and then non-parties to the treaty may come to be bound by *customary* rules having the same content as the treaty<sup>172</sup>.

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<sup>164</sup> Supra note 162, Art. 4.

<sup>165</sup> Supra note 148, Art. 26.

<sup>166</sup> Abeyratne, R. I. R. (1996). Legal and regulatory issues in international aviation. Irvington-on-Hudson NY: Transnational Publishers, Inc.

<sup>167</sup> Supra note 148, Art. 27.

<sup>168</sup> Fitzmaurice, G. (1958) 'Some Problems Regarding the Formal Sources of International Law.' *Symbolae Verzijl : Présentées Au Professeur J. H. W. verzijl À L'occasion De Son Lxx-ième Anniversaire*, pp. 153-176 (In French).

<sup>169</sup> Evans, M. D. (2006) *International Law*. Oxford: Oxford University Press, p. 119.

<sup>170</sup> A thing done between some does not harm or benefit others

<sup>171</sup> Supra note 148, Art. 34.

<sup>172</sup> Dixon, M. (2013). *International Law. Textbook. Seventh Edition*. Oxford: Oxford University Press, p. 27-28.

In practice, this situation also occurs with the CAA Agreements, as their conditions inevitably impact the Party's relations with third countries. For example, the CAA agreement stipulates conditions on 'fitness', which means whether an air carrier is fit to operate international air services, i.e., whether it has satisfactory financial capability and adequate managerial expertise and is disposed to comply with the laws, regulations and requirements which govern the operation of such services<sup>173</sup>. According to the CAA Agreement, this provision is applied to air carriers of the Parties of this agreement. However, these rules indirectly affect air carriers, which belong to third countries, too, when they provide the transportation of passengers and cargo to the country – Party of the CAA Agreement. Therefore, treaties on open skies contribute to the expansion of the scope and create certain prerequisites for transformation into a source of customary law in the sphere of aviation liberalisation.

From this, it is evident that the CAA Agreements serve not only as a source of obligations for their parties but also as a source of law. To regard treaties purely as a source of obligation conceals the vital function they perform in the system of international law. They are the sole means through which states can consciously establish binding laws, and they are commonly utilized precisely for that purpose. When a state acts contrary to a treaty, it is said that it has violated international law as well as having violated its obligations towards the other parties. If a state is bound by the terms of the treaty, it is legally bound to act in a certain way and, in a practical sense, it has created law for itself<sup>174</sup>.

***(e) Governed by International law***

There are intentions to create obligations under international law and gathered from the terms of the instrument itself and the circumstances of its conclusion, not from what the parties say afterwards<sup>175</sup>. Although a treaty can be in any form, government lawyers, in particular, use carefully chosen words to indicate that, rather than creating a treaty, the participants intend only to record their mutual understandings<sup>176</sup>.

Art. 27 of the Convention stipulates that the dictates of national law cannot be invoked as a reason for failure to perform a treaty obligation and this preserves the objective validity of international law as a *system of law* distinct from the local laws of each state<sup>177</sup>. Consequently, failure to perform a treaty obligation involves international responsibility<sup>178</sup>, even if the act in breach is consistent with, or even required by, national law.

At this stage of our analysis of the nature of the CAA and its treaties, we approach the points of contact between their features, which lie in the plane of public international law and law of international treaties, with their features in the field of European law.

First of all, being covered by the rules of international law, CAA agreements are part of the system of European aviation law regarding the liberalization of aviation services, because they constitute a special provision of a single market in aviation services.

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<sup>173</sup> Supra note 12, Art. 2 (14).

<sup>174</sup> Supra note 172, p. 30.

<sup>175</sup> Aegean Sea Continental Shelf case, ICJ Reports (1978), p. 3, at pp. 39-44; 60 ILR 562.

<sup>176</sup> Aust, A. (2010). Handbook of International Law (2nd ed.). Cambridge: Cambridge University Press, p. 116.

<sup>177</sup> Supra note 148, Art. 27.

<sup>178</sup> Interpretation of Peace Treaties Case 1950 ICJ Rep 65; Danube Dam Case, para. 47. Retrieved from: [http://www.worldcourts.com/icj/eng/decisions/1997.09.25\\_gabchkovo.htm](http://www.worldcourts.com/icj/eng/decisions/1997.09.25_gabchkovo.htm)



Secondly, the fulfillment of the CAA Agreements' conditions is ensured through not only purely international legal approaches but also through the political and economic endeavors of neighboring states, who aim to integrate into the EU by aligning their national systems with European law. The parties of CAA Agreements are EU Member States, on one side, and neighboring countries, including candidate countries, as well as third countries that have not yet obtained a chance to acquire EU membership, on the other side. However, they have this goal for the future. Hence, the CAA may be considered as a bright example of so-called 'sectoral integration without membership', which gives third countries the opportunity to consolidate in the domestic EU market and spread the 'sectoral Acquis' of the EU beyond its borders.

Such sectoral cooperation provides legislative adaptation of a neighboring country by means of voluntary implementation of the EU 'sectoral Acquis' in accordance with the terms and conditions of signed CAA agreements.

The formation of the CAA, based on European and international law, occurs through the 'Europeanization' of third, neighboring, countries. Although Europeanization primarily focuses on a specific domain, such as aviation, its influence extends beyond that sector, encompassing various other industries. This influence can be observed in the progressive opening of EU internal market access to neighboring countries, resulting in the adoption and adjustment of the EU sectoral Acquis.

Cooperation and accession towards the European CAA give the third countries a unique opportunity of EU 'sectoral Acquis' transposition into their legal systems, which implies the gradual integration of the aviation sector of neighboring countries into the EU aviation area, by means of contracts obligations fulfillment.

For this reason, rules and principles of the European law are also applicable to the CAA Agreements' parties, which are not member states of the EU. Thus, Art. 288 of TFEU stipulates:

'To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.'<sup>179</sup>

This norm is based on the principle of the supremacy of European law over national law. The principle of the primacy (also referred to as 'precedence' or 'supremacy') of EU law is based on the idea that where a conflict arises between an aspect of EU law and an aspect of law in an EU Member State (national law), EU law will prevail. Supremacy is one of the key doctrines, or constitutional pillars, created by the ECJ that ensure the enforceability of the legal order<sup>180</sup>. The principle of the primacy of EU law has developed over time by means of the case law (jurisprudence) of the ECJ of the EU.

The Treaty signed in Rome on 25 March 1957<sup>181</sup> establishing the European Economic Community did not explicitly establish the supremacy of Community law over the laws of

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<sup>179</sup> Consolidated version of the Treaty on the Functioning of the European Union, Official Journal C 326, 26.10.2012, p. 1–172.

<sup>180</sup> Storney, T., and A. Pimor. *Unlocking the EU Law*. The Netherlands: Routledge, p. 47.

<sup>181</sup> Consolidated Version of the Treaty Establishing the European Community (1997). Official Journal of the European Communities, 97/C 340 /03.

member states. None of the subsequent amendments to the Treaty have altered this position. The ECJ has, however, firmly established the primacy of Community law in its case law. The landmark decision was *Costa v ENEL*<sup>182</sup>) in which the Court gave priority to Community law over provisions of Italian law. The court's comments on the nature of the Community are worthy of full citation:

‘By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves’.

The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity<sup>183</sup>.

The principle of supremacy therefore seeks to ensure that people are uniformly protected by EU law across all EU territories, by means of adaptation of their national law system to the Community legislation.

This principle applies to EU Member states. However, the other parties to the CAA agreements are not members of the EU but may be countries that are either candidates or aspiring to join the EU. Hence, it is obvious that by signing the CAA agreement, the parties (neighboring countries of the EU) simultaneously undertake to fulfill the principle of the supremacy of European law over national law in the field of air transport.

Community legislation consists of various types of legislative acts, such as: regulations, directives, decisions, recommendations, and opinions. Article 288 of TFEU involves different approaches to each of them.

‘A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force<sup>184</sup>.

Regulations are the most powerful lawmaking tools available to the Community institutions. Without any intervention by national governments or legislatures, regulations become part of the national legal system(s) of each member state<sup>185</sup>.

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<sup>182</sup> Court of Justice of the European Union (1964). Judgment of the Court. *Flaminio Costa v E.N.E.L.* Reference for a preliminary ruling: *Giudice conciliatore di Milano — Italy.* Case 6-64. pp. 193-4.

<sup>183</sup> *Ibid.*, pp. 593-4.

<sup>184</sup> *Supra* note 179, Art. 288.

<sup>185</sup> Weatherill, S., and P. Beaumont (1999). *EU Law Paperback – International Edition.* UK: Penguin, p. 437.

A directive does not necessarily apply to all member states and, rather than being directly applicable in those states, allows them the choice of form and methods of implementing it in their national laws. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods<sup>186</sup>.

A decision shall be binding in its entirety upon those to whom it is addressed. Decisions come into effect when the requirement to notify them to those to whom they are addressed is complied with. Although not required by the EEC Treaty, some of the more important decisions were published in the Official Journal.

The EC Treaty provides for the making of recommendations and opinions in a number of situations and confers a general power on the Commission to make these provisions whenever it considers it necessary<sup>187</sup>.

Just as the idea of identical legal frameworks is at the fundamentals of the EC Treaty, it is also a bedrock of the CAA treaties. The aim of the CAA Agreements is the gradual creation of a CAA between EU Member States and neighboring countries founded on, in particular, identical rules in the areas of safety, security, air traffic management, the environment, consumer protection and computerised reservation systems, as well as identical rules with regard to social aspects. For this purpose, a list of acts (usually regulations) is attached (as annexes) to the main text of a CAA agreement and a reference of joint committee decisions is stipulated in its text. For instance, the ECAA Agreement stipulates the following:

The applicable provisions of acts referred to or contained either in Annex I, adapted in accordance with Annex II, or in decisions of the Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:

(a) an act corresponding to a European Community Regulation shall be made part of the internal legal order of the Contracting Parties;

(b) an act corresponding to a European Community Directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation<sup>188</sup>.

Therefore, after analyzing the essence of the CAA and its treaties, it is important to emphasize their dual nature. They are governed by international public law norms and principles, which regulate various aspects such as the parties involved in the agreements, the authority to conclude them, the expression of consent to be bound, the entry into force, the scope of legal obligation (the principle *pacta sunt servanda*) and responsibility.

However, on the other hand, according to their internal content, such agreements obey the principles of European law, in particular the principle of the priority over national law and facilitate the adjustment of national legislative acts to align with EC legislation in the field of aviation transport.

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<sup>186</sup> Supra note 48, Art. 189 TEC.

<sup>187</sup> Schutze, R., and T. Tridimas (2018). Principles of European Union Law: Volume 1: The European Union Legal Order. Oxford; Oxford University Press, p. 152.

<sup>188</sup> Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area. OJ L 285, 16.10.2006, p. 3–46. Art. 3.

## **B. ECAA Agreement: experience of cooperation with the Western Balkan countries**

The signing of the ECAA Agreement was preceded by a long and complex process of developing relations with the countries of the Western Balkans. This process was conditioned by their geographical location in the region of Southeast Europe, which directly borders the leading states of the continent and is the territory of their priority interests; the disintegration of the Socialist Federal Republic of Yugoslavia; the democratization of neighboring authoritarian Albania; increasing influence of the European and Euro-Atlantic community; implementing of fundamental transformations in a relatively short period of time (the transition to a market economy and the democratization of the socio-political system)<sup>189</sup>.

Today, all the countries of the Western Balkans are aiming for participation in the EU. For more than three decades, the EU has been trying to implement a policy of protection of human rights, rule of law, democracy, and economic development in the Balkans. At the same time, the EU worked to create a CAA between the European Community and the states of Eastern and Central Europe to promote liberalization and strengthen the position of air carriers<sup>190</sup>. Hence, taking into consideration these obstacles and other factors towards the integration of Western Balkan countries, creation of a ECAA for this region was a great step forward.

In 2000, a draft agreement on the creation of a CAA between the EU and 10 countries of Central and Eastern Europe (Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Romania, Slovakia, Slovenia), as well as Cyprus and Malta, was created, which was submitted for consideration by the transport ministers of these countries<sup>191</sup>. This began on November 11, 1996, when the Council of Ministers approved the mandate of the European Commission to conduct negotiations with these countries regarding the terms of their participation in the common European aviation market.<sup>192</sup> The CAA was proposed to be created within the framework of a single multilateral agreement based on association agreements concluded with many Eastern European countries<sup>193</sup>.

On June 9, 2006 the agreement on the creation of the ECAA Agreement<sup>194</sup> was signed between the EU and its member states, on the one hand, and Albania, Bosnia and Herzegovina, Bulgaria, Croatia, North Macedonia, Iceland, Montenegro, Norway, Romania, Serbia, and Kosovo (UNMIK), on the other hand, and entered into force in 2017. The last two EU member states to sign it were Slovakia and Latvia respectively on 13 June 2006 and 22 June 2006.

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<sup>189</sup> Wolf, H., P. Forsyth, D. Gillen, K. Hüschelrath, and H.-M. Niemeier. (2016). *Liberalization in Aviation: Competition, Cooperation and Public Policy*. The Netherlands: Routledge, p. 24.

<sup>190</sup> Tota, E. (2019). *EU Enlargement and its Impact to the Western Balkans*. Berlin: Logos Verlag, p. 96.

<sup>191</sup> Bieber, F. (2017). *EU Conditionality in the Western Balkans*. The Netherlands: Routledge. p. 176.

<sup>192</sup> Qorraj, G., and J. Gezim (2018). 'The EU Stabilisation and Association Agreement for the Western Balkans: Between Challenges and Opportunities.' *Croatian International Relations Review* 81, p. 56.

<sup>193</sup> European Commission - Enlargement - Stabilisation and Association Agreement. Available at: [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/stabilisation-and-association-agreement\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/stabilisation-and-association-agreement_en)

<sup>194</sup> Supra note 188.

According to Article 1(1)<sup>195</sup> the aim of this Agreement is the creation of the ECAA. The ECAA is based on 'free access to the market, freedom of establishment, equal conditions of competition' and general rules, including in the areas of safety, security, ATM, social sphere, and environment. The relevant acquis to be adopted by non-EU parties covers, inter alia, aviation market access, aviation safety, aviation security, ATM, environment, social aspects, and consumer protection.

An analysis of the practical impact on the development of aviation in the region before and after the signing of this agreement should be conducted in order to determine its significance and economic efficiency.

Before the signing of the ECAA the aviation sector development across the region was low due to the strong negative impact of the breakup of Yugoslavia, the absence of preeminent hub in the region, and a small number of developed national air carriers.

According to the Report prepared on behalf of the European Commission 'A Study of the Aviation Sector in the Eight Western Balkans Countries'<sup>196</sup> the aviation sector of Balkan peninsula's countries was turned into a shadow of its former self after the breakup of Yugoslavia, a series of armed conflicts and economic problems of the last decade.

In the early 1990s, the Yugoslav airline JAT alone carried 5 million passengers annually. With less than 3 million passengers in 2005, overall air traffic in the Western Balkans remains lower than in a small EU country. Vienna airport alone serves 15 million passengers a year. Nevertheless, this sector resumed growth. According to the European Commission, transport between the EU and South-Eastern Europe (incl. Bulgaria and Romania) increased by 121 percent between 2000 and 2005. For example, the number of weekly departures from Southeast Europe to France more than doubled from 41 to 86 between 2001 and 2005, while the number of weekly flights to Italy increased from 65 to 345<sup>197</sup>.

**Table 6.1. General Air Transport Indicators in Western Balkan countries (2005)<sup>198</sup>**

	Flight Departures		Passengers		Freight (mill tons)	Airports*	Airlines*
	number	EU share (%)	number	domestic (%)			
Albania	5,000	87	189,000	0	<1	1	2
Bosnia & Herzegovina	5,000	69	73,000	0	<1	3	1
Croatia	44,777	84	3,946,000	20	<1	8	4
Macedonia	6,595	59	555,000	0	<1	2	1
Montenegro	n.a.	n.a.	n.a.	0	<1	2	1
Serbia	19,122	44	2,059,000	23	<1	2	2
Kosovo	2,491	n.a.	930,000	0	<1	1	1
<b>Total/Average</b>	<b>82,985</b>	<b>69</b>	<b>7,752,000</b>	<b>6</b>	<b>&lt;1</b>	<b>19</b>	<b>12</b>

\* airports or airlines offering scheduled services

<sup>195</sup> Supra note 157, Art. 1 (1)

<sup>196</sup> Booz, A.H. (2005). 'A Study of the Aviation Sector in the Eight Western Balkans Countries'. Report prepared on behalf of the European Commission.

<sup>197</sup> Ibid., p. 1.

<sup>198</sup> Ibid., p. 2.

According to the report of the Office for South East Europe of the European Commission and World Bank most countries in the Western Balkans are too small for domestic flights, so the vast majority of traffic in the region passes across national borders. For example, Albania and Kosovo had only one airport each, while Macedonia had two, only 150 km apart. The only exceptions were Croatia and Serbia, which had a sufficient amount of domestic traffic. This underlined the importance of cross-border liberalization. A second notable feature of regional traffic flows was that more than two-thirds of air traffic in the Western Balkans was in Western Europe, ranging from 69 percent in Bosnia to 87 percent in Albania. This means that the ECAA countries are natural partners for regional integration in this sector. A third common feature was the concentration of north-south movement in a small number of EU countries that have particularly strong migration and trade links with the Balkans. Germany, Italy, and Austria together account for 60 percent of the routes from the EU to Southeast Europe. This is not surprising, given that the main drivers of demand for air travel are tourists (mainly EU citizens) and a large migrant community (mainly within the EU). Business trips and air transportation remain small market segments but could be important sources of future growth<sup>199</sup>.

Although the network of routes in the Western Balkans had become more and more extensive in the years before the signing of the CAA Agreement with the EU, among the 19 commercial airports, a central and sufficiently powerful hub had not yet emerged. The main airports with transfers were Zagreb and Belgrade. Croatia Airlines operated a network of short- and medium-haul flights based in Zagreb, supported by domestic feeder routes. For long-haul flights, the Croatian flag carrier relied on partner airlines and their respective hubs. Belgrade lost most of its previous hub functions when JAT was forced to abandon its long-distance network. The airline planned to restore intercontinental routes to the USA and Asia, while simultaneously developing a system of regional feeder connections with half a dozen neighboring countries. However, Belgrade and Zagreb airports, which provided services for 2 and 1.6 million passengers in 2005, remained conditioned by law standards<sup>200</sup>.

In the early 1990s, the main airlines in the Western Balkans were the airlines of Yugoslavia and Albania. The breakup of Yugoslavia led to the proliferation of 'national' airlines. While Serbia's JAT emerged as a successor to Yugoslavian Airlines, Slovenia, Croatia, Macedonia, and Montenegro established their own carriers. Bosnia and Herzegovina even had two of them (one for each state) until Air Srpska went bankrupt in 2003. Most of the new regional airlines were state-owned and unprofitable. Air Bosnia (formerly Bosnian Airlines) had only two aircraft, while Macedonian Airlines had three, and Montenegro Airlines had four. The most successful regional carrier was Croatia Airlines with a fleet of 11 aircraft and 1.6 million passengers in 2005. The few private airlines established in the Western Balkans remained small, such as Trade Air (Croatia), Albatros Airways (Albania), Air Varda (Macedonia), and Centavia (Serbia). The creation of the ECAA should have given

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<sup>199</sup> Müller-Jentsch, D. (2007). 'The European Common Aviation Area and the Western Balkans: Domestic Reforms and Regional Integration in Air Transport.' European Commission – World Bank, p 10.

<sup>200</sup> Ibid, p. 11.

them a chance to grow. However, EU carriers were also attracted to the region and forced smaller airlines to either seek critical size through mergers or exit the market<sup>201</sup>.

**Table 6.2. Flag Carriers in Western Balkans countries (2005)<sup>202</sup>**

	Staff	Aircraft	Routes	Passengers (number)	Cargo (mill ton-km)	Load Factor (%)	
						passengers	cargo
Albanian Airlines	165	3	10	175,000	0	51	n.a.
Air Bosna	90	2	6	25,000	0	66	n.a.
Croatia Airlines	1,037	11	55	1,555,000	2.4	59	50
Macedonian Airlines	n.a.	3	8	190,000	n.a.	n.a.	n.a.
Montenegro Airlines	350	4	10	450,000	0	70	n.a.
JAT	1,740	16	37	1,022,700	3.3	55	47
<b>TOTAL</b>	<b>3,382</b>	<b>39</b>	<b>126</b>	<b>3,417,700</b>	<b>5.7</b>	<b>50</b>	<b>49</b>
Austrian Airlines	8,468	105	130	10,120,000	2,965	72	74
Adria Airways	543	10	24	929,000	2.7	56	63

The ECAA agreement commits all signatories to adopt the EU acquis for the aviation sector and includes:

- legislation that liberalizes market access, traffic rights and fares;
- regulation on airport ground handling and slot allocation;
- safety and security regulations;
- rules on competition and state aid;
- the Acquis related to air traffic management and the SES;
- environmental standards and consumer rights pertaining to aviation.

The implementation of the ECAA agreement took place in three phases. During the 1st phase, rights of freedoms Nr. 3 and Nr. 4 were completely liberalized. This meant all airlines licensed within the ECAA area obtained the possibility to fly to and from their own countries to any other ECAA destination, without bandwidth or frequency restrictions. The second phase involved a liberalization of the freedom Nr. 5, and allowed airlines to pick up passengers at a stop in the other country before disembarking them in a third country<sup>203</sup>. Before a party country could move to the second phase of the ECAA, however, it was necessary to introduce a basic package of aviation legislation, which mainly concerns security and safety regulations. The third phase included the liberalization of freedoms Nr. 6-8 and complete transposition of the aviation legislation. No clear target dates were set for the first 2 phases, and each country could progress at its own pace once it met the necessary requirements and conditions<sup>204</sup>.

<sup>201</sup> The European Common Aviation Area and the Western Balkans: Domestic Reforms and Regional Integration in Air Transport (February 2007). Available at: [https://transport.ec.europa.eu/system/files/2016-09/2007\\_02\\_09\\_see\\_air\\_transport\\_en.pdf](https://transport.ec.europa.eu/system/files/2016-09/2007_02_09_see_air_transport_en.pdf)

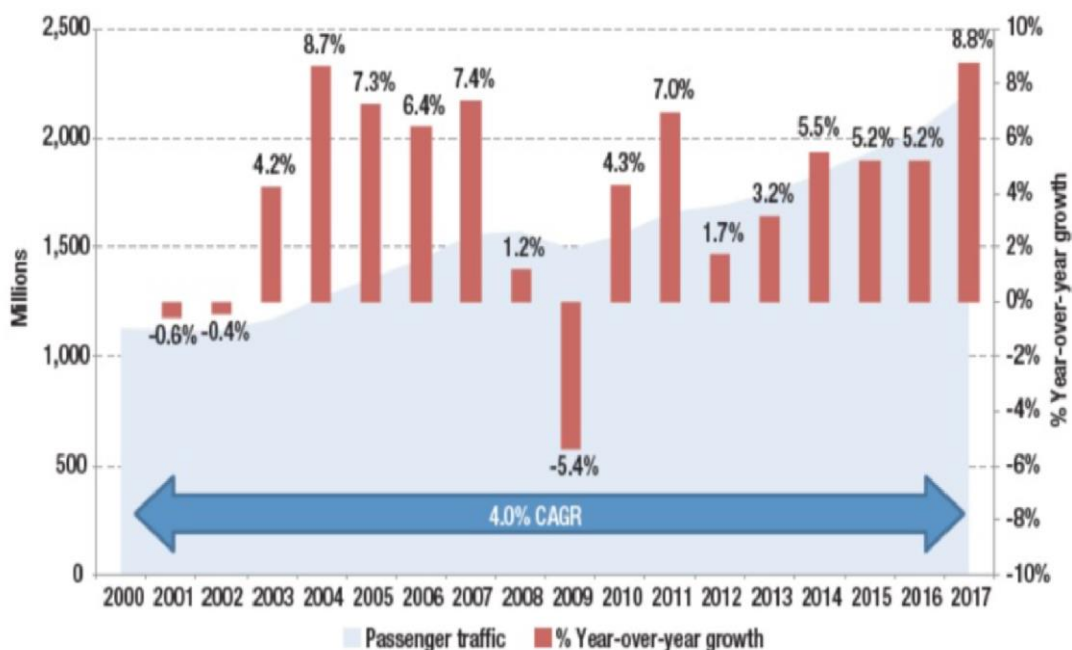
<sup>202</sup> Supra note 198, p. 3.

<sup>203</sup> Kathuria, S. (2008). Western Balkan Integration and the EU: An Agenda for Trade and Growth. World Bank Publications, p. 15.

<sup>204</sup> Ibid., p 27.

This Agreement is aimed at the full integration of these countries into the EU internal market, as if they were EU member states. They are indeed required to transpose all EU rules in this area and to accept the powers that these rules give to the Commission and the EASA, as well as the case law of the CJEU. Then they would be in the same situation as Switzerland, Iceland, and Norway. However, the agreement envisages a gradual implementation, so that market access is linked to a satisfactory transposition of the EU acquis. Consequently, and as the analysis of traffic evolution shows, little has been achieved in terms of market opening, as convergence conditions are relatively difficult to achieve.

**Figure 6.1. Evolution of passenger traffic in European Union countries (2000-2017) (year-over-year growth)<sup>205</sup>**



As regards the Balkan countries party to the ECAA agreement, their commitment goes much further, as it implies the application of the principles related not only to state aids, but also to state monopolies, dominant positions, and agreements between undertakings, which mirror the related provisions in the ECAA Agreement.

<sup>205</sup> ACI World Airport Traffic Database, 2018. Available at: <https://store.aci.aero/product/annual-world-airport-traffic-dataset-2018/>



## C. Euro-Mediterranean aviation agreements (EMAA)

According to summaries, stipulated in the Memorandum of Minister for Transport and Infrastructure<sup>206</sup> regarding the recommendation of signing the EMAA between EU and Israel, it is underlined that due to the creation of a single market for aviation in the EU, the economic and regulatory landscape of air transport has undergone revolutionary changes. Players of the air transport industry have benefited from new routes and airports, greater choice, lower prices, and better overall quality of service.

However, airlines still have less commercial freedom when flying to countries outside the EU, and passengers have less choice. International aviation has traditionally been governed by bilateral agreements between individual countries, restricting the number of airlines on the routes concerned, the number of flights and the possible destinations<sup>207</sup>.

The EU is extending its external aviation policy beyond its borders to overcome these limitations. First, any bilateral agreements that are not in line with the freedom of operation deriving from the single market need to be revised to ensure legal certainty and to put all EU airlines on an equal footing for flights to countries outside of the EU. Second, the EU is working to establish a CAA with neighboring countries in the Mediterranean and to the East. Third, the EU is setting up open aviation areas with other key international partners. Closer international relations will not only open markets, but also allow the EU to ensure high standards of safety and security in international air transport and to work with others more effectively to address the impact of aviation on the environment.

In March 2005, the Commission presented a communication on aviation relations<sup>208</sup>, and conclusions were adopted at the Council of Transport Ministers on 27 June 2005<sup>209</sup>. These texts establish an action plan for the development of Community aviation relations and define the three pillars on which European policy is founded:

- 1) To guarantee the legal certainty of bilateral agreements, in particular by including new designation clauses.
- 2) To develop a wider ECAA, which means that neighboring countries should incorporate European rules into their own legal systems, starting with safety rules.
- 3) To establish a range of new comprehensive aviation agreements, with inseparable twin aims: on the one hand, to open markets in order to create new economic opportunities and, on the other hand, to establish a process of regulatory convergence that ensures a satisfactory level playing field with sufficiently fair and equitable competition conditions.

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<sup>206</sup> Memorandum of Minister for Transport and Infrastructure. Available at:  
<https://parlament.mt/media/89939/89.pdf>

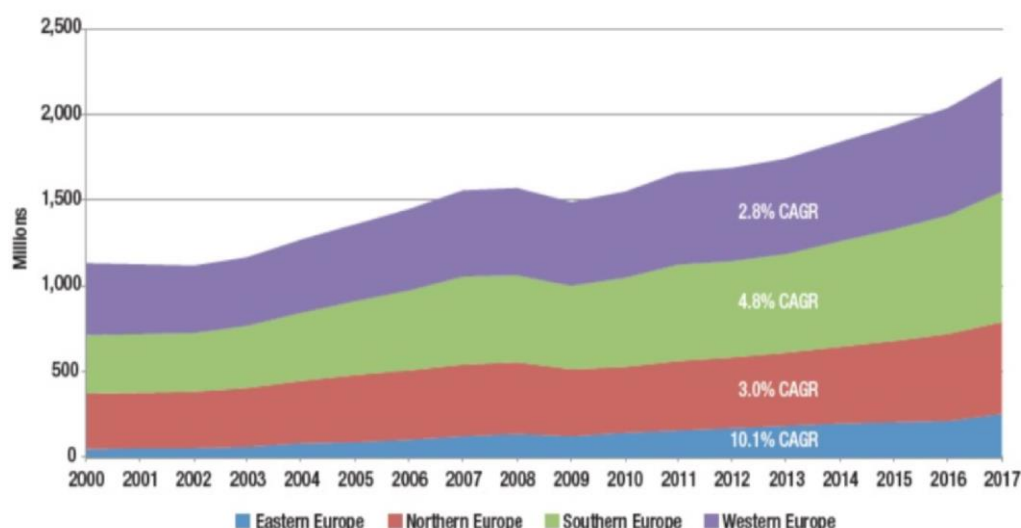
<sup>207</sup> Maertens, S., and W. Grimme (2019). 'Traffic impacts of EU horizontal air service agreements'.  
Transportation Research Procedia 37, p. 290.

<sup>208</sup> European Commission. Communication from the Commission (2005) Developing the agenda for the  
Community's external aviation policy. COM/2005/0079.

<sup>209</sup> The Conclusions of the European Council and the Council of Ministers. Tenth Report of Session 2007–08.  
Report, together with formal minutes, oral and written evidence. Available at:  
<https://publications.parliament.uk/pa/cm200708/cmsselect/cmeuleg/86/86.pdf>

In order to create a CAA between the EU and its Mediterranean partners, EMAAs were concluded with a number of countries, such as: the Kingdom of Morocco<sup>210</sup> (December 12, 2006), the Hashemite Kingdom of Jordan<sup>211</sup> (December 15, 2010), Israel<sup>212</sup> (June 10, 2013) and Tunisia<sup>213</sup> (June 28, 2014). These agreements form part of the EU's neighborhood policy and aim to replace the network of bilateral aviation agreements between EU member states and its Mediterranean partners. EMAAs are aimed at the gradual opening and integration of Mediterranean partners' respective markets, the development of their aviation sectors under uniform rules, providing economic benefits to consumers and new opportunities for the industry.

**Figure 6.2. Evolution of passenger traffic in European region (2000–2017)<sup>214</sup>**



These agreements should be seen against the background of the ENP, through which the EU works to strengthen relations with neighboring countries. It sets ambitious goals for regulatory cooperation and improves conditions for bilateral cooperation and investment.

<sup>210</sup> Euro-Mediterranean aviation agreement between the European Community and its Member States, of the one part and the Kingdom of Morocco, of the other part. Official Journal L 386, 29.12.2006, p. 57–88

<sup>211</sup> Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part. Official Journal L 334, 6.12.2012, pp. 3-30.

<sup>212</sup> Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part and the government of the State of Israel, of the other part. Official Journal L 208, 2.8.2013, p. 3–67

<sup>213</sup> Council Decision (EU) 2021/1404 of 28 June 2021 on the signing, on behalf of the Union, of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Republic of Tunisia, of the other part. Available at: <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vllr6bs7aiw4>

<sup>214</sup> Lucas, P. (2018). 'Europe's air transport industry – Eastern Europe emerging as major contributor to growth in the last decade'. Airports Council International 1.

## 1. The Kingdom of Morocco

The Kingdom of Morocco was the first country outside Europe to sign the Aviation Agreement. Negotiations on the ECAA with Morocco began in May 2005 on the basis of a Council mandate granted in December 2004, and the agreement was signed on 12 December 2006 on the condition that it would be concluded at a later date<sup>215</sup>.

The aim of the Agreement is both to open markets and to move towards the alignment of aviation legislation on both sides, in particular around key aspects of European rules on aviation, including those concerning safety, economic regulation and, in particular, competition, air traffic control, and consumer protection. It also contains provisions concerning bilateral investment on both sides of the Mediterranean. It shall comprise two phases.

The agreement has created new development opportunities for Moroccan and EU companies by doing away with capacity, nationality, frequency, or route restrictions. Since 2006, the opening up of the markets has brought some huge benefits: passenger traffic between the EU and Morocco has more than doubled, reaching 12 million passengers per year, an increase of 109% since 2005; the services and destinations on offer have also significantly increased. Coupled with roughly 60% reduction in average ticket prices, all this has brought significant advantages for consumers<sup>216</sup>.

In the context of this dissertation, the study of the definition of the concept of 'territory' and the scope included in this concept in the agreement on CAA is relevant given the fact that for a long time the lack of agreement on this issue was called the official reason for not concluding an agreement on CAA between the EU and Ukraine (which will be discussed further in the relevant section). That is why, during the consideration of the aviation agreement with the Kingdom of Morocco, I would like to pay special attention to the situation regarding the occupied territories of Western Sahara.

According to the Agreement, the 'territory' of the Kingdom of Morocco means 'land territories (mainland and islands), internal waters and territorial sea under its sovereignty or jurisdiction'<sup>217</sup>. However, under Moroccan domestic law, this would also include Western Sahara. The airports of Dakhla and El Ayoun (often called Laayoune in Morocco), the two main cities of Western Sahara, are integrated into the national aviation area of Morocco and are counted among Moroccan airports<sup>218</sup>. However, Western Sahara is considered by the UN as a non-self-governing territory that has yet to complete the decolonization process.

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<sup>215</sup> Decision 2006/959/EC of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 4 December 2006 on the signature and provisional application of the Euro-Mediterranean Aviation Agreement between the European Community and its Member States, of the one part, and the Kingdom of Morocco, of the other part. Official Journal L 386, 29.12.2006, p. 55–56

<sup>216</sup> European Parliament, Committee on Transport and Tourism (2017). Draft recommendation on the draft Council Decision on the conclusion, on behalf of the Union, of the Euro-Mediterranean Aviation Agreement between the European Community and its Member States, of the one part, and the Kingdom of Morocco, of the other part. [https://www.europarl.europa.eu/doceo/document/TRAN-PR-610572\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TRAN-PR-610572_EN.pdf)  
[https://www.europarl.europa.eu/doceo/document/TRAN-PR-610572\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TRAN-PR-610572_EN.pdf)

<sup>217</sup> Euro-Mediterranean aviation agreement between the European Community and its Member States, of the one part and the Kingdom of Morocco, of the other part. Official Journal L 386, 29.12.2006, p. 57–88

<sup>218</sup> The air transport sector makes a major contribution to Morocco's economy. Available at: <https://www.iata.org/en/iata-repository/publications/economic-reports/morocco--value-of-aviation/>

Morocco invaded Western Sahara in 1975 and continues to maintain an illegal military presence in three-quarters of the territory.

When the parliament approved an aviation agreement with Morocco back in 2006, the EU had not yet clarified its legal position on the territorial scope of any of its agreements with Morocco. But in December 2016, the Court of Justice of the EU ruled that Western Sahara is a 'separate and distinct' territory from Morocco (art. 106, C 104/16 P *Polisario v Council*)<sup>219</sup>. Thus, the Court stated that no EU trade or association agreement with Morocco could be applied to Western Sahara unless there was the express consent of the people of the territory<sup>220</sup>.

## 2. The Hashemite Kingdom of Jordan

The EU and the Hashemite Kingdom of Jordan have been in cooperation since 2002 when the first Support to the Association Agreement Programme was adopted. This protocol was aimed at improving the institutional capacities of the Jordanian administration. A second support programme to the Association Agreement was concluded in 2005. The EU-Jordan ENP Action Plan<sup>221</sup> was implemented for a five-year period. The Action Plan defined a list of priorities covering a number of key areas for specific action, and the six priorities of this Action Plan included transport. In 2010, Action Plan was renewed, resulting in an 'Advanced Status'. In the context of this cooperation in the area of transport, in December 2010, the EMAA between Jordan and the EU aimed at developing a common approach in the aviation sector [was signed]<sup>222</sup>. One of the objectives of the agreement is regulatory convergence, ensuring that all the operators (airlines, airports, and navigation providers) are subjected to similar rules and apply the highest standards, notably in the field of aviation safety, air transport management, and aviation security.

This contract defines one distinct feature compared to other similar agreements: as regards competition rules, all EU agreements except the one with Jordan include clauses on state aids. These articles, pointing out that state aids may distort competition, provide for reciprocal information, including possible discussions within the Joint Committee, before a party makes use of its own competition rules in that field.

Jordan's aviation sector is well developed when compared to other countries of the region. The Jordanian aviation activities are concentrated at the two international airports: Queen Alia International Airport in Amman and King Hussein International Airport in Aqaba. The international passenger traffic is around 8.66 million passengers per year and in terms of

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<sup>219</sup> Court of Justice of the European Union (2016). Judgment of the Court (Grand Chamber) Council of the European Union v Front populaire pour la libération de la sagaia-el-hamra et du rio de oro (Front Polisario). C-104/16 P.

<sup>220</sup> Imminent vote on EU-Morocco aviation deal, covering Western Sahara. October 23, 2017. Available at: <https://wsrw.org/en/archive/3996>

<sup>221</sup> EU/Jordan ENP Action Plan. Available at: [https://www.eeas.europa.eu/sites/default/files/2013\\_jordan\\_action\\_plan\\_en.pdf](https://www.eeas.europa.eu/sites/default/files/2013_jordan_action_plan_en.pdf)

<sup>222</sup> EU report: EU-Jordan cooperation remains strong and diverse. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_6150](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6150)

cargo, the international cargo traffic represents 108 000 metric tons<sup>223</sup>. There are four national airlines with international services and 47 foreign airlines are serving the country<sup>224</sup>. The sector was significantly impacted by the COVID-19 pandemic. Although both airports have resumed commercial flights since September after a few months' closure, the current passenger and aircraft traffic remains low compared to previous years. In prospect, the air transport sector in Jordan faces several challenges, mainly linked to the growth of the country's economy and regional and international traffic, which is projected to pick up again in a post-COVID scenario<sup>225</sup>.

However, considering the increasing level of terrorist threat in the region in the past years, meeting international security and safety standards is of key importance within the cooperation under the umbrella of ECAA with Jordan.

Part B of Annex III to the ECAA specifies that aviation security legislation should aim at delivering the standards set in the EU legislation. The Annex III Part B refers in particular to the EU regulations relating to common rules in the field of civil aviation security<sup>226</sup> and detailed measures for the implementation of the common basic standards on aviation security<sup>227</sup>.

Hence, making aviation operations secure is a common priority for the Jordanian authorities and the EU, considering the number of direct aviation connections between the two territories. As such, the EU and Jordan agreed to take forward the joint work on aviation security at the EU-Jordan CT/Enhanced Security workshop on 15 March 2016, and included it among the EU-Jordan Partnership Priorities, adopted on 19 December 2016 and extended on 12 December 2018, as part of their security and counterterrorism cooperation<sup>228</sup>.

### 3. Israel

Negotiations between the European Commission and Israel over the new aviation agreement started in 2008. The ECAA with Israel was signed on 10 June 2013 and immediately went into effect, pending its formal ratification. In the following years it was ratified by the parliaments of all 27 member states<sup>229</sup>. That stage of the process was

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<sup>223</sup> O'Connell, J.F., and G. Williams (2012). *Air Transport in the 21st Century: Key Strategic Developments*. London: Ashgate Publishing, Ltd., p. 383.

<sup>224</sup> Presentation of 2019 Air Transport Statistical Results. Available at: [https://www.icao.int/annual-report-2019/Documents/ARC\\_2019\\_Air%20Transport%20Statistics.pdf](https://www.icao.int/annual-report-2019/Documents/ARC_2019_Air%20Transport%20Statistics.pdf)

<sup>225</sup> Supporting Civil Aviation Regulatory Commission in the reinforcement of aviation security in Jordan. Available at: <https://www.ncp-twinning.de/wp-content/uploads/2020/12/Twinning-Fiche-JO-17-ENI-TR-04-20.pdf>

<sup>226</sup> Commission Regulation (EU) No 18/2010 of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned. Official Journal L 7, 12.1.2010, p. 3–14

<sup>227</sup> Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security. Official Journal L 299, 14.11.2015, p. 1–142

<sup>228</sup> Supporting Civil Aviation Regulatory Commission in the reinforcement of aviation security in Jordan. Available at: <https://www.ncp-twinning.de/wp-content/uploads/2020/12/Twinning-Fiche-JO-17-ENI-TR-04-20.pdf>

<sup>229</sup> EU-Israel Aviation Agreement: EU and Israel sign Euro-Mediterranean Aviation Agreement. Available at: [https://content.next.westlaw.com/1-531-6876?\\_\\_lrTS=20210823053621650&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/1-531-6876?__lrTS=20210823053621650&transitionType=Default&contextData=(sc.Default)&firstPage=true)

concluded in May 2019, bringing the agreement to final ratification of the European Parliament. On June 17, 2020, 437 European legislators voted for the ECAA with Israel, only 102 against and 147 abstained and after this formalization it should offer the Israeli economy a significant boost amid the crisis caused by the coronavirus<sup>230</sup>.

The purpose of the Agreement<sup>231</sup> is to provide a framework that expands the CAA to Israel. This is part of the EU neighbourhood policy to replace the network of bilateral agreements through the establishment of a ECAA between the EU and neighbouring Mediterranean countries. The Agreement covers not only access to the air transport markets of the Contracting Parties, but extensive alignment of Israeli aviation legislation with EU legislation and regulations on aviation safety, security and air traffic management, as well as on economic regulation, competition laws, environment and consumer protection. The Agreement provides phased opening of market access between Israel and the EU, providing substantial opportunities for consumers and industry for both sides. The bilateral air services agreements between Member States and Israel will in almost all respects be superseded by this Agreement. The Agreement takes the form of a number of articles, which are essentially a new bilateral air services agreement between the EU and Israel, and a number of annexes that include a list of applicable European legislation and scope of the Agreement<sup>232</sup>.

According to this agreement, all EU airlines can fly directly to Israel from anywhere in the EU, and Israeli carriers can fly to airports throughout the EU. The EU-Israel air transport market can gradually open up until there are no restrictions on the number of flights.

In parallel with the gradual opening of the market, the agreement also aims to integrate Israel into the wider CAA with the EU based on common rules. Israel should implement regulatory requirements and standards equivalent to EU aviation rules in areas such as aviation safety, environment, consumer protection including passenger rights, air traffic management, economic regulation, competition issues, and social aspects.

The implementation and functioning of this agreement were also conditioned by the influence of territorial discussions. Hence, the agreement includes a clause stressing that, 'the application of this Agreement is understood to be without prejudice to the status of the territories that came under Israeli administration after June 1967<sup>233</sup>.

The need for this provision of the agreement was prompted by the Israeli Prime Minister Benjamin Netanyahu's plan, presented in 2019, to enlarge sovereignty over the Jordan Valley and West Bank settlements<sup>234</sup>. This plan became a serious threat to the ratification of the agreement by EU members, because the EU strongly opposes this annexation plan and considers it a serious violation of international law.

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<sup>230</sup> EU ratifies aviation agreement with Israel despite annexation strain. Available at: <https://www.al-monitor.com/originals/2020/06/israel-european-union-gabi-ashkenazi-josep-borrell-aviation.html#ixzz7nU068j5G>

<sup>231</sup> Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part and the government of the State of Israel, of the other part. Official Journal L 208, 2.8.2013, p. 3–67

<sup>232</sup> Explanatory Memorandum on the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the One Part, and The Government of the State of Israel, of the Other Part. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/739846/EM\\_EU.11\\_Euro\\_Med\\_Israel.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739846/EM_EU.11_Euro_Med_Israel.pdf)

<sup>233</sup> Supra note 231, Art. 1.

<sup>234</sup> Netanyahu. Facing Tough Israel Election, Pledges to Annex a Third of West Bank. Available at: <https://www.nytimes.com/2019/09/10/world/middleeast/netanyahu-israel-west-bank.html>

The EU urged Israel to refrain from any unilateral decisions that would lead to the annexation of any occupied Palestinian territory, as such a move would inevitably have significant consequences for the close relationship between the EU and Israel.

The EU is the most important aviation market for Israel, accounting for 57% of scheduled international air passenger movements to and from Israel. Similarly, Israel is one of the most important aviation markets for the EU in the Middle East with a strong growth potential. In 2011, EU-Israel traffic accounted for 7.2 million passengers, which represents an increase of 6.8% compared with 2010<sup>235</sup>.

#### 4. Tunisia

The EMAA between the EU and its Member States and the Republic of Tunisia<sup>236</sup> was negotiated by the Commission as authorised by the Council on 9 December 2008.

Air services between the EU and Tunisia operate at present on the basis of bilateral agreements between individual Member States and Tunisia.

It is part of the EU's external aviation policy to negotiate comprehensive air services agreements with neighbouring countries, where the added value and economic benefits of such agreements have been demonstrated.<sup>237</sup> The Agreement aims in particular at:

- gradual market opening in terms of access to routes and capacity on a reciprocal basis;
- ensuring regulatory convergence and effective compliance with EU aviation related legislation by Tunisia;
- non-discrimination and level playing field for economic operators.

The conclusion of an EMAA with Tunisia is an important element in the development of the EU external aviation policy and a crucial component of the EU neighbourhood policy and the creation of a wider ECAA<sup>238</sup>.

The Agreement consists of the main body including the core principles and three annexes: Annex I on transitional provisions, Annex Ia on transitional provisions relating to Tunis-Carthage International Airport, and Annex II on the EU rules applicable to civil aviation<sup>239</sup>.

The Agreement enables the extension of its terms simultaneously to all 27 Member States, providing equal treatment to all European Union air carriers, regardless of their nationality.

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<sup>235</sup> Memorandum of the Minister of Transport and Infrastructure. Available at: <https://parlament.mt/media/89939/89.pdf>

<sup>236</sup> Council Decision (EU) 2021/1404 of 28 June 2021 on the signing, on behalf of the Union, of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Republic of Tunisia, of the other part. Available at: <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vllr6bs7aiw4>

<sup>237</sup> Communication from the Commission - Developing the agenda for the Community's external aviation policy. COM/2005/0079 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005DC0079>

<sup>238</sup> European Commission. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions the EU's External Aviation Policy (2012) Addressing Future Challenges. Brussels.

<sup>239</sup> Euro-Mediterranean Aviation Agreement Between The European Union And Its Member States, Of The One Part, And The Republic Of Tunisia, Of The Other Part. Available at: [https://opac.oireachtas.ie/Data/Library3/Documents%20Laid/2021/pdf/TRAdocslaid200821\\_200821\\_144537.pdf](https://opac.oireachtas.ie/Data/Library3/Documents%20Laid/2021/pdf/TRAdocslaid200821_200821_144537.pdf)

These carriers can operate freely from any point in the EU to any point in Tunisia which is currently not the case.

The aviation industry plays an increasingly important role in the Tunisian economy, and according to experts, this trend continues. Historically, Tunisia has always been the land of aviation, from the country's first balloon flight in Tunisia in 1784 to Louis Bleriot's flight demonstration, also in the Tunisian capital, in 1910. Nowadays the aviation industry in Tunisia is experiencing double-digit annual growth, and it is also one of the few industries that has created jobs in recent years. The aeronautics sector in Tunisia is in full growth mode, with around 80 companies employing more than 13,000 people<sup>240</sup>.

Moreover, the EMAA with Tunisia is also noteworthy because the decision to sign it was made at the same time as the decision to sign 'open sky' agreements with Armenia and Ukraine. The following sections of the work will be devoted to the process of approval, signing, and features of these agreements.

## **D. The CAA within the Eastern Partnership**

At the end of April 2008, Poland and Sweden came up with a joint initiative regarding the need to develop a clear Eastern dimension of the EU's foreign policy, which later received the name 'Eastern Partnership' (EaP). This initiative extends to six countries of Eastern Europe and the South Caucasus - Azerbaijan, Belarus<sup>241</sup> (suspended), Armenia, Georgia, Moldova, and Ukraine<sup>242</sup>. The main goal of the EP for the EU is to transform this program into a cooperation mechanism with partner countries which would contribute to the construction of a safe environment and influence the regions of its operation.

After analyzing the data from the European Investment Bank, it is clear that over 65% of the funds are allocated to the environment sector, followed by the transport and energy sectors, with the remaining funds going towards other sectors of the economy<sup>243</sup>. Figure 6.3 shows that 18,6% of the European Investment Bank financing is directed to the transport sector for the development of the 'EaP'.

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<sup>240</sup>Aerospace's key role in Tunisian economy (2017). Times Aerospace. Available at: <https://www.timesaerospace.aero/features/aerospaces-key-role-in-tunisian-economy>

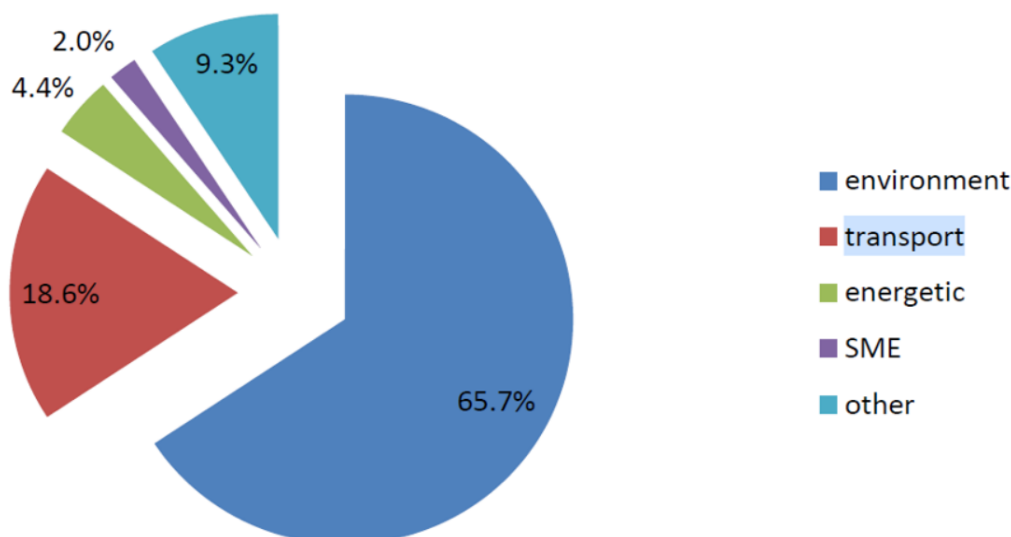
<sup>241</sup> On July 29, 2021, Belarus suspended its participation in the Eastern Partnership

<sup>242</sup> Pavlenko, S. (2014). 'Modern aspects and perspectives of the EU initiative 'Eastern Partnership' Transborder partnership, p. 14 (In Ukrainian)

<sup>243</sup> Eastern Partnership Technical Assistance Trust Fund (EPTATF), EBI. Available at: <http://www.eib.org/projects/regions/eastern-neighbours/instruments/technical-assistance/index.htm>



**Figure 6.3. Invested sector of the economy**



## 1. Georgia

Georgia unilaterally liberalized air traffic with the EU back in the 2000s, but signed the CAA Agreement with the EU in 2010<sup>244</sup>. The agreement was supposed to gradually liberalize air traffic between Georgia and the EU in order to attract new airlines and expand the operations of Georgian airports. As of mid-2016, all EU member states, except for four, ratified the CAA Agreement<sup>245</sup>. The progress achieved in the process of implementing EU directives and regulations into the Georgian legal system is monitored at the meetings of the EU-Georgia Joint Committee<sup>246</sup>. Since 2010, passenger traffic in Georgian airports more than tripled, from 918.7 thousand passengers in 2010 to 2 million 840.4 thousand in 2016.

The indicators of 2017 also show a significant increase - during the first 9 months, Georgian airports carried out regular and charter transportation of 3 million 199 thousand passengers, which is 46.63% more than for the same period in 2016<sup>247</sup>. High rates of passenger flow growth were observed in all the three international airports of Georgia – Tbilisi, Kutaisi, and Batumi.

<sup>244</sup> Common Aviation Area Agreement between the European Union and its Member States, of the one part, and Georgia, of the other part. Official Journal L 321, 20.11.2012, pp. 3-32.

<sup>245</sup> Emerson, M., and T. Kovziridze (2021) Deepening EU-Georgian relations. Brussels: CEPS.

<sup>246</sup> Third meeting of the EU-Georgia Joint Committee on the CAA Agreement in Tbilisi. Available at: <http://www.gcaa.ge/eng/news.php?id=6252>

<sup>247</sup> Georgian Civil Aviation Agency. Statistics. Available at: <http://www.gcaa.ge/geo/news.php?id=6368>

**Table 6.3. Passenger traffic to and from Georgian airports in 2010-2016**<sup>248</sup>

Year	Number of passengers
2010	918781
2011	1201441
2012	1403538
2013	1833807
2014	2008171
2015	2261006
2016	2840455

Currently, Turkish Airlines, Georgian Airlines, Qatar Airlines, Azerbaijan Airlines, Air Arabia, YanAir, Aeroflot, Ural Airlines, Belavia, Pegasus Airlines, Lufthansa, FlyDubai, LOT, Atlasjet Airlines, UIA, Ozark Air Lines, Air Astana, Emirates, and other airlines carry out transportation to Georgian airports. Georgia managed to attract only one classic European low-cost carrier – the Hungarian company 'Wizz Air'. According to aviation experts, the company's involvement took place after the government provided 'extremely attractive conditions' at the Kutaisi state airport and paid a subsidy for each transported passenger (it was mentioned in the media that this amount was 35 euros per person)<sup>249</sup>. The low-cost carrier currently operates flights to 15 destinations across several European countries, including Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Italy, and Lithuania. According to public activists in Georgia, the CAA Agreement has made the airport in Kutaisi accessible to all airlines, preventing any one carrier from monopolizing prices and allowing for fair competition among airlines<sup>250</sup>. The Civil Aviation Service of Georgia oversees the implementation of EU directives and regulations, as well as ICAO standards. From 2015 to 2017, the Twinning project 'Legal approximation of Georgian civil aviation regulations with EU standards' was implemented in Georgia with a budget of 1.23 million Euro<sup>251</sup>.

The Twinning project had a significant impact on the implementation of EU legislation in the aviation sector in Georgia. As part of this project, 80 European regulations were identified for the sector, with European experts focusing on the top twenty. The experts

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<sup>248</sup> GCAA Report 2016 official. Available at: [http://www.gcaa.ge/files/files/law\\_2/proactive%20information/GCAA%20Report%202016%20official.pdf](http://www.gcaa.ge/files/files/law_2/proactive%20information/GCAA%20Report%202016%20official.pdf)

<sup>249</sup> Lanetskyi O. How the Open Skies agreement will harm Ukraine. <http://biz.nv.ua/ukr/experts/lanetsky/jak-dogovir-pro-vidkrite-nebo-nashkudit-ukrajini.html> (In Ukrainian)

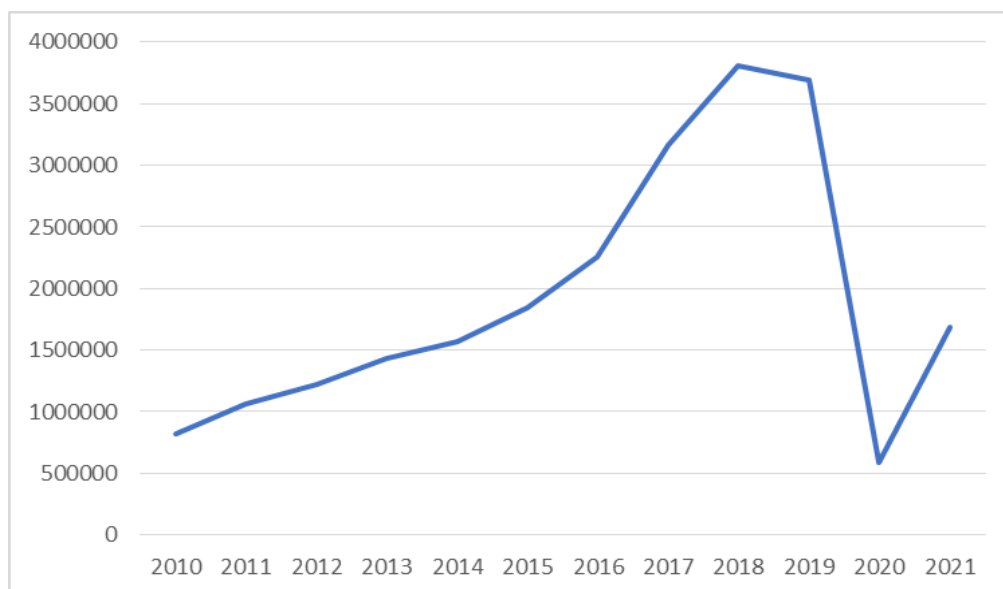
<sup>250</sup> Naroushvili L. When will Georgia get a visa-free regime with the EU? <http://apsny.ge/interview/1479532421.php>

<sup>251</sup> Georgian Civil Aviation Agency. Statistics. Available at: <http://www.gcaa.ge/statistics/>

worked on several key EU regulations, including No. 1321/2014, 1178/2011, and 965/2012<sup>252</sup>.

Although the agreement on CAA did not result in a significant increase in European carriers operating at Georgian airports, it did contribute to a significant growth in passenger traffic. Since 2010, the number of passengers using Georgian airports has more than tripled.

**Figure 6.4. An increase of number of passengers in Georgia (2010-2021)<sup>253</sup>**



## 2. Moldova

In June 2012, Moldova signed the CAA Agreement with the EU<sup>254</sup>. The purpose of this agreement is to align Moldova's legislation with European legislation in the areas of aviation safety, air traffic control, computer reservation systems, and environmental protection<sup>255</sup>. The agreement aims to gradually apply EU legislation on air transport in its entirety<sup>256</sup>. Harmonization takes place gradually: its progress is assessed by the European Commission and approved by a separate decision of the EU-Moldova Joint Committee<sup>257</sup>. However, the CAA Agreement did not give Moldovan air carriers full access to the EU market: they received the right to fly only between Moldova and EU cities and could not operate flights

<sup>252</sup> Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. Official Journal L 296, 25.10.2012, p. 1–148

<sup>253</sup> Georgian Civil Aviation Agency. Statistics. Available at: <http://www.gcaa.ge/statistics/>

<sup>254</sup> Common Aviation Area Agreement between the European Union and its Member States and the Republic of Moldova. Official Journal L 292, 20.10.2012, pp. 3-37

<sup>255</sup> Ibid. Appendix III.

<sup>256</sup> Ibid. Appendix II.

<sup>257</sup> Emerson, M., and D. Cenușă (2021). Deepening EU-Moldovan relations. Brussels: CEPS.

within an EU member state (cabotage) or between EU member states without flying to Moldova. The Moldovan authorities hoped the Agreement would allow low-cost carriers to be attracted to Chisinau airport, as European airlines were given the opportunity to fly to and from Moldova without restrictions. Currently, 15 airlines fly from the capital of Moldova to 42 destinations<sup>258</sup>. Air Moldova (30) and the private Moldovan airline FLY ONE (15) have the most destinations, Italian Meridiana (7), Hungarian Wizz Air (7), Turkish Airlines (2) and ATLASGLOBAL (2), and S7 Airlines (2). Wizz Air, which began flying to Moldova in September 2013, can be considered as a classic low-cost carrier. There was no mass arrival of low-cost carriers in Moldova. However, passenger traffic increased by 80% from 2013 to 2.2 million passengers in 2016.

**Table 6.4. Passenger flow to and from Chisinau International Airport in 2013-2016<sup>259</sup>**

Year	Number of passengers
2013	1220500
2014	1781469
2015	2226400
2016	2206266

Overall, the number of destinations has more than doubled from 19 in 2013 to 42 in 2017. As a result of increased competition in the market, prices have decreased. Thus, according to the Civil Aviation Authority of Moldova, a ticket for a direct flight to London, which in April 2010 cost 210 Euro, cost 45 Euro in April 2017 (a drop of almost 80%). The price of a ticket to Milan fell during this period by 75% from 141 to 35 Euro, tickets to Lisbon fell by 34% from 222 to 146 Euro. For some destinations (Moscow, Vienna) it is currently cheaper to fly from Chisinau airport than from the nearest larger airport in Bucharest<sup>260</sup>.

Within the framework of the Agreement on CAA, Moldova needed to implement 86 EU norms in the new main law of the industry – the Civil Aviation Code, as well as other laws and regulations. As of November 2016, all European regulations were translated and adapted to Moldavian conditions, tasks for their implementation were planned and agreed on by the Civil Aviation Service and the Ministry of Transport and Road Infrastructure of Moldova<sup>261</sup>. The Civil Aviation Code was approved by the Government in October 2016, its adoption by the Parliament was expected in 2018, and three more main aviation laws (on aviation safety, insurance, and accident investigation) had been developed and were in the approval stage<sup>262</sup>.

As of the end of 2017, the Government of Moldova and the Civil Aviation Service approved part of the normative legal acts in accordance with the Agreement on CAA. In

<sup>258</sup>Chisinau airport web-site. Available at: <http://www.airport.md/airlines-en/>

<sup>259</sup> The Civil Aviation Authority of Moldova. Statistics. Available at: <https://www.caa.md/en/statistica-si-indicatori-4-177>

<sup>260</sup>National Action Plan for the implementation of the Association Agreement between the Republic of Moldova and the European Union for 2014-2016. Available at: [http://lex.justice.md/UserFiles/File/2015/mo281-290en/plan\\_713.doc](http://lex.justice.md/UserFiles/File/2015/mo281-290en/plan_713.doc)

<sup>261</sup> EU-Moldova Association Committee. Ministry of Transport and Road Infrastructure of the Republic of Moldova. Available at: [http://mtid.gov.md/sites/default/files/Brux%2023.11.2016%20\\_2.pdf](http://mtid.gov.md/sites/default/files/Brux%2023.11.2016%20_2.pdf)

<sup>262</sup>Aviation Code of the Republic of Moldova dated December 21, 2017 No. 301 (as amended and supplemented as of 06/09/2022). Available at: [https://continent-online.com/Document/?doc\\_id=38859585](https://continent-online.com/Document/?doc_id=38859585).

particular, the Government of Moldova approved: Regulations on statistical reporting on air transportation of passengers, cargo and mail, and the structure of recording the transfer of statistical data (No. 868 dated 18.12.2015)<sup>263</sup>, which was provided by the National Action Plan for the Implementation of the Association Agreement with the EU for 2014-2016 (EU Regulations No. 437/200<sup>264</sup> and No. 1358/2003<sup>265</sup>), Methodology for calculating and approving tariffs for airport services and air navigation services (No. 476 of 20.04.2016<sup>266</sup>), Regulation on access to the market for ground handling services (No. 971 dated 15.11.2017).

In November 2016, Moldova was required to analyze the regulatory impact of over 50 EU norms that were to be implemented between 2016 and 2018. Additionally, they needed to adopt over 70 acts by the Government and Parliament between 2016 and 2020.

These tasks were laid out in the new National Action Plan for the implementation of the Association Agreement with the EU for 2017-2020<sup>267</sup>.

The plan included several specific tasks, such as the implementation of EU Directive 2003/88<sup>268</sup> on the organization of working hours of civil aviation workers in the first quarter of 2019, the creation of the Civil Aviation Fund, and joining the Protocol on Aviation Equipment approved in Cape Town on November 16, 2001<sup>269</sup>.

Other tasks included the development of a new law on aviation safety that considered the provisions of EU Regulations No. 300/2008<sup>270</sup>, 18/2010<sup>271</sup>, 1254/2009<sup>272</sup>, and 72/2010<sup>273</sup>, the approval of the new National Program on civil aviation safety, and the approval of the Regulation on the creation of rules and procedures regarding the introduction of operational restrictions related to noise at airports (EU Regulation No. 598/2014<sup>274</sup>) by the end of 2018.

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<sup>263</sup> Statistical requirements compendium (2022). Manuals and guidelines. Luxembourg: Publications Office of the European Union, p. 26.

<sup>264</sup> Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air. Official Journal L 66, 11.3.2003, pp. 1-8

<sup>265</sup> Commission Regulation (EC) No 1358/2003 of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto. Official Journal L 194, 1.8.2003, pp. 9-33

<sup>266</sup> Methodology for calculating and approving tariffs for airport services and air navigation services (No. 476 of 20.04.2016. Available at: [https://www.caa.md/files/2016\\_05/821.pdf](https://www.caa.md/files/2016_05/821.pdf)

<sup>267</sup> National Action Plan for the implementation of the Association Agreement between the Republic of Moldova and the European Union for 2017-2019. Available at: [http://lex.justice.md/UserFiles/File/2017/mo103-108en/planul\\_1472.doc](http://lex.justice.md/UserFiles/File/2017/mo103-108en/planul_1472.doc)

<sup>268</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. Official Journal L 299, 18.11.2003, p. 9–19

<sup>269</sup> Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town on 16 November 2001). Available at: [https://www.icao.int/sustainability/Documents/CPTConvention\\_Protocol\\_AnnexB.pdf](https://www.icao.int/sustainability/Documents/CPTConvention_Protocol_AnnexB.pdf)

<sup>270</sup> 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. Official Journal L 97, 9.4.2008, p. 72–84

<sup>271</sup> Commission Regulation (EU) No 18/2010 of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned. Official Journal L 7, 12.1.2010, p. 3–14

<sup>272</sup> Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures. Official Journal L 338, 19.12.2009, p. 17

<sup>273</sup> Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security. Official Journal L 23, 27.1.2010, p. 1–5

<sup>274</sup> Regulation (EU) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at

Moldova was also required to approve the Regulation on Administrative Procedures for Airports (EU Regulation No. 139/2014<sup>275</sup>) by the end of 2017 and to adopt the law on the investigation of transport accidents and incidents that considered the adopted EU regulation No. 996/2010<sup>276</sup> on the prevention of aviation accidents in civil aviation, in the third quarter of 2017.

Other tasks included the adoption of the law on the application of airworthiness and environmental certification of aircraft taking into account EU regulation No. 748/2012<sup>277</sup> in the first quarter of 2019, the adoption of the Regulation on issuance of slots at the airports of the Republic of Moldova (EU Regulation No. 95/93<sup>278</sup>) in the third quarter of 2017, the approval of the Government Resolution on creating a list of Community air carriers that are subject to a ban on operation on the territory of the Community, and on informing aircraft passengers about the identity of such a carrier (regulations EU No. 768/2006<sup>279</sup>, 2111/2005, 473/2006, 474/2006) in the first quarter of 2018, and the approval of the new Air Code taking into account the provisions of EU regulations No. 216/2008 and 965/2012 in the first quarter of 2018.

Moldova's experience demonstrates that the process of incorporating European norms into national legislation is a lengthy and extensive one. During the five years of the CAA Agreement, Moldova only approved some of the legislative acts that the Agreement required, and also developed a new fundamental law for the aviation sector, known as the Civil Aviation Code. The European Commission monitors Moldova's progress in this area and provides advisory assistance in reforming the air transport sector. According to Moldavian high-ranking officials, the signing of the CAA Agreement with the EU contributed to an increase in the number of direct flights from Moldova, low-cost operators entered the market, and flight prices decreased<sup>280</sup>. Considering the long process of implementation of EU legislation in Moldova, the Ukrainian aviation authorities should start implementing EU regulations now, without waiting for the actual signing of the Agreement, in order to speed up this process.

Over the past 11 years, the air transport industry has undergone the changes depicted in the table below.

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Union airports within a Balanced Approach and repealing Directive 2002/30/EC. Official Journal L 173, 12.6.2014, p. 65–78

<sup>275</sup>Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. Official Journal L 44, 14.2.2014, p. 1–34

<sup>276</sup>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. Official Journal L 295, 12.11.2010, p. 35–50

<sup>277</sup>Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations. Official Journal L 224/1, 21.8.2012

<sup>278</sup>Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports. Official Journal L 14, 22.1.1993, p. 1–6.

<sup>279</sup>Commission Regulation (EC) No 768/2006 of 19 May 2006 implementing Directive 2004/36/EC of the European Parliament and of the Council as regards the collection and exchange of information on the safety of aircraft using Community airports and the management of the information system. Official Journal L 134, 20.5.2006, p. 16–18

<sup>280</sup>Chisinau - Moldova has become part of the European project to provide assistance in the field of civil aviation to 8 countries. July 13, 2016. Available at: <http://www.caa.md/eng/news/item146>.

**Table 6.5. Brief analysis regarding passenger traffic (2009-2019)<sup>281</sup>**

Indicator Name	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Aircraft takeoff	12355	13751	15022	16113	16858	19756	22468	22033	27113	27949	27092
Passengers' delivering	808096	937030	1046086	1220506	1321236	1781166	2226441	2206266	2744465	2828626	2995530
Shipping of goods	1630.7	1815.5	2068.5	2022.4	2309.7	2243.1	2230,9	2130.1	2743.3	32459	2757.0
Mail conveyance	402.5	583.7	597.7	743.0	642,1	680.4	660.9	644.2	745.4	940.7	1010.7

### 3. Armenia

In their relations, the EU and Armenia are guided by the Comprehensive and Enhanced Partnership Agreement between the EU and Armenia (CEPA), which was signed on November 24, 2017 and entered into force on March 1, 2021<sup>282</sup>.

The document lays the foundation for mutually beneficial cooperation in various areas, including transport development.

The CAA Agreement between the Republic of Armenia and the EU was signed on November 15, 2021 in Brussels. The agreement is currently (November 2022) at the stage of ratification.

The purpose of the Agreement is the gradual liberalization of the air transportation market. The unified aviation zone will expand air traffic, develop the international aviation system, including relying on non-discriminatory, competitive, transparent, and fair competition among airlines in the market. For Armenia this is also a direct path to the adoption of common EU aviation standards, the application of rules and the development of cooperation in the field of aviation security.

Georgia's and Moldova's experience testifies to the long-term implementation of European norms into national legislation of post-soviet developing countries. The approval of new norms takes place with the support of consultants of the EU at all stages. Hence, Armenian ratification of the CAA Agreement and implementation its clauses into the national legislation will definitely lead to its main goal: liberalization of aviation service market.

### 4. Azerbaijan

Azerbaijan is the only country among the EaP countries that has not signed the CAA agreement with the EU as of 2022, with the exception of Belarus, which suspended its participation in the EaP in 2019. Azerbaijan is making efforts to turn the country into a

<sup>281</sup> Civil Aviation Authority. Republic of Moldova. Brief analysis regarding passengers' traffic (2009-2019). Available at: <https://www.caa.md/en/statistics-4-114>

<sup>282</sup> Council of European Union (2017). Joint Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part. JOIN/2017/037 final – 2017/0238.

regional transport hub. However, such efforts will be incomplete in the absence of an open skies agreement that has significant economic potential<sup>283</sup>.

CAA agreement between the EU and Azerbaijan is being negotiated within the framework of the Partnership and Cooperation Agreement<sup>284</sup>. It is designed to promote the development of air traffic between the EU countries and Azerbaijan, increase competition in the aviation sector, and create an opportunity for various international airlines to operate in Azerbaijan.

The first round of negotiations took place back in January 2013, but then a long pause followed. Negotiations were resumed in June 2016, and there were expectations for the completion of negotiations by the end of 2018, but soon there was a slowdown in the negotiations again<sup>285</sup>.

However, Azerbaijan demonstrates its intention to cooperate with the EU. The essential progress in preparations for signing the CAA Agreement between EU and Azerbaijan has been achieved during the visit of the EU delegation to Baku in February 2019.

Furthermore, Azerbaijan is one of EASA's Pan-European Partners (PANEP)<sup>286</sup>. This is a community of non-EASA European countries with which EASA cooperates on the implementation of the EU aviation safety rules - either in the framework of comprehensive aviation agreements already concluded with the EU, or in anticipation of such agreements. The EASA and State Aviation Administration of Azerbaijan signed the Working Agreement which covers all aspects of regulation of civil aviation safety and environmental protection of products, organizations, and personnel.

## 5. Ukraine

Since its independence, gained in 1991, Ukraine has developed dynamic relations with the EU. The impetus for this was the common understanding that the prosperity, stability, and security of both Ukraine and the EU can be significantly enhanced by close cooperation.

The process towards the CAA between EU and Ukraine started in 1999 and the official confirmation of intentions to continue the process and the CAA agreement signing became an important step.

On December, 12, 2006, the Council of the EU authorized the Commission to open negotiations with Ukraine<sup>287</sup>. During the negotiation process on the CAA Agreement air services between the EU and Ukraine operated on the basis of bilateral agreements between individual Member States and Ukraine.

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<sup>283</sup>EU Ambassador: Without 'open skies' the project of turning Baku into a transport hub will be incomplete. Available at: <https://1news.az/news/20181213051200796-Posol-ES-Bez-otkrytogo-neba-proekt-prevrashcheniya-Baku-v-transportnyi-khab-budet-incomplete>.

<sup>284</sup> Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part. Official Journal L 246, 17.9.1999, p. 3–51

<sup>285</sup> A Common Aviation Area with the EU's neighbours. European Commission. Available at: [https://transport.ec.europa.eu/transport-modes/air/international-aviation/external-aviation-policy/common-aviation-area-eus-neighbours\\_en](https://transport.ec.europa.eu/transport-modes/air/international-aviation/external-aviation-policy/common-aviation-area-eus-neighbours_en)

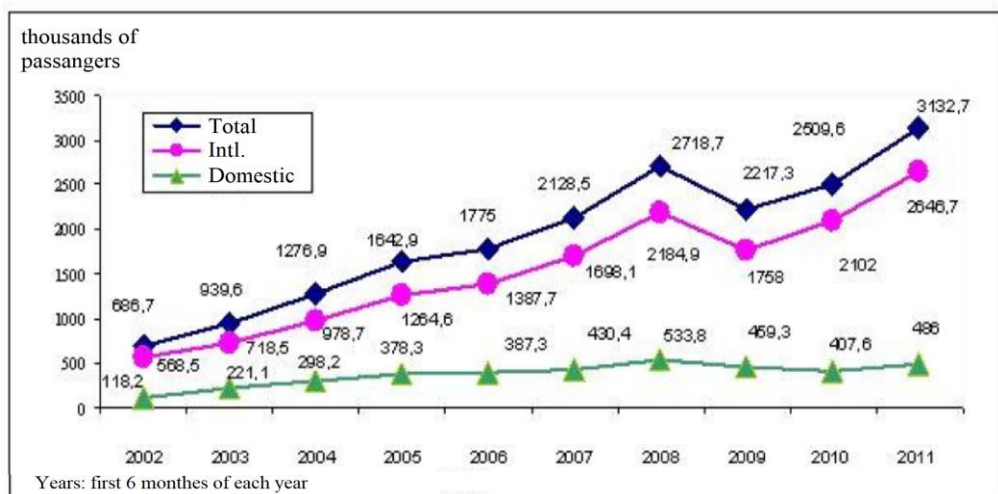
<sup>286</sup>EASA-Azerbaijan. Available at: <https://www.easa.europa.eu/en/domains/international-cooperation/easa-by-country/countries/azerbaijan>

<sup>287</sup>The Council of the EU agreed to sign the Agreement with Ukraine. Available at: <https://mtu.gov.ua/news/32903.html?PrintVersion>



The EU also declared its interest in signing this Agreement with Ukraine, defining the following statement in the Proposal for a Council Decision<sup>288</sup> market between the EU and Ukraine is significant. Traffic by air involves more than 4 million passengers, growing at an average yearly rate of 17% over the past 10 years<sup>289</sup>. Aviation services for cargo are also on the increase, registering double growth over the same period. It is also worth noting that traffic between the EU and Ukraine averaged almost 43% of the Ukraine's total international traffic during the last 4 years<sup>290</sup>.

**Figure 6.5. Dynamics of passenger transportation volumes by air transport of Ukraine<sup>291</sup>**



Negotiations on the CAA Agreement with Ukraine were completed in 2013, however the signing of the Agreement was blocked due to a conflict between the UK and Spain concerning the status of Gibraltar airport<sup>292</sup>. Thus, the lack of consensus between Spain and the United Kingdom on the wording of paragraph 31 'Territory' of Article 2 'Definition' of the CAA Agreement<sup>293</sup> regarding the territorial status of Gibraltar was named as the main reason for postponing the signing of the CAA Agreement in 2014-2016.

Only since January 2021, with the end of Brexit and the restrictions on the work of institutions related to the COVID-19 disease, has legal work resumed on a whole series of

<sup>288</sup> European Commission (2014). Proposal for a Council Decision on the signature, on behalf of the European Union, and provisional application of a Common Aviation Area Agreement between the European Union and its Member States and Ukraine. COM/2014/018 final - 2014/0008 (NLE). <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52014PC0018>

<sup>289</sup> Karas, O. S. (2012). 'Status and prospects of the development of passenger air transportation in Ukraine'. Bulletin of the Ternopil National Economic University 1, pp. 73–80 (In Ukrainian), p. 75.

<sup>290</sup> Ibid. p. 75

<sup>291</sup> State Aviation Service. Available at: <http://avia.gov.ua>

<sup>292</sup> Cohen, S. B. (2008). Geopolitics: The Geography of International Relations. USA: Rowman & Littlefield Publishers.

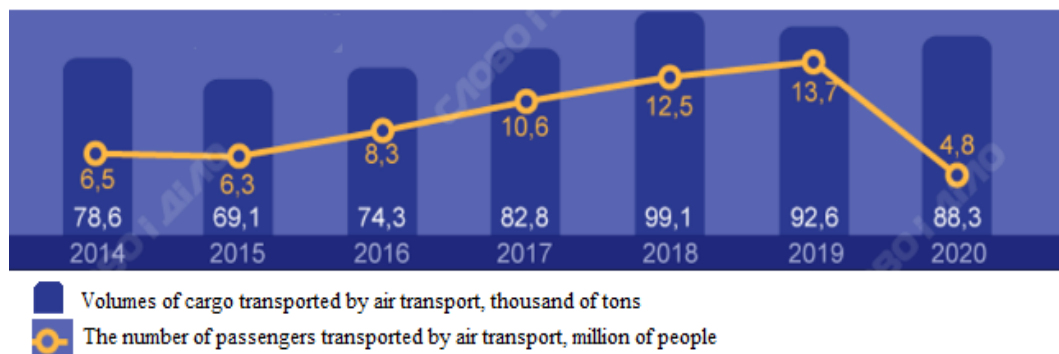
<sup>293</sup> Art. 2 para 31 of the Common Aviation Area Agreement Between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part. Official Journal L 387, 3.11.2021, p. 3–57

EU aviation agreements with third countries ready to be signed<sup>294</sup>. In the end, the story came to a logical conclusion: on June 28, the EU Council approved four agreements at once - with Ukraine, Armenia, Tunisia, and Qatar. And already on October 12, 2021, the CAA agreement between Ukraine and the EU was signed. On February 17, 2022, the Verkhovna Rada<sup>295</sup> ratified the long-awaited Agreement on 'visa-free aviation'<sup>296</sup>.

The CAA Agreement enters into force on the first day of the second month from the date of the last notification in the process of exchanging diplomatic notes between the Parties confirming the completion of all procedures necessary for this Agreement to enter into force<sup>297</sup>.

Although the CAA Agreement prevails over the provisions of bilateral treaties on air services, the latter are still applicable if their regime is more favorable to carriers than the provisions of the Agreement<sup>298</sup>.

**Figure 6.6. Volumes of civil air transportation in Ukraine in 2014-2020<sup>299</sup>**



In accordance with the provisions of the Agreement, the parties will establish a CAA between Ukraine and the EU based on equal rules of aviation safety, air traffic management, social rights of employees, electronic reservation systems, environmental protection, and consumer rights<sup>300</sup>.

According to the CAA Agreement, a Joint Committee should be established for the purpose of interpretation of EU legislation in the field of civil aviation, control over the organization of air traffic, monitoring of the implementation of the Agreement, making changes and additions to the Agreement<sup>301</sup>. The Joint Committee shall be responsible for the application of this Agreement and ensure its proper implementation<sup>302</sup>. The CAA Agreement

<sup>294</sup>Brexit: Gibraltar – European Union Committee. Available at: <https://publications.parliament.uk/pa/ld201617/ldselect/deucom/116/11609.htm>

<sup>295</sup>Parliament of Ukraine.

<sup>296</sup>Ukraine and the European Union signed the Agreement on Common Aviation Area. Available at: <https://www.ukrinform.ua/rubric-economy/3331533-ukraina-ta-es-pidpisali-ugodu-pro-vidkrite-nebo.html>

<sup>297</sup>Supra note 12, Art. 38.

<sup>298</sup>Supra note 12, Art. 34.

<sup>299</sup>Ukraine and the European Union signed the Agreement on Common Aviation Area. Available at: <https://www.ukrinform.ua/rubric-economy/3331533-ukraina-ta-es-pidpisali-ugodu-pro-vidkrite-nebo.html>

<sup>300</sup>Supra note 12, Art. 1.

<sup>301</sup>Supra note 12, Art. 29.

<sup>302</sup>Supra note 12, Art. 15 para 3.

does not contain implementation schedules, the transition to the next period of implementation of the Agreement occurs after a decision is made by the Joint Committee, which assesses the degree of implementation. The Joint committee will consist of representatives of Ukraine and the EU, its decisions are binding<sup>303</sup>. The Joint committee has broad rights and powers, but neither the mechanism for its creation nor its quantitative composition is prescribed in the Agreement.

In addition, instead of EASA Pan-European Partner status Ukraine will fully participate in the work of several other institutions as an observer - EASA and the Committee for the SES<sup>304</sup>. Ukraine will be accountable to EASA for aircraft certification.

The implementation of the agreement will take place in two stages. After the signing of the CAA Agreement the first stage has begun, which includes two transitional periods. The first transitional period will allow air carriers of Ukraine and the EU to fly between any point in the EU and any point in Ukraine. Ukraine is involved as an observer in the work of the committee responsible for allocating slots at EU airports. At the same time, legislative harmonization and implementation of EU requirements and standards are ongoing in Ukraine (started long before the signing of the agreement), the successful completion of which will allow the start of the second transition period<sup>305</sup>.

During the second transitional period, the EU will start accepting crew certificates issued by Ukraine; ground handling service providers will be able to work on the territory of another Party; Ukraine will be involved as an observer in the work of the committee, which determines which air carriers are prohibited from flying within the EU<sup>306</sup>.

At the second stage, Ukrainian airlines will have the right to operate complex flights (with intermediate or final stops in other countries), and EU airlines - complex flights and domestic flights in Ukraine.

Therefore, the CAA Agreement will be fully operational for Ukraine only after its ratification by both parties and the implementation of a number of European regulations and decisions aimed at free access to the air transport market, air transport management, licensing of air traffic inspectors, aviation safety, environmental protection, social aspects and consumer protection, ticket reservation systems, etc. into Ukrainian legislation. The list of these documents is contained in Annex I to the Agreement<sup>307</sup>. A joint committee will be established for the purpose of checking the quality of the implementation. The success of the implementation will be determined based on the positive conclusions drawn from this committee's evaluation:

1) air carriers of the EU will be allowed to use unlimited transportation rights between any points in Ukraine and EU partner countries, provided that the flight is part of transportation that begins in an EU member state. Air carriers of the EU will also be allowed to carry out unlimited transportation between points in Ukraine, regardless of whether the transportation begins or ends in the EU;

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<sup>303</sup> Supra note 12, Art. 29 para 1.

<sup>304</sup> Supra note 12, Art. 7 para 3.

<sup>305</sup> Ibid., Annex III SECTION 2 Art. 1.

<sup>306</sup> Ibid., Annex III SECTION 2 Art. 2.

<sup>307</sup> Ibid. Annex I.

2) air carriers of Ukraine will be allowed to carry out unlimited transportation between any points in the EU, EU partner countries, provided that the flight is part of a service serving a point in Ukraine.

## E. Appraisals

The process of liberalization in the EU ended thirty years after the establishment of the Economic Community and the adoption of many legislative acts. The decision to create a single European aviation market in the EU became part of the actions to create a single internal market in accordance with the SEA. Such processes of development of the CAA in the EU itself were combined with the process of accession of third countries to it.

In today's conditions of constant geopolitical changes, one of the important tools for the reorganization of the European Security Strategy has become the ENP, which provides for the organization of cooperation in many strategically important directions for the EU, including aviation transport. This policy was implemented through agreements under the frameworks of the ECAA, EMAA and EaP.

Hence, the EU's cooperation is extended to neighboring countries. The list of Agreements within the main neighborhood program is presented in the Table 6.6.

**Table 6.6. ECAA Agreements: countries and dates of signing**

<b>ECAA Agreement (9.06.2006)</b>	<b>Euro-Mediterranean aviation agreements</b>	<b>CAA Agreements within the EaP 6 Eastern neighbors</b>
27 EU members of the EU itself, Albania Bosnia and Herzegovina Croatia Iceland Montenegro North Macedonia Norway Serbia Kosovo (UNMIK) <i>Last two EU member states:</i> Slovakia (13.06.2006) Latvia (22.06.2006)	Kingdom of Morocco (12.12.2006) Jordan (15.12.2010) Israel (10.06.2013) Tunisia (28.06.2021)	Armenia (15.11.2021) Azerbaijan (negotiation) Belarus (suspended) Georgia (2.12.2010) Moldova (26.06.2012) Ukraine (12.10.2021)

The regulations of the signed ECAA Agreement include: licensing and market access rules (economic compliance); competition rules (prohibition of abuse of a dominant position); the duty of non-discrimination (based on nationality); capacity and tariffs; flight safety; state

aid. That is, as a result of signing such an agreement, these countries would include the Community norms in the field of air transport management in their national legislation.

The ECAA Agreement permits complete reciprocal ownership inasmuch as it requires the Balkan states to apply EU law concerning the licensing of air carriers as it stands. However, it must be pointed out that this agreement is of a completely different nature from all the others, since it was drafted as a first step towards EU membership and puts the Balkan states in the same position as any EU Member State as regards EU law and the powers of the Union institutions and bodies.

The purpose of EMA Agreements is to create a framework that extends the CAA to neighboring countries. It is part of the EU's neighborhood policy, which aims to replace the network of bilateral agreements by creating a Common Euro-Mediterranean Area between the EU and neighboring Mediterranean countries.

The EaP policy is increasingly acquiring specific and meaningful features and should become a kind of continuation of the European Neighborhood Policy and its extensive direction in the Eastern Europe. EaP provides fundamental pillars for creation of the CAA with Eastern European countries.

The necessity to liberalize the aviation area with the EU member states was mentioned in the Association Agreement between Ukraine and the EU. The implementation of the CAA Agreement after the war will allow more efficient use of the air transportation market, improve the quality of services, develop Ukraine's transit potential, integrate Ukraine into European aviation structures, and strengthen the country's authority as a European aviation power. Ukraine hopes that the CAA Agreement would attract low-cost carriers and give impetus to the development of Ukrainian airports as transit hubs.

The main condition for the successful functioning of the signed CAA Agreement is the harmonization of Ukrainian legislation with several European regulations and decisions in the field of the 'open sky'.

Therefore, in general, the CAA Agreement provides implementation of 64 EU regulations and directives in the field of aviation into Ukrainian legislation. After that Ukrainian air carriers will be able to obtain unlimited commercial rights during carrying out transportation from Ukraine to the EU and between any EU member states, if the route starts or ends in Ukraine. In turn, EU air carriers will have unlimited commercial rights regarding flights to and within Ukraine.

# **CHAPTER III**

## **PREREQUISITES AND FUNDAMENTALS**

### **FOR THE CAA IN UKRAINE**

In the previous two sections, we explored questions such as the prerequisites for the emergence, the process of formation, principles, and experience of the functioning of the European CAA, among others. Additionally, we briefly discussed the transformation of the mutual direction towards the liberalization of the aviation sector between the EU countries and Ukraine, culminating in the signing of an important document – the CAA – on October 12, 2021, during the 23rd bilateral summit.

To answer the following questions: 1) what are the peculiarities and difficulties of creating a CAA between Ukraine and the EU; 2) what is important to consider when harmonizing Ukrainian national legislation; 3) how to ensure the promotion of mutual access to air transport markets with equal conditions of competition and respect for the same rules, it is crucial to examine the fundamentals and peculiarities for the harmonization of Ukrainian civil aviation legislation. Therefore, this section will provide a brief analysis of the position of Ukrainian civil aviation in the international Chicago system, the normative framework for fulfilling the CAA Agreement by Ukraine, and a retrospective of the preliminary implementation of CAA regulations, including the reform of the Air Code of Ukraine and changes to the entire civil aviation regulatory system.

This and the following sections will be devoted to a detailed analysis of the process of implementation of the provisions of the CAA Agreement with the aim of its actual and real functioning in the sphere of passenger air transportation in the pre-war period and during the CAA Agreement negotiations.

This section is built on a chronological basis, starting with a brief description of Ukrainian achievements and contributions to the development of world aviation. We will then proceed with an analysis of the air transport system and reforms of aviation legislation, focusing on the approximation towards EC legislation after Ukraine gained independence and before the signing of the CAA Agreement. Finally, we will highlight the main provisions of the signed CAA Agreement.

## **A. Prerequisites and conditions for the implementation of the CAA in Ukraine**

In order to provide a clearer answer to the question about the effectiveness of the implementation of the CAA in neighboring countries, experts from EU member countries obviously conduct thorough research on the aviation industry conditions in certain states or regions (for instance, the Western Balkans), as well as on the development of air transport enterprises, aircraft construction and certification, flight safety, the country's participation in international aviation organizations, air security, ATM, environmental protection, consumer rights protection, computer reservation systems, etc. This research process is extremely important for determining the terms and conditions of the CAA Agreement.

Therefore, this section of the dissertation is precisely devoted to an overview of Ukraine's place in world aviation and the aviation transport industry conditions. The opinion that this section aims to prove is that Ukraine is a really important and strategic partner for the EU and, through significant achievements in the aviation industry, has made significant contributions to world aviation. Therefore, further fulfillment of the conditions of the CAA Agreement can become a catalyst for larger-scale integration of Ukraine into the EU.

### **1. Brief overview of early Ukrainian contribution to the development of world aviation**

Before proceeding to the analysis of the operating conditions of the aviation transport system in Ukraine, let's briefly dwell on its origins and achievements. The roots of Ukrainian aviation go back to times long before Ukraine gained its independence. Speaking about the Ukrainian contribution to the achievements of world aviation, the following names should be very briefly mentioned:

The first Ukrainian drag-rotor shaped biplane, weighing 320 kilograms and powered by a 35-horsepower Anzani engine, was the 'Kudashev-1' named after its developer Oleksandr Kudashev, a Kyiv design engineer and professor at the Kyiv Polytechnic Institute (1906–1911)<sup>308</sup>.

Kudashev's work was continued by Ihor Sikorskyi<sup>309</sup> - a student of Kyiv Politechnic Institute, who designed and built his first helicopter in 1908<sup>310</sup>. Later, together with his colleagues at the institute, Fedir Bylinkin<sup>311</sup> and Vasyl Iordan<sup>312</sup>, he built airplanes BiS-1<sup>313</sup>,

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<sup>308</sup> Yankoviy, V. and D. Stefanovych (2003). 'Air pioneers: World aviation owes a lot to our compatriots [Olexandr Kudashev, Igor Sikorskyi, Peter Nesterov]' *Khreshchatyk*, No. 134. p. 12-13 (In Ukrainian)

<sup>309</sup> Basaraba, V. (2004). 'Igor Sikorsky: [about the designer of airplanes and helicopters Igor Sikorsky]'. Free speech 24, p. 12 (In Ukrainian).

<sup>310</sup> *Ibid.*, p. 11.

<sup>311</sup> Trotsenko, A.M. (2004). 'Constructors and pilots - testers. Fedir Ivanovich Bilinkin'. *History of Civil Aviation of Ukraine 1*, p.33 (In Ukrainian).

<sup>312</sup> Trotsenko, A.M. (2004). 'Designers and pilots are testers. Vasyl Volodymyrovych Iordan (1884 – 1954). *History of civil aviation of Ukraine 1*, pp. 36–37 (In Ukrainian).

<sup>313</sup> The biplane's name 'BIS' includes the first letters of the surnames of its creators: Bilinkin, Iordan, Sikorsky

BiS-2, and C-3, C-4, C-5, C-6, and S-6 (which broke the world speed record at 111 km/h<sup>314</sup>), the first multi-engine airplanes, 'Vytiaz' (Grand), Ilya Muromets<sup>315</sup>, 'S' brand helicopters (used by the US Armed Forces<sup>316</sup>), and helicopters that were the first in history to cross the Atlantic and the Pacific Ocean<sup>317</sup>.

The name of the talented Ukrainian engineer and pilot Petro Nesterov is firmly established in the history of aviation, not only thanks to the famous 'Nester loop' or 'dead loop'<sup>318</sup>, but also due to his work on improving the design of the 'Newpon-4' airplane, which he used to perform a closed loop in the vertical plane<sup>319</sup>.

Dmytro Hryhorovych, the author of the idea of the world's first seaplane 'M-1', the world's first fighter, and the first sports plane with a landing gear named 'G-1', also came from Kyiv<sup>320</sup>.

The greatest era in the development of aviation in Ukraine belongs to the brilliant designer of the Kyiv Separate Design Bureau - Oleh Antonov (1906-1984). For almost 60 years of design activity under the leadership of Oleh Antonov, several dozen different machines - cargo, passenger, and special - were created. Personally, Antonov made an invaluable contribution to the development of world science in the fields of gliders, aircraft construction, and economics<sup>321</sup>.

## 2. Air transport system of Ukraine after the gaining of independence

After the collapse of the USSR, one of the largest Air Force capacities remained in Ukraine, and civil aviation and aircraft construction also remained at a high level.

A new era in the history of civil aviation in Ukraine began with the gaining of independence and the initiation of market relations. Freedom was given to initiatives and the creation of new national airlines of various forms of ownership. Despite a sharp drop in the volume of transportation in the domestic market and a limited legal framework for international flights, Ukraine's air aviation managed to avoid a complete collapse.

As a new subject of international law, Ukraine became the 172-nd member country of ICAO<sup>322</sup> after gaining independence in September 1992. In May 1993, Ukraine adopted its

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<sup>314</sup> Klimenko, N.O. (2019). Ukrainian Leonardo da Vinci: biobibliographic reference. Kyiv: Kyiv Regional Library for Youth.

<sup>315</sup> Kravets, M. (2004). 'A Kyivan who gave humanity the opportunity to realize dreams of flight: [about the aircraft designer Igor Ivanovich Sikorsky: (1889-1972)]' Education. 30. (In Ukrainian), p. 8.

<sup>316</sup> Ibid, P. 9.

<sup>317</sup> Supra note 313, p. 9.

<sup>318</sup> Dernova, V. (2003). 'Aviation in Ukraine: up to 100 years of light aviation'. Wings of Ukraine 22, p. 9 (In Ukrainian).

<sup>319</sup> Shestakov, A. (2004). 'A pilot by the will of God: [about the pilot Petro Mykolayovych Nesterov]' Young Ukraine 192, p. 11 (In Ukrainian).

<sup>320</sup> Trotsenko, A.M. (2004). 'Designers and pilots are testers. Dmytro Pavlovich Hryhorovych (1883 – 1938)'. History of civil aviation of Ukraine 1, pp. 44–45 (In Ukrainian).

<sup>321</sup> Griffin, L.O.. (2002). 'General designer O.K. Antonov: materials of scientific readings from the cycle: 'Outstanding Designers of Ukraine''. Kyiv: NTTU KPI, DPM (In Ukrainian).

<sup>322</sup> Participation in international organizations (in Ukrainian). Available at: <https://avia.gov.ua/pro-nas/mizhnarodna-diyalnist/uchast-u-mizhnarodnih-organizatsiyah/>



own ACU<sup>323</sup>, facilitating the establishment of air bridges with many countries around the world.

Ukraine's accession to the Chicago Convention<sup>324</sup> contributed to the development and improvement of national standards. Recognizing state sovereignty as a guiding principle, the Chicago Convention affirmed each state's right to regulate air transportation, commercial activities of air transport enterprises, and exercise jurisdiction over transport<sup>325</sup>.

After experiencing a significant decline in air transportation volume in the 1990s (from 15 million passengers in 1990 to 1.3 million in 1999<sup>326</sup>), as well as the practical disappearance of the domestic air transportation market and the gradual decline of regional airports, the development of the air transportation market in Ukraine began to recover in the early 2000s. This recovery involved a redistribution of passenger flows between airports, a gradual return in demand for domestic air transportation, and an increase in cargo air transportation.

In 2001, the reconstruction of flight zone No. 1 of BIA was completed, and a new 4,000-meter-long runway meeting European standards and ICAO requirements was put into operation. This runway can receive all types of aircraft without restrictions under any weather conditions<sup>327</sup>.

From the early 2000s, the average annual growth rate of the air transportation market in Ukraine was about 20%. In certain years, airlines experienced a demand increase of up to 28-30% for their services. The 2008 financial crisis led to a sharp decline in transportation volume across all modes. However, the Ukrainian air transport market still showed positive growth, remaining at around 15%. In 2008, Ukrainian airports handled 10.7 million passengers and 52.3 thousand tons of mail and cargo (an overall increase of about 15%). In the first half of 2009, passenger transportation volume decreased by 18.4% compared to the first half of 2008, amounting to 2.2 million people, while cargo and mail decreased by 25.6% to 40.5 thousand<sup>328</sup>.

In accordance with the ICAO Global Plan for Ensuring Flight Safety<sup>329</sup>, which includes regular and mandatory inspections by ICAO experts of flight safety control organizations in participating states, regular audits of the capacity of state aviation authorities in Ukraine have been conducted since 2000. These audits have confirmed the compliance of national aviation safety control measures with international standards and ICAO recommended practices<sup>330</sup>. Following ICAO recommendations, a decision was made at the government

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<sup>323</sup> The Air Code of Ukraine dated May 4, 1993 N 3167-XII (Annuals of the Verkhovna Rada of Ukraine, 1993, No. 25, Article 274 with subsequent amendments).

<sup>324</sup> Chicago Convention on International Civil Aviation (2014) 15 U.N.T.S. 295.

<sup>325</sup> *Ibid.*, Art. 2.

<sup>326</sup> Pelagenko, A.P. (2003). Civil Aviation of Ukraine: historical and analytical review. Historical and Analytical Review. Kyiv, Aerobusiness (In Ukrainian), p. 16.

<sup>327</sup> Trotsenko, A.M. (2004). History of civil aviation of Ukraine. Kyiv: Airports of Ukraine Association (In Ukrainian), p. 513.

<sup>328</sup> Begliy, O., Z.I. Boyarska, and E.K. Yerashov (2012). 'Legal support of the aerospace industry of Ukraine: state and prospects for improvement'. Scientific works of the National Aviation University. Series: Legal Bulletin 'Air and Space Law': collection of science works No. 1 (22). Kyiv: National Aviation University, p. 7 (In Ukrainian).

<sup>329</sup> ICAO Global Aviation Safety Plan. Available at: <https://www.icao.int/safety/GASP/Pages/Home.aspx>

<sup>330</sup> Safety Audit Results: USOAP interactive viewer. Available at: <https://www.icao.int/safety/pages/usoap-results.aspx>.

level to switch to the World Geodetic System of 1984 (WGS-84)<sup>331</sup>. Since 2001, ICAO cruise levels have been implemented in the airspace of Ukraine, along with a reduced minimum vertical separation, which has had a positive effect on the adaptation of the route network with European states.

On December 5, 2011, Ukraine signed a Memorandum of Understanding with ICAO<sup>332</sup> regarding the permanent monitoring of the universal audit program for flight safety control, which came into force<sup>333</sup> on November 18, 2011.

ICAO continuously provides advisory assistance in various aspects of aviation activities and promotes initiatives where Ukraine participates. One notable initiative is the preparation for the creation of a regional organization to ensure flight safety and manage the system<sup>334</sup>, involving the aviation administrations of Ukraine, Azerbaijan, Turkey, and Moldova.

Furthermore, Ukraine has been a member of EUROCONTROL since May 1, 2004. Additionally, Ukraine has been a member of JAA, the IAC, and the European Organization of EUROCAE<sup>335</sup>, among others.

Before the war that started in 2022, Ukraine had 36 operational airports of various types, with 16 considered as the main ones. Approximately 40 Ukrainian airlines operated in the air transportation market, serving both domestic and international passengers and cargo. Additionally, around 50 foreign airlines regularly flew to Ukraine. The air transport services allowed access to almost every regional center in Ukraine and 77 airports in 50 countries worldwide<sup>336</sup>.

This brief historical overview highlights Ukraine's important contributions to world aviation, showcases achievements in Ukrainian aviation transport and industry, and demonstrates the ongoing process of harmonizing legislation with European aviation laws.

## **B. Retrospective of the preliminary implementation of CAA provisions**

### **1. Reform of the Air Code of Ukraine**

After gaining independence, Ukraine's regulatory framework for its aviation transport system initially consisted of a number of documents inherited from the former Ministry of Civil Aviation of the USSR, as well as developments from the early 1990s. Over the years, necessary changes and additions have been made to these acts, but most of them remain outdated and need to be replaced by relevant national legal acts aligned with the requirements of EU legislation.

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<sup>331</sup> Zajets, I. M. (2012). 'Stages of creation of the national geodetic reference system in Ukraine'. Interdepartmental scientific and technical collection 'Geodesy, cartography and aerial photography' 76, (In Ukrainian), p. 32.

<sup>332</sup> ICAO cooperation areas. Available at: [https://transport.ec.europa.eu/transport-modes/air/international-aviation/european-union-icao/icao-cooperation-areas\\_en](https://transport.ec.europa.eu/transport-modes/air/international-aviation/european-union-icao/icao-cooperation-areas_en)

<sup>333</sup> Supra note 321.

<sup>334</sup> Supra note 331.

<sup>335</sup> Supra note 331.

<sup>336</sup> Statistics - State Aviation Service of Ukraine (in Ukrainian). Available at: <https://avia.gov.ua/pro-nas/statistika/>

The cornerstone of legal regulation for civil aviation in Ukraine is the Air Code of Ukraine (ACU). The initial version of the ACU was adopted in 1993<sup>337</sup>, coinciding with the formation of Ukraine's aviation system. European experts have consistently emphasized the need to improve the ACU, considering it a crucial condition and prerequisite for concluding the CAA Agreement. Additionally, Ukraine should align with international regulatory requirements in this area as it is a full member of ICAO, ECAC, and EUROCONTROL, and a candidate for membership in JAA, whose powers have been transferred to EASA<sup>338</sup>.

To meet these requirements, on May 19, 2011, the Verkhovna Rada of Ukraine adopted a new ACU, which came into force on September 17, 2011<sup>339</sup>. This revision defines the specific procedures for using Ukrainian airspace in accordance with international standards. The new ACU improved national legislation concerning the liberalization of international air transportation, considering the requirements of European integration processes in which Ukraine is involved. The adoption of the new ACU in 2011 was a significant step toward the development of a modern, Europeanized regulatory and legal framework to support the functioning of the domestic civil aviation industry.

The provisions of the ACU establish the necessity of aviation regulations in Ukraine that are adopted in accordance with the structure of EU documents and international standards and recommended practices of ICAO, IATA regulations, EUROCONTROL, and other international aviation organizations. They also take into account EU legislation in the field of civil aviation<sup>340</sup>.

The ACU of 2011 addresses passenger rights in a new way by specifying grounds, conditions, and compensation amounts for flight refusal, flight cancellations, significant departure delays, and downgrading of service class. Furthermore, passengers of charter flights are now eligible to receive compensation for flight delays.

The new ACU introduces several key changes, including the division of aviation into state and civil sectors. Civil aviation encompasses commercial aviation (passenger and cargo transportation), aviation operations, and general aviation (commonly referred to as 'small aviation'), which is used for private purposes and governed by simplified rules and requirements<sup>341</sup>. State aviation is responsible for national security, defense activities, regulatory oversight in the aviation field, and the state administration system<sup>342</sup>. The ACU defines the Authorized Body for Civil Aviation, which implements the state policy and strategy for the development of aviation in Ukraine, and oversees state regulation of civil aviation activities<sup>343</sup>. The Code also addresses the financing of state expenses related to civil aviation activities, which are covered by the budget of Ukraine<sup>344</sup>.

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<sup>337</sup> Air Code of Ukraine dated May 4, 1993 N 3167-XII (1993). Annuals of the Verkhovna Rada of Ukraine, No. 25, Article 274 with subsequent amendments.

<sup>338</sup> EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement As endorsed by the EU-Ukraine Association Council on 16 March 2015. Available at: [https://eeas.europa.eu/archives/docs/ukraine/docs/st06978\\_15\\_en.pdf](https://eeas.europa.eu/archives/docs/ukraine/docs/st06978_15_en.pdf)

<sup>339</sup> Air Code of Ukraine No. 3393-VI dated May 19, 2011 (2011). Official Bulletin of the Verkhovna Rada of Ukraine (BVR), No. 48-49, Article 536.

<sup>340</sup> Ibid., Art. 11.

<sup>341</sup> Ibid., Art. 4 para 4.

<sup>342</sup> Ibid., Art. 1 (30).

<sup>343</sup> Ibid., Art. 5 para 1.

<sup>344</sup> Ibid., Art. 12 para 1.

One of the innovations of the ACU is the provision for organizing socially important passenger transportation while granting air carriers the right to operate flights that consider the needs of Ukraine's transport system development. This means that the aviation authority can decide to serve a certain route even with low air traffic if it is important for the city or region<sup>345</sup>.

The new ACU explicitly outlines the airline's obligations to passengers. According to the document, the airline is responsible for losses or damages that occur during the transportation of passengers, baggage, cargo, and mail. In contrast to the previous version of the code, the new document includes specific numbers regarding fines against airlines<sup>346</sup>.

The ACU addresses issues related to aviation safety, including flight operations and operational techniques.

Aviation entities are obligated to comply with established standards for pollutant levels in exhaust gases and the effects of physical factors during aircraft operation on the ground and in the air. Measures must be taken to reduce emissions and noise levels, as well as electromagnetic and radiation radiation<sup>347</sup>. These norms were implemented to align Ukrainian legislation with EU laws.

An innovation of the ACU is the inclusion of issues related to the modernization of airport and airfield functioning principles<sup>348</sup>.

The ACU also establishes responsibility for violations of legislation in the field of civil aviation, including financial sanctions that can be applied to legal entities engaged in aviation activities<sup>349</sup>.

As part of the adaptation of Ukrainian legislation to the EU *Acquis communautaire*, the ACU grants greater independence to the authorized body in the field of civil aviation (State Aviation Service of Ukraine) from the Ministry of Infrastructure of Ukraine. It also provides for the formation of the National Commission for the Investigation of Aviation Events<sup>350</sup>.

The alignment of Ukrainian legislation with international and European standards is a crucial element of the ongoing legal reform in Ukraine. Regulatory and legal acts in the field of civil aviation are developed in accordance with the standards and recommended practices of the ICAO, the normative acts of the International Air Transport Association, the (EUROCONTROL), and other international aviation organizations. The legislation also considers the laws of the European Union regarding civil aviation. The purpose of adopting international experience is to ensure compliance of Ukraine's legal system with international and European civil aviation standards.

In conclusion, the reform process of the ACU, marked by its adoption in a new version in 2011, aims to align the current legislation with international air law, particularly with EU norms, in preparation for the conclusion of a CAA Agreement with the EU.

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<sup>345</sup> Ibid., Art. 96 para 2.

<sup>346</sup> Ibid., Art. 100.

<sup>347</sup> Ibid., Art. 69.

<sup>348</sup> Ibid., Art. 70.

<sup>349</sup> Ibid., Chapter XIII.

<sup>350</sup> Ibid., Chapter XVII.

## 2. Ongoing harmonization of Ukrainian aviation legislation before the CAA

### Agreement signing

Since gaining independence, Ukraine has identified the liberalization of international air transport as an important aspect of its foreign economic and political activities. As a result, the process of implementing EU directives in the field of civil aviation began long before the signing of the CAA agreement in 2021. Ukraine had already initiated the harmonization process voluntarily and unilaterally.

Ukraine has proclaimed its 'European vector' since the early years of its independence. The 'National Transport Strategy of Ukraine for the period till 2030'<sup>351</sup> defines the development of air transport and the creation of conditions for its sustainable growth as among the priority tasks. This includes the liberalization of air transport by removing restrictions on a reciprocal basis regarding the number of designated airlines, points, and frequencies for flights between Ukraine and countries worldwide. The signing and implementation of the CAA Agreement with the EU, along with simultaneous bilateral negotiations, have played a significant role in this process.

The National Concept<sup>352</sup> and National Program<sup>353</sup> for the Adaptation of Ukrainian Legislation to EU Legislation served as the fundamental documents upon which Ukraine's aviation legislation was updated prior to the signing of the CAA Agreement.

These documents paved the way for the adoption of more than 60 regulatory acts aimed at aligning general technical requirements and administrative procedures with European standards for the organization of air traffic.

Several aviation rules have been modified or newly adopted, including changes in:

- The procedure for reporting civil aviation events, considering received information, conducting analysis, and taking appropriate measures.
- Aircraft and aviation product airworthiness maintenance, as well as the approval of organizations and personnel involved in these tasks.
- Technical requirements and administrative procedures for civil aviation flight crews.
- Certification of aircraft, related products, components, and equipment, as well as developer and manufacturer organizations (APU-21 or Part-21).
- Requirements for airport operators regarding the spatial zoning of airport surroundings to mitigate aviation noise exposure.
- Technical requirements and administrative procedures for issuing certificates and licenses for air traffic control controllers.
- Technical requirements and administrative procedures for airfield certification.
- Airworthiness maintenance rules (Part-M).

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<sup>351</sup> Order No. 430 of the Cabinet of Ministers of Ukraine dated May 30, 2018 'On the approval of the National Transport Strategy of Ukraine for the period up to 2030'. Official Bulletin of Ukraine 2018, № 52, page 533, article 1848, code of act 90720/2018

<sup>352</sup> Law of Ukraine. On the Concept of the National Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union 11/21/2002 No. 228-IV. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2003, No 3, Article 12

<sup>353</sup> Law of Ukraine 'About the National Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union' 18.03.2004 No. 1629-IV. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2004, No 29, Article 367

– Airworthiness standards for aircraft noise.

An important milestone in aligning the regulatory framework of Ukraine's civil aviation sector with European standards, as a prerequisite for the establishment of 'open skies,' was the development of legislation on aviation security prior to the signing of the CAA Agreement. In 2007, the State Aviation Administration of Ukraine entered into an agreement with EUROCONTROL for the exchange of information on aircraft safety.

This agreement facilitated discussions on key international cooperation issues and led to the signing of Working Agreements between the State Aviation Administration of Ukraine and the EASA<sup>354</sup> in Paris in 2009. These agreements aimed to enhance cooperation, particularly in implementing European certification standards for devices, equipment, and organizations involved in civil aviation. However, the key condition for preparing the CAA Agreement between Ukraine and the EU remained the maximum approximation of national legislation in the field of civil aviation to EU standards.

The process of introducing European standards into Ukraine has been lengthy and complex. Efforts have been made to harmonize technical standards with EU legislation. Between 2015 and 2016, approximately 15,000 state standards from the USSR were cancelled, and over 4,000 modern technical standards, in line with international and European requirements, were adopted. In January 2015, a law was passed to adapt Ukrainian legislation to EU norms in the field of technical regulations and conformity assessment. A significant step was taken with the approval of the draft Law 'On the State Program of Aviation Safety of Civil Aviation' by the Verkhovna Rada of Ukraine on January 17, 2017<sup>355</sup>. This law was designed to consider ICAO standards to the maximum extent, leading to the potential conclusion of an agreement on mutual recognition of standardization certificates between Ukraine and the EU. Such certification would facilitate the integration of the domestic aviation industry into the European and international transportation system. ICAO's strategy emphasizes the reduction of accidents by improving coordination and unification of flight safety programs. Other flight safety initiatives include enhancing reporting procedures, establishing a Global Roadmap for flight safety, developing a comprehensive methodology for aviation system modernization, and creating a global concept that integrates flight trajectories, air navigation systems, and regulatory components<sup>356</sup>.

In 2017, the State Aviation Service and the European Commission signed an agreement on the convergence of certification systems. This agreement aimed to continue joint efforts over the following 5 years to achieve convergence in the areas of initial airworthiness, continued airworthiness, and maintenance of aircraft and its components. As a result, several Aviation Rules of Ukraine were developed to align with EU regulations, and staff training

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<sup>354</sup> Working Arrangement between the European Aviation Safety Agency (EASA) and the State Aviation Administration of Ukraine (SAAU). Available at: [https://www.easa.europa.eu/sites/default/files/dfu/Working%20Arrangement%20between%20EASA%20and%20SAAU\\_EN.pdf](https://www.easa.europa.eu/sites/default/files/dfu/Working%20Arrangement%20between%20EASA%20and%20SAAU_EN.pdf)

<sup>355</sup> Resolution of the Verkhovna Rada of Ukraine No. 1813-VIII 17.01.2017 'On the adoption as a basis of the draft Law of Ukraine on the State Program of Aviation Safety of Civil Aviation: Available at: <http://zakon2.rada.gov.ua/laws/show/1813-19>

<sup>356</sup> Annual report of the Council 2011. Documentation for the session of the Assembly in 2013 Available at: [http://www.icao.int/publications/Documents/9975\\_en.pdf](http://www.icao.int/publications/Documents/9975_en.pdf).

was conducted. In 2018, the State Civil Aviation Safety Program<sup>357</sup> was adopted, and various licensing conditions and rules were approved.

To support the State Aviation Service of Ukraine in harmonizing the aviation legal framework with EU standards, the SAFER-U project was launched in 2019. This project, financed by the European Union with a budget of 2.5 million Euros<sup>358</sup>, focuses on improving Ukrainian flight safety regulations in the areas of civil aircraft flight operations and certification of civil aviation flight crews. Compliance with these new standards is required for all registered Ukrainian airlines, training organizations, and flight crews.

However, the airport ground handling market remains monopolized by individual companies. For instance, in November 2018, the AMCU found violations of antimonopoly legislation by the 'Kyiv' (Zhulyany) airport and 'Master-Avia' LLC, which had a general agreement on ground handling, excluding other companies from the market. As a result, the 'Kyiv' (Zhulyany) airport was fined UAH 681,019, and 'Master-avia' LLC was fined UAH 1,801,406<sup>359</sup>. In 2017, BIA was fined UAH 13 million for abusing its monopoly position in the market of specialized airport services for ground handling<sup>360</sup>.

The harmonization of legislation in the field of civil aviation and the strengthening of administrative capacity in state authorities responsible for aviation policy were recognized as preparatory tasks for signing the CAA Agreement. In the Government's Plan of Priority Actions for 2019<sup>361</sup>, aligning Ukrainian aviation legislation with European standards was scheduled to be completed within a year after the CAA Agreement came into force.

Despite the challenging military conditions that have affected the entire territory of Ukraine, the process of implementing EU norms into national legislation has been a priority for Ukraine even before the signing of the CAA Agreement.

Achieving a certain level of consistency between Ukrainian legislation and EU legal norms through legal reform has been a key element of Ukraine's successful integration into the CAA. The signing of the CAA Agreement in October 2021 marked a new stage in the relationship between the two parties and elevated the legislative adaptation process to a higher level of development. Prior to the Agreement, Ukraine demonstrated its active and effective cooperation with the EU in the field of air transport by amending numerous national laws and regulations to meet European standards. The implementation process is guided by national legislation and international treaties, which Ukraine has ratified, recognizing their binding nature.

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<sup>357</sup> On the State Program of Aviation Safety of Civil Aviation dated February 20, 2003 No. 545-IV.

<sup>358</sup> The SAFER-U project (Development of the aviation legislative framework of Ukraine by approximation to EU legislation) from 2019. Retrieved from: <https://avia.gov.ua/projekt-safer-u-rozvitok-aviatsijnoi-zakonodavchoyi-bazi-ukrayini-shlyahom-nablizhennya-do-zakonodavstva-yes/>

<sup>359</sup> Information on Decisions and Orders of the Anti-Monopoly Committee Of Ukraine (AMCU). Published on November 28, 2018. Available at: <https://amcu.gov.ua/news/informatsiya-pro-rishennya-ta-rozporjadzhennya-antimonopolnogo-komitetu-ukraini-amku-232>

<sup>360</sup> Anti-Monopoly Committee of Ukraine. Recommendations. September 29, 2015. Kyiv No. 14-rk. Antimonopoly Committee of Ukraine Annual Report 2017. Available at: <https://amcu.gov.ua/storage/app/uploads/public/5e7/b2b/61d/5e7b2b61dcf082>

<sup>361</sup> Order of the Cabinet Of Ministers Of Ukraine No. 1106 dated December 18, 2018 'On the approval of the plan of priority actions of the Government for 2019'. Government courier official publication, 2019, No. 58.

Upon the successful implementation of the CAA Agreement, it is expected that it will not only contribute to the development of the civil aviation industry but also strengthen the existing economic, political, and legal relations between the EU and Ukraine.

### **3. Analysis of the signed CAA Agreement between the EU and Ukraine**

The European CAA Agreements are comprehensive air transport agreements. They aim to gradually open and integrate relevant aviation markets, develop an aviation area with uniform rules, offer economic benefits to consumers, and provide new opportunities for the industry. The creation of a CAA involves a long and comprehensive transformation process, which begins well before the signing of the agreement between the EU and its neighboring country. In this section, we will examine the role, purpose, and peculiarities of such a transformation process in the development of international relations between the EU and Ukraine.

The intention to sign the joint venture agreement in the aviation field was declared in the Association Agreement (AA)<sup>362</sup>. According to Article 137 of the AA, the conditions of mutual access to the market must be considered in line with the CAA Agreement between Ukraine and the EU<sup>363</sup> to ensure coordinated development and progressive liberalization of transportation based on their mutual commercial needs.

The AA between the EU and Ukraine is a comprehensive treaty covering Ukraine's political and economic relationship with the EU. The trade-related aspect includes the establishment of a Deep and Comprehensive Free Trade Area (DCFTA), which is a crucial component of the overall Agreement. The AA updates the system of joint institutions, deepens bilateral relations in all areas of cooperation, strengthens political association and economic integration, and establishes mutual rights and obligations.

On one hand, while much of the content in the AA and DCFTA is highly technical, its signing in 2014 held significant strategic and geopolitical significance in the history of Ukraine. It became symbolic of a crucial struggle to replace the Yanukovich regime and affirm Ukraine's 'European choice' as a democratic and independent state, despite attempts by neighboring countries to deny it. The costs of this struggle have been tragically high in terms of territory, economy, and human lives, but these losses should strengthen the country's determination to succeed. Although the AA between the EU and Ukraine does not include prospects for Ukraine's accession to the EU, Ukraine has committed to implementing the EU Acquis, aligning its legal obligations closely with those of EU candidates.

On the other hand, the AA differs from the EU's external agreements and serves as a prototype for a new group of association agreements between the EU and ENP countries. The goals of association agreements between the EU and neighboring countries are not identical, but vary depending on the level of relations with each neighboring country. However, they do include sectoral cooperation among other conditions. As described in the Commission Communication COM(2012) 556 final on the 'EU's External Aviation Policy - Addressing Future Challenges,' the conclusion of a comprehensive air transport agreement

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<sup>362</sup> Supra note 6.

<sup>363</sup> Supra note 6, Art. 137.



with Ukraine is a crucial element in the development of the EU's external aviation policy and a significant component of the EU neighborhood policy, leading to the creation of a broader European CAA<sup>364</sup>.

Regarding transport, the AA provides for a progressive liberalization of road, rail, and inland waterway transport, with an approximation to many EU standards and, in some cases, the conclusion of further special agreements<sup>365</sup>. The DCFTA aims to expand and strengthen Ukraine's cooperation with the EU in the transport field, promoting efficient, safe, and secure systems with greater interoperability.

This cooperation covers the development of sector strategies in line with the national transport policy, including the legal requirements for upgrading technical equipment and transport fleets to meet the highest international standards in road, rail, inland waterway, aviation, maritime transport, and intermodality. It also includes timetables and milestones for implementation, administrative responsibilities, and financing plans<sup>366</sup>.

The AA establishes the conditions for mutual access to the air transportation market, which must be considered in the CAA Agreement between the EU and Ukraine. Seven years after the signing of the AA, on October 12, 2021, Ukraine and the EU finally signed the CAA Agreement. According to this Agreement, Ukraine is committed to align its legislation with over 60 EU legal acts<sup>367</sup> concerning flight safety and certification regulations. It also focuses on strengthening the administrative capacity of aviation authorities to implement EU aviation standards and promotes further cooperation with the EASA, including the convergence of the airworthiness certification system with that of the EU.

The CAA Agreement will be subject to ratification or approval by the signatories in accordance with their own procedures<sup>368</sup>.

According to Article 9 of the Constitution of Ukraine<sup>369</sup>, current international treaties, for which the Verkhovna Rada of Ukraine has given its binding consent, form part of the national legislation of Ukraine. The conclusion of international agreements that contradict the Constitution of Ukraine is only possible after appropriate changes are made to the Constitution.

Interpreting this constitutional norm, the Constitutional Court of Ukraine emphasizes in its decisions<sup>370</sup> that the constitutional norm takes precedence over international norms based on hierarchical arrangement. According to Decision No. 9 of the Supreme Court of Ukraine dated November 1, 1996, 'the court cannot apply the law that regulates legal relations if it contradicts the Constitution of Ukraine.' However, international agreements are applicable if they do not contradict the Constitution of Ukraine<sup>371</sup>.

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<sup>364</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions the EU's External Aviation Policy - Addressing Future Challenges. Document 52012DC0556. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0556>

<sup>365</sup> Emerson, M, and V. Movchan. Deepening EU-Ukrainian Relations. What, why and how? Meriland: Rowman & Littlefield International, p. 144.

<sup>366</sup> Supra note 6, Art. 369 (b).

<sup>367</sup> Supra note 12, Annex I.

<sup>368</sup> Supra note 12, Art. 38.

<sup>369</sup> Supra note 162, Art. 8.

<sup>370</sup> Decision of the Supreme Court of Ukraine No. 9 dated November 1, 1996 'On the application of the Constitution of Ukraine in the administration of justice'.

<sup>371</sup> Supra note 12, Art. 4.

On February 17, 2022, the Verkhovna Rada of Ukraine ratified the CAA Agreement between Ukraine and the EU through Law No. 2067-IX<sup>372</sup>. The Agreement was concluded on October 12, 2021, and enters into force on the first day of the second month following the last notification in the process of exchanging diplomatic notes between the Parties, confirming the completion of all necessary procedures for its entry into force<sup>373</sup>.

According to Article 5, 'Basic principles of regulatory cooperation' of the CAA Agreement, Ukraine is required to take necessary measures to incorporate the requirements and standards of EU legislation listed in Annex 1 to the CAA Agreement into its legal system and implement them, in accordance with the transitional arrangements specified in Article 33 of the Transitional Arrangement<sup>374</sup>.

Annex I of the CAA Agreement includes a list of applicable requirements and standards adopted by the EU in the field of civil aviation that are to be incorporated into Ukraine's legislation<sup>375</sup>. This encompasses standards and regulations related to market access, ancillary issues, air traffic management, aviation safety, environment, social aspects, consumer protection, computer reservation systems, and other legislation.

The CAA Agreement comprises the main body, which includes core principles, and seven annexes: Annex I on EU applicable requirements and standards; Annex II on agreed services and specified routes; Annex III on transitional provisions; Annex IV on the list of certificates to be recognized; Annex V on the list of States referred to in Articles 17, 19, and 22 and Annexes II and III to the Agreement; Annex VI on procedural rules; and Annex VII on criteria referred to in Article 26, paragraph 4 of the Agreement.

The objective of this Agreement is the gradual establishment of the CAA between the EU, its Member States, and Ukraine, based on identical rules in areas such as safety, security, air traffic management, environment, consumer protection, and computerized reservation systems. The Agreement defines the rules, technical requirements, administrative procedures, basic operational standards, and implementing rules applicable between the Parties. The CAA is built on principles of free access to the air transportation market and equal conditions of competition<sup>376</sup>. The Agreement enters into force one month after the date of the last note exchanged between the Parties confirming the completion of all necessary procedures<sup>377</sup>. Additionally, the Agreement is subject to ratification or approval by the signatories in accordance with their own procedures<sup>378</sup>. The Verkhovna Rada of Ukraine ratified the CAA Agreement<sup>379</sup> on February 17, 2022.

As evidence that the CAA Agreement with Ukraine encompasses comprehensive cooperation between the signatories and is not solely a contract limited to a specific economic outcome, Article 5 of the Agreement specifies that the Parties cooperate in various

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<sup>372</sup> Law of Ukraine. On the ratification of the Agreement between Ukraine, on the one hand, and the European Union and its member states, on the other hand, on CAA dated February 17, 2022 No. 2067-IX. The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 13.05.2022 - 2022 p., No. 37, page 28, article 1976, code of act 111164/2022.

<sup>373</sup> Supra note 12, Art. 38 Para 2.

<sup>374</sup> Supra note 12, Art. 38 Para 2.

<sup>375</sup> Supra note 12, Anex I.

<sup>376</sup> Supra note 12, Anex I.

<sup>377</sup> Supra note 12, Art. 38 (2)

<sup>378</sup> Supra note 12, Art. 38 (1).

<sup>379</sup> On the ratification of the Agreement between Ukraine, on the one hand, and the European Union and its member states, on the other hand, on Common Aviation Area. Law of Ukraine. February 17, 2022. No. 2067-IX. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2067-20#n5>.

ways to ensure the gradual incorporation of EU requirements and standards listed in Annex I into Ukraine's legislation and the implementation of the specified provisions by Ukraine<sup>380</sup>.

As per the provisions of the Agreement, the Parties collaborate in areas such as market access and ancillary issues, air traffic management, aviation safety, environment, social aspects, consumer protection, and computer reservation systems.

In these specified areas, Ukraine is required to adopt necessary measures to incorporate the requirements and standards of the European Union acts listed in Annex I to this Agreement into the Ukrainian legal system and implement them, in accordance with the transitional arrangements specified in Article 33 (Transitional Arrangements) and related Annex III to this Agreement<sup>381</sup>.

The transition of Ukraine towards full implementation of the CAA will occur in stages, subject to assessments and standardization inspections by the EC and the EASA, as well as a decision of the Joint Committee. Initially, Ukrainian carriers do not immediately gain complete internal market access; they only obtain the right to fly between Ukraine and an EU destination, directly or via an intermediate point in the neighborhood, the European Common Aviation Area, or in Iceland, Liechtenstein, or Switzerland<sup>382</sup>. This excludes Ukrainian carriers from operating flights within EU member states (cabotage) and flights between two EU member states not connected to a flight to or from Ukraine. Such rights would be granted in a second stage<sup>383</sup>.

Annex III to this Agreement provides a detailed description of the tasks and conditions for the two transitional periods. During the first transitional period: (a) air carriers from the European Union and air carriers licensed by Ukraine are permitted unlimited traffic rights between any point in the European Union and any point in Ukraine; (b) subject to an assessment of Ukraine's implementation of the relevant EU requirements and standards and following information from the Joint Committee, Ukraine participates as an observer in the work of the Committee established under the terms of Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports<sup>384</sup>. During this period, the provision regarding ground handling states that any groundhandling provider of each Party, whether an air carrier or not, has the right to provide groundhandling services for air carriers of the Parties operating at the same airport, where authorized and consistent with applicable laws and regulations<sup>385</sup>.

The conditions for transitioning to the second transitional period include the following requirements for Ukraine: (a) incorporation into national legislation and implementation of 24 applicable requirements and standards; (b) application of operating licensing rules substantially equivalent to those contained in Chapter II of 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 European Union; and (c) implementation of ECAC Document 30, Part II, in its latest applicable amendment<sup>386</sup>, with regard to aviation security.

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<sup>380</sup> Supra note 12, Art. 5 (1).

<sup>381</sup> Supra note 12, Art. 5 (2).

<sup>382</sup> Supra note 12, Art. 16 and Annex II.

<sup>383</sup> Supra note 12, Art. 33 and Annex III

<sup>384</sup> Supra note 12, Annex III, Section 2 (1).

<sup>385</sup> Supra note 12, Art. 22, sub-paragraph 5(c)

<sup>386</sup> Supra note 12, Art. Annex III, Section 2 (2).

If Ukraine fulfills all these conditions, which will be confirmed by a relevant decision of the Joint Committee, the following outcomes will occur: (a) relevant certificates for aircraft crew, organization of air traffic, and provision of air navigation services issued by Ukraine will be recognized by EU member states, in accordance with conditions defined in the decision of the Joint Committee and Article 11 of Regulation (EC) 216/2008; (b) conditions regarding the rights of each Party's groundhandling service provider, as defined in clause (c) of Article 22 (5) of this Agreement, will apply; and (c) depending on the assessment of Ukraine's compliance with relevant EU requirements and standards and based on information from the Joint Committee, Ukraine will participate as an observer in the work of the Committee established in accordance with the provisions of Regulation (EC) No. 2111/2005 on the establishment of a list of Community air carriers whose flights within the Community are prohibited<sup>387</sup>.

The conditions for transitioning towards full implementation of this Agreement for Ukraine involve the following: (a) incorporation of all applicable requirements and standards of the European Union acts listed in Annex I to this Agreement into national legislation and their implementation; and (b) organization of the airspace under Ukraine's responsibility in line with the EU requirements applicable for the establishment of FABs<sup>388</sup>.

Full implementation of the CAA Agreement includes additional rights, in addition to those mentioned above. (a) Air carriers of the European Union are permitted unlimited traffic rights between points in Ukraine, intermediate points in the European Neighborhood Policy (ENP) and European Common Aviation Area (ECAA) countries, as well as points in countries such as Iceland, Liechtenstein, Norway, Switzerland, and points beyond, provided that the flight is part of a service serving a point in a Member State. Air carriers of the European Union are also permitted unlimited traffic rights between points in Ukraine, regardless of whether such air services originate or terminate within the EU. (b) Air carriers of Ukraine are permitted unlimited traffic rights between any point in the European Union, intermediate points in the ENP and ECAA countries, as well as in countries listed in Annex V, provided that the flight is part of a service serving a point in Ukraine. Furthermore, all relevant certificates on Air Traffic Management/Air Navigation Services issued by Ukraine will be recognized by the Member States in accordance with the conditions provided in these provisions<sup>389</sup>.

A Joint Committee is established to oversee the implementation of this Agreement and ensure its proper implementation during the transitional periods. This Joint Committee, composed of representatives of the Parties, will make recommendations and decisions where expressly provided for in this Agreement<sup>390</sup>.

Despite the difficult political, economic, and social situation associated with a full-scale military invasion by its northern neighbor, Ukraine continues to carry out legislative and executive activities to fulfill its international obligations. On July 12, 2022, the Action Plan for the implementation of the CAA Agreement<sup>391</sup> was adopted and approved by Decree of the Cabinet of Ministers of Ukraine No. 593-r.

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<sup>387</sup> Supra note 12, Annex III, Section 3 (1).

<sup>388</sup> Supra note 12, Annex III, Section 3 (2).

<sup>389</sup> Supra note 12, Annex III, Section 4.

<sup>390</sup> Supra note 12, Art. 29 (1).

<sup>391</sup> Decree of the Cabinet of Ministers of Ukraine No. 593-r dated July 12, 2022 'On the approval of the plan of measures for the implementation of the Agreement between Ukraine, on the one hand, and the European

This Action Plan provides details about the stages of fulfilling the conditions of the signed and ratified Agreement. It defines the following areas of implementation:

1) establishing cooperation with the EU Party based on the principles of the Agreement, in terms of the commercial operation of air lines by applying the provisions of the consultation protocol signed by the heads of the delegations of Ukraine and the EU during the negotiations for concluding the Agreement;

2) organizing the work of the Joint Committee as provided for in Article 29 of the Agreement.

3) updating the list of applicable requirements and standards adopted by the EU in the field of civil aviation for incorporation into Ukrainian legislation<sup>392</sup>.

Furthermore, a law aimed at simplifying access to the markets of air transportation and ground handling services was adopted and signed on April 21, 2023.

Key aspects of this Law include:

- aligning the provisions of the Air Code with the requirements of the Law 'On Licensing Types of Economic Activities' regarding the licensing of economic activities for the provision of services for the transportation of passengers and/or dangerous goods, hazardous waste by air transport.
- simplifying the procedure for issuing an airworthiness certificate and flight permit by the State Aviation Service for certain aircraft imported to Ukraine.
- removing state regulation regarding:
  - obtaining rights to operate air lines by Ukrainian air carriers for regular air transportation within Ukraine and air transportation in other countries, as well as Ukrainian and foreign air carriers for charter air transportation within Ukraine.
  - confirming compliance of entities that provide ground services in the field of civil aviation with the established requirements for the provision of such services (compliance is proposed to be introduced on a declarative basis instead of obtaining a certificate).
  - certification of entities engaged in activities related to the provision of services for the sale of air transportation of goods, including dangerous ones, and entities providing agency services for the sale of air transportation, as well as entities providing training personnel for the organization and/or sale of air transportation.
  - the need to obtain permission from the State Aviation Service for the departure of a civil aircraft from a Ukrainian airfield, the arrival of an aircraft to a Ukrainian airfield, or a flight through the territory of Ukraine<sup>393</sup>.

The unification of European countries into a strong multi-level union began with 'sectoral' cooperation when the European Coal and Steel Community was established on May 9, 1950. It aimed to unite European countries economically and politically to strengthen the peace situation. Similarly, the CAA plays a parallel role by becoming the foundation for achieving multi-level collaboration between the EU and neighboring countries and

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Union and its member states, on the other hand, on CAA'. Government Courier official publication dated 07/20/2022 — No. 157

<sup>392</sup> Ibid., Art. 1-4.

<sup>393</sup> Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine with the Purpose of Development of General Aviation, Adaptation of Ukrainian Legislation to European Union Legislation in the Field of Civil Aviation, Establishment of Additional Mechanisms for Effective Control of Aviation Safety and Deregulation of Economic Activities in the Field of Civil Aviation'

potentially becoming the driving force behind extensive harmonization of political, economic, social, and other systems.

### **C. Appraisals**

The CAA is considered the basis for achieving multi-level collaboration between the EU and neighboring countries and will likely become the driver of large-scale harmonization of political, economic, social, and other systems.

The fulfillment of the CAA Agreement by Ukraine is based on the development of its civil aviation and high achievements in harmonizing legislation with the EU Acquis even prior to the Agreement signing.

It should be noted that international agreements form the basis for the organization of international air transportation and serve as a tool for the development of international air transportation of passengers and cargo. Therefore, based on the above, it can be concluded that the work on harmonizing Ukrainian and European legislation in the field of air transport by implementing European standards even before the signing of the CAA Agreement demonstrates Ukraine's serious intention to become a full member of the European 'open sky'.

The roots of Ukrainian aviation date back to a time long before Ukraine gained its independence. The Ukrainian contribution to international aviation, including pilots, constructors, and designers, is significant, and Ukrainian influence can be observed in various fields of aviation. A new era in the history of civil aviation in Ukraine began with independence and the introduction of market relations. Freedom was granted to initiative and the creation of new national airlines of different ownership forms. Ukraine is a member of several international aviation organizations, including ICAO, EUROCONTROL, JAA, IAC, and EUROCAE.

On February 17, 2022, the CAA Agreement between Ukraine and the EU was ratified by Law of Ukraine No. 2067-IX<sup>394</sup>. Together with the National Transport Strategy of Ukraine for the period until 2030, this agreement creates a legislative task of ensuring the development of air transport, creating conditions for the liberalization of air transport, and implementing CAA regulations.

The process of harmonizing national and pan-European standards, especially in challenging military conditions and the post-war period, is long-term and requires significant efforts and a multitude of measures. It entails both positive and negative consequences that necessitate careful consideration and analysis.

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<sup>394</sup> On the ratification of the Agreement between Ukraine, on the one hand, and the European Union and its member states, on the other hand, on CAA. Law of Ukraine, dated February 17, 2022 No. 2067-IX. The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 13.05.2022 - 2022 p., No. 37, page 28, article 1976, code of act 111164/2022.

# **CHAPTER IV**

## **COMPARATIVE ANALYSIS**

### **OF COMPLIANCE OF UKRAINIAN LEGISLATION**

#### **WITH EU REQUIREMENTS AND WAYS**

#### **FOR IMPROVING FURTHER HARMONIZATION**

#### **A. Comparative analysis of compliance of Ukrainian legislation with EU requirements regarding ATM**

The organization of ATM in Ukraine is based on the principles of aviation space structure and its classification. According to the ACU, the structure of Ukraine's airspace is developed and approved by the authorized body on civil aviation issues in agreement with the General Staff of the Armed Forces of Ukraine, and, if necessary, with interested state bodies, enterprises, institutions, and organizations in accordance with the standards and recommended practice of the ICAO, EUROCONTROL documents, and the requirements of aviation regulations of Ukraine<sup>395</sup>.

At the same time, the airspace of Ukraine available for general air traffic flights is divided into:

1) the controlled airspace of Ukraine for air traffic services, within which all types of air traffic services (dispatching, flight information, emergency) can be provided in the prescribed manner;

2) the airspace of Ukraine outside the controlled airspace of air traffic services, where flight information and emergency services are provided in accordance with the established procedure.

The classification of the airspace of Ukraine and air traffic service is determined by the State Aviation Service based on the needs of airspace users, the need to ensure flight safety, their economic efficiency, and is published in aeronautical information documents<sup>396</sup>.

Also, airspace management is regulated in accordance with the provision on the use of airspace of Ukraine, which establishes the basics of airspace management in Chapter 2, 'Regulatory regulation and procedure for the use of airspace.' According to point 6, the Ministry of Infrastructure and the Ministry of Defense carry out state regulation of the use of airspace within their powers.

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<sup>395</sup> Supra note 338, Art. 25.

<sup>396</sup> Supra note 338, Art. 26

According to this regulation, aircraft flights are performed in accordance with the requirements of the ACU, the Rules of Flight in the Airspace of Ukraine, which are approved by the Ministry of Infrastructure and the Ministry of Defense, this Regulation, other normative legal acts, and international treaties of Ukraine. The use of airspace over the open sea is carried out in accordance with the rules approved in accordance with the Chicago Convention<sup>397</sup>.

Activities related to the use of airspace, as well as activities that may pose a threat to flight safety, are allowed only after obtaining the appropriate permission (certificate, license) and subject to compliance with necessary precautions.

This provision also establishes that airspace management is carried out by the Ministry of Infrastructure, the Ministry of Defense, and relevant bodies of the joint civil-military system of air traffic management in accordance with the instructions for managing the use of airspace, which are developed and approved by the Ministry of Infrastructure together with the Ministry of Defense.

Regarding the issue of airspace organization, according to this provision, it is determined in accordance with the requirements of this Regulation, the classification of airspace to the Chicago Convention, taking into account the established requirements for environmental protection.

The provision also expands the structure of the airspace<sup>398</sup>, which consists of the following elements:

- flight information areas;
- dispatching areas;
- airfield traffic zones;
- air traffic service routes;
- restricted areas;
- flight restriction zones;
- dangerous zones;
- airspace of the zone with a special mode of airspace use;
- temporarily reserved airspace;
- special flight areas;
- test flight areas;
- air corridor crossing the state border;
- search and rescue areas;
- areas of simplified coordination.

Information on the structure of the airspace, data on airfields, permanent restricted areas, flight restriction areas, and dangerous areas are published in aeronautical information collections according to the World Geodetic System-1984 (WGS-84)<sup>399</sup> and applied to aeronautical charts. Aeronautical information should be available to all airspace users. The collection of aeronautical information and changes to it are approved by the State Aviation Service in agreement with the interested state bodies.

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<sup>397</sup> Supra note 323.

<sup>398</sup> Supra note 338, Art. 25.

<sup>399</sup> World Geodetic System (WGS84). Available at: <https://gisgeography.com/wgs84-world-geodetic-system/>



Aviation regulations of Ukraine, specifically 'Air Traffic Management,' were approved by the Order of the State Aviation Service of Ukraine No. 1920 of 09.12.2021<sup>400</sup>. These regulations were established to align Ukraine's legal acts in civil aviation with the standards and recommended practices of the ICAO. Their purpose is to establish general rules and procedures for organizing and providing civil aviation air traffic services within Ukraine's airspace and civil airfields (airports of shared use).

The main SES EU Regulations<sup>401</sup> serve as the foundation for these Aviation Regulations of Ukraine. However, Regulation (EC) 551/2004<sup>402</sup> of the European Parliament and the Council from March 10, 2004, regarding the organization and use of airspace in the SES, is not taken into account in Ukraine's legislation.

On the other hand, provisions of Regulation (EC) 552/2004<sup>403</sup>, concerning the interoperability of the European air traffic control network, its systems, components, and related procedures for air navigation services, are considered in Ukraine's legislation. There are eight such systems, which include airspace management, air traffic flow management, air traffic services (such as flight data processing systems, surveillance data processing systems, and user-machine interface systems), ground-to-ground, air-to-ground, and air-to-air communications, navigation systems, supervision systems, aeronautical information services systems, and systems for using meteorological information.

The systems, components, and related procedures of the European air traffic control network must meet specific requirements, including general requirements such as complex use, support for new operating principles, security, civil-military coordination, limitations related to the environment, and principles of logical building systems. Additionally, there are special requirements for airspace management, air traffic flow management, air traffic services, and the use of meteorological information.

Regulation No. 549/2004<sup>404</sup> provisions were not taken into account in the legislation of Ukraine, namely regarding the creation of an agreed regulatory structure for the creation of a SES, to increase the current safety standards and overall efficiency for general air traffic in Europe, to optimize the bandwidth that meets the requirements of all users airspace, and minimize delays, which would contribute to the safe and regular operation of air transport services, thus facilitating the free movement of goods, persons and services in conjunction with Regulation (EC) No. 551/2004<sup>405</sup>, Regulation (EC) No. 550/2004<sup>406</sup>, Regulation (EC)

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<sup>400</sup> Order of the State Aviation Service of Ukraine No. 1920 of 09.12.2021 'On approval of Aviation regulations of Ukraine 'Air Traffic Management

<sup>401</sup> The list and description of these Regulations were studied in Chapter 1.

<sup>402</sup> 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 (the airspace Regulation), Official Journal L 96, 31.3.2004, p. 20–25

<sup>403</sup> 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 (the interoperability Regulation), Official Journal L 96, 31.3.2004, p. 26–42

<sup>404</sup> 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 (the framework Regulation), Official Journal L 96, 31.3.2004, p. 1–9

<sup>405</sup> 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 (the airspace Regulation), Official Journal L 96, 31.3.2004, p. 20–25

No. 552/2004<sup>407</sup> (Clause 1 of Article 3); the obligation of Member States to designate or establish a body or bodies as their national supervisory authority to undertake the tasks assigned to such a body in relation to the above purpose and which shall be independent of air navigation service providers.

Provisions of Regulation (EC) 2150/2005<sup>408</sup> have been considered in Ukraine's legislation. This regulation introduces the concept of flexible use of airspace within the SES, which aligns with the ICAO's principles and is developed by EUROCONTROL. The concept emphasizes that airspace should not be categorized strictly as civil or military but rather as a unified environment that meets the requirements of all users to the greatest extent possible, facilitating airspace and air traffic management within the general transport policy.

The principles of the concept of 'flexible use of airspace' are also provided for in the Ukrainian legislation, namely:

(a) coordination between civil and military authorities is organized at the strategic, pre-tactical and tactical levels of airspace management, by concluding agreements and creating procedures to increase security and capacity airspace, as well as improving the efficiency and flexibility of air operations;

(b) coherence between airspace management, air traffic flow management and air traffic services shall be established and maintained at all times at the three levels of airspace management listed in in order to ensure, to the benefit of all users, the efficiency in the planning, placement and use of airspace;

the reservation of airspace for exclusive or special use by categories of users shall be of a temporary nature and shall apply only for limited periods of time, based on actual use, and shall be released as soon as the activity giving rise to its use ceases;

Member States shall develop cooperation for the effective and coordinated application of the concept of flexible use of airspace across national borders and/or borders of flight information regions, and in particular to implement cross-border measures; this cooperation covers all important legal, operational and technical issues;

(e) air traffic services units and users shall use the available airspace as efficiently as possible<sup>409</sup>.

Provisions of Regulation (EC) 1032/2006<sup>410</sup> were taken into account in the legislation of Ukraine, namely regarding the obligation of air navigation service providers to ensure that flight data processing systems serving air traffic control points serving general air transportation, as well as systems serving district control rooms centers met the

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<sup>406</sup> 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 (the service provision Regulation). Official Journal L 96, 31.3.2004, p. 10–19

<sup>407</sup> 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 (the interoperability Regulation), Official Journal L 96, 31.3.2004, p. 26–42

<sup>408</sup> Commission Regulation (EC) No 2150/2005 of 23 December 2005 laying down common rules for the flexible use of airspace. Official Journal L 342, 24.12.2005, p. 20–25

<sup>409</sup> Ibid. Art. 3.

<sup>410</sup> Commission Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units. Official Journal L 186, 7.7.2006, p. 27–45.

interoperability and performance requirements<sup>411</sup>. Also taken into account are the obligations of air navigation service providers who have indicated in their letter of agreement that they will implement the processes of notification, initial coordination, review of coordination, cancellation coordinating, processing basic flight data or making changes to basic flight data between air traffic control units that are not area control centers, ensure that flight data processing systems serving air traffic control units serving general aviation met the requirements for operational compatibility and performance characteristics<sup>412</sup> and performance characteristics for flight data processing systems serving general aviation.

## **B. Comparative analysis of compliance of Ukrainian legislation with EU requirements regarding aviation safety**

Chapter 7 of the CAA Agreement focuses on flight safety<sup>413</sup>. The Agreement entails the implementation of European standards concerning aviation safety and the appropriate level of aircraft maintenance by the air navigation service.

'Aviation safety' encompasses:

- Technical standards of aircraft.
- The level of training for air carrier personnel.
- The level of training for dispatching service personnel.
- The qualification level of air inspectors.
- Compliance with the flight schedule by the airline.

1) Subject to the transitional provisions outlined in Annex III of this Agreement, the Parties shall act in accordance with their respective laws concerning the flight safety requirements and standards stated in Part C of Annex I of this Agreement, under the conditions specified in this Article.

2) While performing the functions and tasks of the developing state, the producing state, the state of registration, and the operating state, as prescribed in the Convention, Ukraine incorporates into its legislation and effectively implements the requirements and standards specified in paragraph 1 of this article, in accordance with the transitional provisions detailed in Annex III of this Agreement.

3) The parties collaborate to ensure the effective implementation of Ukraine's national legislation, adopted for the purpose of incorporating the requirements and standards specified in paragraph 1 of this article. To achieve this, Ukraine participates as an observer in the work of EASA from the date of entry into force of this Agreement, as described in Annex VI of this Agreement.

4) In order to ensure the operation of contractual routes in accordance with clauses (a), (b), (c), and (d) of Article 16(1) of this Agreement, each Party recognizes airworthiness certificates, qualification certificates, and certificates issued or approved by another Party as

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<sup>411</sup> Ibid., Parts A and B of Annex I.

<sup>412</sup> Ibid., Art. 3 para 2 and Parts A and B of Annex I.

<sup>413</sup> Supra note 12, Chapter 7.

valid and continuing, provided that the requirements for such certificates or certificates meet at least the minimum standards established in accordance with the Convention.

5) Recognition by EU member states of certificates issued by Ukraine, specified in Section I of Annex IV of this Agreement, is determined in accordance with the provisions outlined in Annex III of this Agreement.

6) The parties collaborate with the aim of achieving convergence of certification systems in the areas of primary certification and maintaining airworthiness.

In accordance with Clause 2 of Section 2 of Annex III of the Agreement<sup>414</sup>, the conditions for transitioning to the second transitional period are determined and entail the following for Ukraine:

(a) Incorporation into national legislation and implementation of applicable requirements and standards, particularly:

- Regulation (EC) No. 216/2008<sup>415</sup> (on common rules in the field of civil aviation and the establishment of EASA).
- Regulation (EU) No. 748/2012<sup>416</sup> (on the establishment of airworthiness and environmental safety certification rules for aircraft and related products, parts, and devices, as well as certification of aircraft development organizations and manufacturers).
- Regulation (EC) No. 2042/2003<sup>417</sup> (on maintaining the airworthiness of aircraft and aviation products, parts, and devices, and on the approval of organizations and personnel involved in the performance of these tasks) as amended.
- Regulation (EU) No. 965/2012<sup>418</sup> (on defining technical requirements and administrative procedures related to air transportation).

## 1. Aircraft certification

Ukraine's agreement on CAA differs from similar agreements with Georgia<sup>419</sup> and Moldova<sup>420</sup>, among other things, in that Ukraine demands recognition of its aircraft certification system. The reasons for such requirements are as follows: in case of transitioning to the European certification system, obtaining a certificate would become

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<sup>414</sup> Supra note 12, Clause 2 of Section 2 of Annex III.

<sup>415</sup> 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. Official Journal L 79, 19.3.2008, p. 1–49

<sup>416</sup> Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations. Official Journal L 224/1 21.8.2012

<sup>417</sup> Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks. Official Journal L 315, 28.11.2003, p. 1

<sup>418</sup> Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council. Official Journal L 296, 25.10.2012, p. 1–148

<sup>419</sup> Supra note 243.

<sup>420</sup> Supra note 253.

more expensive; specialized experts from the EU are not sufficiently familiar with the Ukrainian certification system, particularly when it comes to recognizing certificates for AN aircraft, especially older models that do not comply with European standards<sup>421</sup>; Antonov State Enterprise holds intellectual property rights on its aircraft and has the obligation to collect information on the condition of aircraft, cases of failure, etc., since AN aircraft are used in over 70 countries worldwide<sup>422</sup>.

Negotiations with the EU on the convergence of certification systems began back in 2007 when the parties agreed to hold working meetings on the continuous operation of aircraft designed by the Aviation Scientific and Technical Complex named after Oleh Kostyantynovich Antonov, which are currently registered in EU member states. The result of these meetings was the signing of the Working Agreements on the Cooperation of the State Aviation Administration of Ukraine with EASA<sup>423</sup> in 2009.

The annexes to the CAA Agreement establish Ukraine's accountability for EASA standardization. However, the certificates, licenses, and other technical documentation must be issued by national authorities of Ukraine, not EASA, as is the practice in EU member states. At the same time, Ukraine should provide mechanisms for conducting inspection checks and audits regarding standardization by EASA. On January 16, 2017, the State Aviation Service and the EC signed a Working Agreement on the convergence of certification systems<sup>424</sup>, which outlined measures to improve flight safety and strengthen cooperation in harmonizing certification systems in the areas of initial airworthiness, continuing airworthiness, and aircraft maintenance and components over a five-year period. Implementing these measures will enable the conclusion of an agreement with the EU on flight safety. This agreement will not cover Ukraine's industrial standards for aircraft production and components, which fall outside the scope of the Agreement on the CAP. Therefore, certificates issued by Ukraine for Antonov SE products will remain valid and recognized by the EU<sup>425</sup>. This, in turn, will allow Ukrainian airlines to continue using their entire existing fleet of civil aircraft for flights to the EU.

The fundamental regulation in the field of aviation (including certification and recognition of certification) in the EU is Regulation (EC) No. 216/2008 on general rules in the field of civil aviation and the establishment of EASA<sup>426</sup>, amended by Regulations No. 690/2009<sup>427</sup> and No. 1108/2009<sup>428</sup>.

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<sup>421</sup> Gudyma, R.R. (2010). Common aviation space between Ukraine and the EU: positive and negative sides. Kyiv: Nova Programa (In Ukrainian), p. 35.

<sup>422</sup> Bratus, L. (2004). 'General aircraft designer, scientist, man...: dedicated to O.K. Antonov'. Aviator: NAU newspaper No. 2, p. 8 (In Ukrainian).

<sup>423</sup> Convergence of certification systems based on the Arrangement between the State Aviation Administration of Ukraine and the European Commission on convergence of Certification Systems. Available at: [https://www.eas.europa.eu/delegations/ukraine/convergence-certification-systems-based-arrangement-between-state-aviation\\_en?s=228](https://www.eas.europa.eu/delegations/ukraine/convergence-certification-systems-based-arrangement-between-state-aviation_en?s=228)

<sup>424</sup> Ibid.

<sup>425</sup> Antonov, G. (2003). 'Steel wings'. History of domestic aircraft construction 21, p.10 (In Ukrainian).

<sup>426</sup> Supra note 414.

<sup>427</sup> Commission Regulation (EC) No 690/2009 of 30 July 2009 amending Regulation (EC) No 216/2008 of the European Parliament and the Council 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, Official Journal L 199, 31.7.2009, p. 6–6

According to Article 1 of the Regulation<sup>429</sup>, it applies to the design, production, maintenance, and operation of aviation products, parts, and devices, as well as personnel and organizations involved in these activities.

The regulation does not apply to products, parts, devices, personnel, and organizations involved in military, customs, police, or similar activities. Participating States undertake to ensure that such activities are appropriately supervised and, as far as possible, aligned with the objectives of the Regulation.

The objectives of the Regulation are:

- Establishing and maintaining a high uniform level of civil aviation security in Europe.
- Ensuring a high uniform level of environmental protection.
- Promoting the free movement of goods, persons, and services.
- Promoting cost-effectiveness in the regulatory and certification process and avoiding duplication at the national and European levels.
- Assisting States Parties in fulfilling their obligations under the Chicago Convention by creating a basis for common interpretation and uniform implementation of its provisions.
- Disseminating Community views on standards and rules of civil aviation safety worldwide through cooperation with third countries and international organizations.

The means of achieving these objectives include the preparation, adoption, and uniform application of all necessary acts, recognition of certificates, licenses, approvals, and other documents issued for products, personnel, and organizations in accordance with the Regulation and its implementation rules without additional requirements, establishing an independent EASA, and ensuring the uniform application of all necessary acts by national aviation authorities within their respective spheres of competence.

According to Article 3 of the Regulation<sup>430</sup>, 'certification' refers to any form of recognition that a product, part, device, organization, or person complies with the relevant requirements, including the provisions of the Regulation and its implementation rules, and the issuance of an appropriate certificate confirming such compliance. 'Certificate' refers to any approval, license, or other document issued as a result of certification.

Subject to the provisions of Article 4431, an aircraft, including any installed product, part and device:

- Designed and manufactured by an organization for which EASA or a participating State provides safety oversight.
- Registered in a participating state unless safety regulatory oversight has been transferred to a third country and is not operated by a Community operator.
- Registered in a third country with regulatory safety oversight carried out by a participating state and operated by an operator inside or outside the Community.

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<sup>428</sup> 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 services and repealing Directive 2006/23/EC, Official Journal L 309, 24.11.2009, p. 51–70

<sup>429</sup> Supra note 414, Art. 1

<sup>430</sup> Supra note 414, Art. 3.

<sup>431</sup> Supra note 414, Art. 4.

- Registered in a third country or registered in a Member State that has delegated safety oversight to a third country and used by a third-country operator inside or outside the Community.

The conformity of an aircraft registered in a participating state, as well as the products, parts, and devices installed on it, is determined as follows:

1. Products must have a type certificate. A type certificate and certification of changes to this type certificate, including additional type certificates, are issued if the applicant has proven that the product meets the basis of the type certification and if the product does not have any properties or characteristics that make it unsafe to use. The type certificate covers the product, including all parts and devices installed on it.

1.1.2) Parts and appliances may be granted special certificates if they are proven to meet the detailed airworthiness requirements established to ensure compliance with the essential requirements.

1.1.3) Each aircraft is issued a separate certificate of airworthiness if it is proven that it conforms to the type design approved by the type certificate, and the relevant documents, inspections, and tests show that the condition of the aircraft guarantees safe operation.

1.1.4) The certificate of airworthiness remains valid until it is suspended, canceled, or terminated, and until the aircraft is maintained in accordance with the basic requirements.

Personnel responsible for reconditioning the product, part, or device may be required to have an appropriate certificate (personal certificate).

The ability of service training organizations to assume the responsibilities associated with their certification privileges may be recognized by issuing an approval.

Permission to fly may be granted if it is proven that the aircraft is capable of safely performing the basic flight. Permission is granted with appropriate restrictions, particularly regarding the safety of third parties.

A limited certificate of airworthiness may be issued to an aircraft for which a type certificate has not been issued. In this case, it must be demonstrated that the aircraft complies with the special airworthiness requirements, and that the deviations from the basic requirements nevertheless provide adequate safety considering the intended use.

Aircraft eligible for these restricted certificates and restrictions on the use of these aircraft will be determined in accordance with implementing regulations.

If the number of aircraft of the same type eligible for a restricted certificate justifies it, a restricted type certificate may be issued, and the basis for the corresponding type certificate established.

According to Article 6 of the Regulation<sup>432</sup>, products, parts, and devices must comply with the environmental protection requirements specified in Annex 16 to the Chicago Convention, published on November 24, 2005, for Editions I and II, except for the annexes to Annex 16. The previous provision may be amended according to the procedure specified in Part 3 of Article 54 of the Regulation to make it compatible with subsequent amendments to the Chicago Convention and its Annexes, which enter into force after the adoption of the Regulation and are in effect in all participating states, provided that such approval does not expand the scope of the Regulation.

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<sup>432</sup> Supra note 414, Art. 6.

The issue of recognition of certificates is regulated by Article 11 of the Regulation. Participating states recognize certificates issued in accordance with the Regulation without additional requirements or assessment. If the initial recognition relates to specific needs, any subsequent recognition will only cover the same needs. The Commission, on its initiative or at the request of a Member State or EASA, may apply the provisions of Article 6 of Decision 1999/468/EC<sup>433</sup> to decide whether a certificate issued based on the provisions of the Regulation complies with these provisions and the rules of its application.

In case of non-compliance with the provisions of the Regulation, the Commission may require the issuer of the certificate to take appropriate measures to correct the situation and apply protective measures, such as restricting or canceling the certificate. Certificates that cannot be issued based on the provisions of the Regulation can be issued based on the relevant provisions of national legislation.

Article 12 deals with the issue of recognition of certificates issued by a third country. Thus, by way of derogation from the provisions of the Regulation and the rules adopted for its implementation, EASA or the aviation authorities in the participating states may issue certificates based on certificates issued by the aviation authorities of a third country, as provided for in mutual recognition agreements between the Community and that third country. In the absence of an agreement concluded by the Community, a Member State or EASA may issue certificates based on certifications issued by the competent authorities of a third country based on an agreement concluded by that Member State with the relevant third country prior to the entry into force of the relevant provisions of the Regulation and notification thereof to the Commission and other member states. EASA may also issue such certificates on behalf of any participating state based on an agreement concluded by one of the participating states with the relevant third country. If the Commission considers that the provisions of an agreement between a participating state and a third country do not guarantee a level of security equivalent to that defined by the Regulation and its implementing rules, and/or such an agreement would create discrimination between participating states without justifying it with reasons that are overriding security or such an agreement is contrary to the external policy of the Community vis-à-vis a third country, it may require the concerned state party to amend the agreement as soon as possible or suspend its application or terminate it.

Member states shall take the necessary measures to terminate the agreements as soon as possible after the entry into force of the agreement between the Community and the third country concerned regarding the areas covered by the latter.

Regarding products, parts, and appliances, EASA, where applicable and as defined in the Chicago Convention or its Annexes, performs on behalf of the participating states the functions and tasks of the State of design, manufacture, or registration, as far as design approval is concerned.

For this purpose, it in particular:

- Establishes and communicates the type certification basis for each product for which a type certificate or change to a type certificate is requested. The basis of certification consists of the relevant airworthiness code, provisions for which an equivalent level of

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<sup>433</sup> Council Decision No. 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, Official Journal L 184, 17.7.1999, p. 23–26



safety has been accepted, and special detailed specifications are necessary if the design features of the individual product or experience in service make any provision of the airworthiness code inadequate or inappropriate to ensure compliance with basic requirements.

- Establishes and communicates special conditions of airworthiness for each product for which a limited certificate of airworthiness is required.
- Establishes and communicates detailed conditions of airworthiness for each part or device in respect of which a certificate is required.
- Establishes and communicates appropriate environmental protection requirements for each product for which environmental certification is required.
- Conducts, independently or through national aviation authorities or qualified organizations, technical inspections related to the certification of products, parts, and devices.
- Issues appropriate type certificates or related changes.
- Issues certificates for parts and devices.
- Issues appropriate environmental certificates.
- Amends, suspends, or cancels the corresponding certificate if the requirements according to which it was issued are no longer fulfilled or if the natural or legal person holding the certificate cannot fulfill the obligations imposed on them by the Regulation or the rules from its implementation.
- Ensures that the airworthiness functions of the products, parts, and appliances it has certified are maintained, including responding without undue delay to a safety problem and issuing and disseminating appropriate mandatory information.

One of the priority areas in which Ukrainian legislation is being adapted is technical rules and standards in transport.

According to Article 1 of the ACU certification (approval), it certifies that the subject or object of aviation activity meets the requirements of the aviation rules of Ukraine and issues the corresponding certificate<sup>434</sup>.

According to the current legislation of Ukraine<sup>435</sup>, certification and obtaining appropriate certificates of approval of aviation entities include enterprises and organizations that carry out the following activities in the field of civil aviation:

- Development of civil aviation equipment and changes to it for the purpose of approving the standard design and serial production of aircraft equipment of the approved design.
- Maintenance of aviation equipment.
- Airworthiness maintenance management.
- Operation of aircraft.
- Training of aviation personnel and personnel involved in aviation safety provision, including ground handling personnel.
- Ground handling.
- Provision of air navigation services.
- Protection of civil aviation from acts of illegal interference.

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<sup>434</sup> Supra note 338, Art. 1.

<sup>435</sup> Supra note 338, Art. 13.

– Other types of activities provided for by legislation, including aviation regulations of Ukraine.

Certificates are issued only after a full technical inspection of the subjects, verification of the safety of their activities, and the general ability to perform a specific form of activity.

The State Aviation Service recognizes a certificate or a similar document issued by an aviation authority of another state or a competent organization if it is stipulated by an international treaty of Ukraine and relevant international legal acts, or if the requirements for its issuance were not lower than those applied in Ukraine<sup>436</sup>.

As part of the regulatory activity of the State Aviation Service, a draft of the Aviation Rules of Ukraine regarding the procedure for certification of aviation equipment<sup>437</sup> has been developed. These regulations define the rules for type certification of aircraft, type certificates, temporary type certificates, amendments to type certificates, etc.

According to these rules, the certification basis is established, which is a set of requirements for airworthiness and environmental protection common to a specific type of aviation equipment. The compliance of the aircraft model and its components with the requirements of the certification basis is determined based on the results of certification works, including calculations, modeling, analysis of the experience of operating the model or its prototypes, and certification (laboratory, bench, ground, and flight) tests of the model.

The rules also specify that certification work is carried out under the direction and control of the State Aviation Service. Certification works are performed in accordance with the current methods of determining conformity or methods developed by organizations and enterprises that carry out certification works. These methods require approval by the State Aviation Service and inclusion in the programs of certification work. The State Aviation Service has the authority to halt the transition to the next certification stage if the goals of the previous stage are not achieved.

Recognition of another certification according to these Aviation Rules occurs through derogation from the airworthiness requirements. Deviations from the airworthiness requirements included in the certification basis may be recognized as acceptable by the State Aviation Service if these deviations are compensated by measures that ensure an airworthiness level equivalent to the level established by the current Aviation Rules<sup>438</sup> (airworthiness standards).

Furthermore, recognition of other certifications is carried out through cooperation with the International Aviation Committee. The State Aviation Service and the Air Registry of the International Aviation Committee work jointly on the certification of aircraft type and components and the certification of aircraft production, in accordance with the Procedures approved by the State Aviation Service and the Aviation Committee, and agreed with the State Committee of Industrial Policy of Ukraine. The procedure for interaction between the IAC AR and the State Aviation Service in performing type certification work, not regulated by the Procedures, is established through special agreements between the IAC AR and the State Aviation Service.

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<sup>436</sup> Supra note 338, Art. 14.

<sup>437</sup> Supra notes 438, Chapter 21.

<sup>438</sup> Supra note 438.

Certification, as a process, is carried out in stages according to the draft Aviation Rules. The main stages of certification include:

1. Submission of an application to the State Aviation Service for obtaining a Type Certificate.
2. Development of the Certification basis of the sample and its approval by the State Aviation Service.
3. Carrying out the mock-up stage of the sample together with its components.
4. Certification factory tests of the sample - the stage of the Applicant.
5. Certification control tests of the sample - the stage of the State Aviation Service.
6. Analysis of the certification results, decision-making, and issuance of a sample Type Certificate by the State Aviation Service.

The Aviation Rules of Ukraine, Part 21 'Certification of aircraft, related products, components, and equipment, as well as developer and manufacturer organizations' APU-21(Part-21)<sup>439</sup>, take into account the provisions of Regulation (EU) 1702/2003<sup>440</sup>. Specifically, they address the mandatory certification of airworthiness and environmental impact of products, parts, and devices. The requirements and procedures for such certification determine the process of:

- Issuance of type certificates, limited type certificates, additional type certificates, and amendments to these certificates.
- Issuance of certificates of airworthiness, limited certificates of airworthiness, permits to fly, and certificates of admission to flight (after maintenance).
- Issuance of permits for repair of the aircraft structure.
- Demonstration of compliance with environmental protection requirements.
- Issuance of noise level certificates.
- Identification of products, parts, and devices.
- Certification of certain parts and devices.
- Certification of organizations engaged in the design and production of aircraft.
- Issuance of airworthiness directives.
- Issuance of export certificates of airworthiness.
- Approval of the typical design of products, components, and equipment imported into Ukraine.

The legislation of Ukraine also takes into account the provisions of Regulation (EC) 2042/2003<sup>441</sup>, particularly regarding the provision of airworthiness support for aircraft and components as specified in Annex I. Organizations and personnel involved in maintaining the airworthiness of aircraft and components, including maintenance, must comply with the provisions of Annex I. Organizations engaged in the maintenance of large aircraft or aircraft used in commercial air transport, as well as maintenance components intended for

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<sup>439</sup> Order of the State Aviation Service of Ukraine dated April 26, 2019 No. 529 'On approval of the Aviation Rules of Ukraine, Part 21 'Certification of aircraft, related products, components and equipment, as well as developer and manufacturer organizations' APU-21 (Part-21). Official Bulletin of Ukraine, official edition, 2019, No. 45, p. 38, article 1566, act code 94711/2019

<sup>440</sup> Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations. Official Journal L L 243/6, 27.9.2003

<sup>441</sup> Supra note 416.

installation on them, must be approved in accordance with the provisions of Annex II. Certification personnel must be authorized in accordance with the provisions of Annex III. Organizations involved in the training of certification personnel must obtain permission, according to Annex IV, to teach approved basic training courses, conduct examinations, and issue certificates of training.

## **2. Requirements for flight safety**

In accordance with ICAO requirements, the maintenance of aircraft airworthiness is carried out based on the following principles:

- The airworthiness of aircraft is established during design, taking into account previous operational experience, airline requirements, and state requirements regarding flight safety.
- The development and serial production of aviation equipment are carried out by certified enterprises.
- State control over aircraft airworthiness, in accordance with SARP's requirements, is entrusted to the State Aviation Administration.
- Each instance of an aircraft installed in the fleet is registered in the State Register and is allowed for operation with the Certificate of Airworthiness, which confirms compliance with airworthiness requirements.
- The airworthiness of each aircraft during operation is maintained by ensuring that the operator complies with established rules for flight operation, maintenance, and repair. Violations by the operator regarding airworthiness requirements or the detection of dangerous conditions can result in restrictions on aircraft operation or termination of its operation.
- Maintenance and repair are carried out by certified maintenance and repair organizations.
- All types of work to maintain the aircraft's airworthiness are performed by aviation personnel who have passed the appropriate attestation<sup>442</sup>.

According to SARP's requirements developed by ICAO, systems for ensuring and maintaining airworthiness are distinguished within the structure of state airworthiness regulation. Airworthiness assurance occurs during the design and production stages of aircraft.

During the aircraft design stage, aviation equipment is developed at factories with the necessary certification. Reliability calculations are performed for all component products, systems, types of equipment, and the entire designed aircraft. Based on this data, designated and inter-repair resources and reliability control levels for all aircraft components are determined. Aircraft are manufactured at certified manufacturing plants, where special attention is paid to structural strength issues, directly affecting the reliability and airworthiness of the aircraft. Before operation, the airworthiness compliance of the manufactured aircraft is determined. If the results are satisfactory, the aircraft is issued a

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<sup>442</sup> ICAO (Doc 9051-AN/896), (Doc 9642-AN/941), (Doc 9760-AN/967)

certificate for operation and delivered to the airlines, which are responsible for maintaining the airworthiness of each aircraft in their fleet.

During the operational stage, aircraft airworthiness is maintained by ensuring the required level of flight safety, improving the reliability of component products, systems, types of equipment, and the aircraft as a whole, conducting necessary aircraft and aviation personnel certifications, as well as timely maintenance and repair.

Currently, the economically feasible service life and resource of an aircraft are determined more by the financial capabilities of the aircraft operator rather than physical wear and tear. Exceeding the actual service life of aircraft beyond the design value is a common practice in international civil aviation. This practice is implemented through two types of aircraft operation: by resource and by condition.

Extending the designated resource and service life of the aircraft involves establishing the value of the resource and service life for each stage of aircraft operation based on laboratory and flight tests, forecasting operating conditions, and ensuring flight safety. During the operation of the aircraft fleet, new information about operating conditions is accumulated, defects are discovered, additional tests are conducted, and technical measures in the form of additional conditions (or confirmation of existing conditions) for extending the resource and service life for the next stage of operation are developed.

Today, extending the resource of the aircraft fleet is somewhat complicated due to factors such as the small fleet size, variety of operating conditions, maintenance quality, and other technical and economic reasons. Therefore, condition-based operation has been widely developed, which involves periodic control or inspection of component products to establish their compliance with defined standards and determine their suitability for further use. These standards serve as the basis for decommissioning a component or part before it fails in service. The standards may be adjusted based on the operating experience of the manufacturer or an approved Reliability Program or Maintenance Program.

The legislation of Ukraine takes into account the provisions of Directive 2003/42/EC<sup>443</sup>, particularly concerning the reporting, collection, storage, protection, and distribution of information about accidents or malfunctions that may endanger an aircraft, its passengers, or any other persons. Reportable incidents related to aircraft operations, maintenance, and aircraft production include flight operations, technical condition, maintenance and repair of aircraft, air navigation services, facilities, and ground services. Air navigation services related to reportable incidents include incidents involving dangerous approaches of aircraft in flight, the potential for collision or danger of collision, and special accidents where the provision of safe air traffic control services becomes impossible. The purpose of reporting these incidents is to prevent accidents and incidents rather than assigning blame or responsibility.

Since maintaining the airworthiness of an aircraft depends on the operator, the economically feasible service life and resource of the aircraft are now determined more by the financial capabilities of the operator rather than physical wear and tear. As a result, exceeding the actual service life of aircraft beyond the design value is a common practice in

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<sup>443</sup> Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation. Official Journal L 167, 4.7.2003, p. 23–36

international civil aviation. This practice is implemented through two types of aircraft operation — by resource and by condition.

The extension of the designated resource and service life of the aircraft consists of the following. For each stage of aircraft operation, the value of the resource and service life, as well as the conditions for their determination, ensuring flight safety, are established based on laboratory and flight tests of the full-scale design of the aircraft and forecasting the expected operating conditions. During the operation of the aircraft fleet at each stage, new information about operating conditions is accumulated, new defects are discovered, additional tests of the full-scale design are carried out, and technical measures in the form of additional conditions (or confirmation of existing conditions) are developed to extend the resource and service life for the next stage of operation.

Currently, extending the resource of the aircraft fleet is somewhat complicated due to the small fleet size, variety of operating conditions, maintenance quality, and other technical and economic reasons. This is why condition-based operation has been widely developed, involving periodic control or inspection of component products to establish their compliance with a defined standard and determine the possibility of further use. This standard serves as a basis for decommissioning a component or part before it fails in service. The standard may be adjusted based on the operating experience of the JSC or an approved Reliability Program or Maintenance Program.

The maintenance of airworthiness for aircraft, aviation products, components, and equipment, as well as the approval of organizations and personnel involved in these tasks, is regulated by the relevant Aviation Rules No. 286 dated 06/03/19<sup>444</sup>.

These Aviation Regulations establish general technical requirements and administrative procedures to ensure:

(a) the maintenance of airworthiness for aircraft, including any component intended to be installed on them, which: (i) are entered into the State Register of Civil Aircraft of Ukraine, if flight safety supervision has not been transferred to a third country and they are not used by an operator approved in Ukraine; or (ii) are registered in a third country and used by an operator approved in Ukraine, in the event that flight safety oversight has been transferred to Ukraine;

(b) compliance with the basic requirements specified in Appendix II to the Aviation Rules of Ukraine, 'Technical requirements and administrative procedures for flight operation in aviation'<sup>445</sup>, approved by the order of the State Aviation Service of Ukraine dated July 5, 2018, No. 682, in terms of maintaining the airworthiness of aircraft registered in third countries, including any component intended to be installed on them, for which flight safety oversight has not been transferred to a Member State and which have been transferred under dry leasing to an air carrier.

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<sup>444</sup> Order of the State Aviation Service Of Ukraine No. 286 of March, 03 2019 'On approval of Aviation Rules of Ukraine 'Maintenance of airworthiness of aircraft and aviation products, components and equipment and approval of organizations and personnel involved in the performance of these tasks', Official Bulletin of Ukraine, official edition, 2019, No. 29, p. 47, article 1036, act code 94045/2019

<sup>445</sup> Order of the State Aviation Service Of Ukraine No. 682 July 5, 2018 Aviation Rules of Ukraine 'Technical requirements and administrative procedures for flight operation in civil aviation', Official Bulletin of Ukraine, official edition of 2018, No. 79, p. 44, article 2640, act code 91749/2018

### 3. Flight safety control

The analysis of the state of flight safety is performed based on information about incidents that occurred during a selected period of time (quarter, half-year, year) involving aircraft that are part of Ukraine's aircraft fleet. A separate document containing a detailed description of the incident, conclusions, and recommendations from the investigation commission is drawn up for each registered incident. To ensure constant control of flight safety, it is proposed to use information from a specially optimized database compiled based on the incident description from a flight safety perspective.

To systematize and classify information, the following details are entered into the database: type of incident (catastrophe, accident, complex incident, incident, emergency event, damage to the aircraft on the ground), date of the incident, operator, board number, type of aircraft involved, flight number (or flight task), the cause of the accident (crew, aviation engineering service, flight support service, aircraft repair plant, design and manufacturing defect, environmental cause like bird strike, etc.), and the consequences of the incident (airplane write-off, repair at an aircraft repair plant, repair at the airline, or continued operation without repair).

Once reliability, airworthiness, and flight safety data are collected, they are recorded and systematized. Reliability indicators and efficiency are calculated, allowing for constant monitoring and control of the level of reliability of component products and the aircraft as a whole. This includes monitoring changes in reliability levels of units, systems, equipment types, main products, and aircraft types in general based on performance, providing early warning of significant non-accidental changes in reliability levels, evaluating the effectiveness of maintenance work on components, comparing reliability characteristics of aircraft and their components among different airlines and during different periods of operation. Based on this analysis, measures are developed to improve reliability, airworthiness, safety, and flight regularity. Depending on the form of data accounting used to determine reliability, appropriate measures are implemented. Quarterly reports on failures and performance are used to develop corrective measures that enhance reliability and ensure the proper airworthiness of the JSC. Changes are made to the Reliability Program and the Aircraft Maintenance Program based on reliability analysis. Technical requirements for the industry are developed and improved to increase reliability and enhance operational technology in the JSC, and evidential information is prepared for aircraft instance certification, aircraft type certification, and the aircraft operator.

Improvements are made to aircraft operation methods, maintenance, and repair based on the form of data entry for aircraft failures and their components. Resources and service life of aviation equipment are justified, and the volume and periodicity of routine maintenance work on aircraft are adjusted. Norms for the consumption of spare parts and materials, as well as labor costs for technical maintenance, are substantiated. Measures are developed to reduce aircraft maintenance costs and increase economic efficiency.

Ukraine's legislation takes into account the provisions of Regulation (EC) 216/2008<sup>446</sup> regarding the design, production, maintenance, and operation of aviation products, parts, and

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<sup>446</sup>Supra note 414.

devices, as well as personnel and organizations involved in their design, production, and maintenance. The legislation also incorporates norms aimed at achieving goals such as: (a) ensuring a high and consistent level of environmental protection; (b) facilitating the free movement of goods, persons, and services; (c) promoting cost-effectiveness in the regulatory and certification process and avoiding duplication at national and European levels; (d) assisting Member States in fulfilling their obligations under the Chicago Convention by establishing a basis for common interpretation and uniform implementation of its provisions; (e) disseminating Community views on civil aviation safety standards and regulations worldwide by establishing cooperation with third countries and international organizations.

Regulations requiring mandatory compliance of aircraft with basic airworthiness requirements have been implemented. The conformity of an aircraft registered in a member state, as well as the products and devices installed on it, is determined based on the following: (a) products must have a type certificate covering all parts and devices fitted to the product; parts and appliances may receive special certificates if they are proven to meet detailed airworthiness requirements established to ensure compliance with essential requirements according to Annex I; (c) each aircraft is issued a separate certificate of airworthiness if it is proven to conform to the approved type design covered by the type certificate, and relevant documents, inspections, and tests confirm that the aircraft's condition guarantees safe operation; (f) personnel responsible for restoring a product, part, or device to working condition may be required to have an appropriate certificate ('personal certificate')<sup>447</sup>. Permission to fly may be granted if it is proven that the aircraft is capable of safely performing basic flight operations. An aircraft may be granted a limited certificate of airworthiness if it is demonstrated that the aircraft meets special airworthiness conditions and that derogations from the essential requirements of Annex I still provide adequate safety.

According to the CAA Agreement between Ukraine and the EU, Ukraine is accountable to the jurisdiction of the Aviation Safety Agency regarding standardization inspections, as stipulated in the regulation itself.

### **C. Comparative analysis of compliance of Ukrainian legislation with EU requirements regarding aviation security**

It can be determined with certainty that the international requirements in the field of civil aviation security have been most widely implemented in the aviation legislation of Ukraine since its independence and long before the signing of the CAA Agreement.

According to Art. 8 of the CAA Agreement<sup>448</sup>, ensuring the aviation security of civil aircraft, their passengers, and crew as a fundamental prerequisite for the performance of international air services, the Parties confirm their obligations to each other to protect civil aviation from acts of unlawful interference. This includes their obligations in accordance

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<sup>447</sup>Supra note 414, Article 5 para 2.

<sup>448</sup>Supra note 12, Art. 8



with the Chicago Convention, the Tokyo Convention of 1963<sup>449</sup>, the Hague Convention of 1970<sup>450</sup>, the Montreal Convention of 1971<sup>451</sup>, the Protocol on Combating Unlawful Acts of Violence at Airports Serving International Civil Aviation signed in Montreal on February 24, 1988 ('Montreal Protocol')<sup>452</sup>, and the Montreal Convention of 1991<sup>453</sup>. The Parties are bound by these conventions and all other conventions and protocols relating to civil aviation security to which both Parties are parties.

The system of air transport, aviation security, and the well-being of this industry in general is a common interest of the international community. Therefore, the responsibility should also be common<sup>454</sup>, especially considering the strategic importance of this industry for national security, society as a whole, and the economies of all countries of the world.

Threats to civil aviation security are also a general threat to aviation activities in general, and specifically to the ability of passengers to move freely and ensure their physical security<sup>455</sup>. The security of passengers, their cargo, and the ease of their movement are necessary components for the gradual development of economies through the improvement of the aviation sector. It is recommended that States, in cooperation with ICAO, develop, approve, and implement procedures, mechanisms, and joint actions (in accordance with the norms of international law), including the Chicago Convention. They should also have the opportunity to promptly modernize their national legislation and strengthen their own capacity to assess the degree of threats to civil security, thereby facilitating the free movement of persons and baggage by air transport.

Starting from the date when the Convention became binding for Ukraine on September 9, 1992, Ukraine, together with other countries participating in the Convention, strives to improve thematic legal acts related to civil aviation security. This improvement is done in accordance with their own current national legislation in the field of civil aviation security and in accordance with ICAO standards and established practices. Ukraine willingly implements the provisions regarding:

- Improving the quality of security of travel documents, the procedure for examining passengers, checking their biometric information, and the obligation to notify passengers about the discovery of stolen passports. If possible, such data is entered into the Interpol database of lost or stolen items.
- Expanding existing cooperation mechanisms between ICAO member countries, other parties to the Chicago Convention, and existing civil aviation industries to improve the efficiency of information exchange for early detection of potential threats to passengers' security.

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<sup>449</sup>Convention on offenses and Certain Other Acts committed on board Aircraft 1963. UN Treaty Series, 1969.

<sup>450</sup>Ibid.

<sup>451</sup>Ibid.

<sup>452</sup>UN. The Protocol on Combating Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed in Montreal on February 24, 1988 ('Montreal Protocol'). Available at: <https://treaties.un.org/doc/db/terrorism/conv7-english.pdf>

<sup>453</sup>Ibid.

<sup>454</sup>Belén, F.T. (2013). The air passenger transport contract. Subjects, statute and responsibility. Madrid: Rústica (In Spanish), p. 354

<sup>455</sup>Lebrón, G. and J. María. (2016). Air carrier liability and passenger protection. Madrid: Derecho del Transporte (In Spanish). 575 p

- Exchanging best practices in various areas related to civil aviation, such as document protection, fraud detection, development of new control and surveillance methods, detection of suspicious behavior in airport premises or on board an aircraft, and creation of appropriate requirements for employee certification at airports.
- Using modern technologies to identify prohibited materials and prevent their transportation on board aircraft. States cooperating in the field of civil aviation should contribute to the achievement of common and joint goals established by this Declaration ('Joint Declaration on Civil Aviation Security'). They should support the activities of organizations such as ICAO and resolve sectoral issues at intergovernmental meetings.
- Security: This includes the development of dispute resolution strategies and the elimination of possible threats in the field of civil aviation. Domestic and international civil aviation security standards, including Annex 17 to the Chicago Convention, should be strengthened. The parties should transmit information on passengers for effective monitoring of situations on board and during take-offs. They should also develop and improve compatible systems for collecting, processing, and using advance passenger information (API) and final identification materials regarding aircraft passengers (passenger name record - PNR). The Parties should explore and develop new possible measures to eliminate threats on board aircraft and promote the exchange of best practices at the international level.
- Exchange of information: Studying the effectiveness and functioning of existing information exchange mechanisms and further facilitating the appointment of contact points for information exchange. There is a prospect of creating specialized management centers in each state for this exchange, while not avoiding legislation on the protection and confidentiality of information.
- Research and development: Through relevant agencies, promoting national and international research on weapons, explosives, and hazardous materials detection, as well as behavioral interpretation, to facilitate the identification of individuals who may endanger civil aviation security. Exchange the results of research related to civil aviation security technology, the detection of weapons, explosives, and dangerous materials, as well as risk assessment, using the fastest way through the relevant institutions of each state.
- International cooperation: Encouraging collaborative efforts at the subregional, regional, interregional, and global levels to support the development of institutional capacity for civil aviation security. Conducting significant and coordinated information and advocacy activities with the states that are parties to the Chicago Convention to improve aviation security measures, methods, and security principles. Promoting the effective application of ICAO standards and recommended practices and developing capacity to address deficiencies identified within the framework of the Universal Security Audit Program. Mechanisms of promotion and development should be strengthened for this purpose.

Since the Convention entered into force for Ukraine on September 9, 1992, improving its legislation in the field of aviation security has become a priority task for Ukraine.

The purpose of the State Civil Aviation Security Program<sup>456</sup> of 2017 is to determine the basis for ensuring aviation security, regularity, and efficiency of flights by introducing rules, practices, and procedures that provide measures to protect against acts of illegal interference.

The main task of the Program is the distribution of responsibilities, establishment of implementation rules, and implementation of measures to ensure the aviation security of passengers, aviation personnel, and personnel involved in aviation activities, aircraft, and property transported by aircraft, regardless of the form of ownership and subordination<sup>457</sup> of subjects of aviation activity.

The Program is developed in accordance with the standards and recommended practices of the aforementioned Conventions and Protocols: the Chicago Convention and the obligations arising from Ukraine's participation in the Tokyo Convention (September 14, 1963), the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, December 16, 1970), the Convention for the Suppression of Unlawful Acts Against the Security of Civil Aviation (Montreal, September 23, 1971), the Protocol on Combating Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal, February 24, 1988), the Convention on the Marking of Plastic Explosives for the Purpose of Their Detection (Montreal, March 1, 1991), Annex 17 to the Chicago Convention 'Security. Protection of international civil aviation from acts of illegal interference,' Aviation Manual of Security (Doc 8973)<sup>458</sup>, as well as other international acts and acts of the legislation of Ukraine.

The program takes into account the requirements of the UN Security Council to direct joint efforts to prevent and stop terrorist acts, particularly Resolution No. 1373 of September 28, 2001<sup>459</sup>.

The issue of aviation security has received special attention in civil aviation, especially after the events of the terrorist attacks in September 2001, when a civilian airliner was used as an instrument of mass destruction, resulting in the loss of innocent lives.

The commission made a legislative proposal to transfer the issue of civil aviation security to the EU. This Commission initiative resulted in the development of Framework Regulation No. 2320/2002<sup>460</sup> of the European Parliament and of the Council of December 16, 2002, establishing general rules in the field of civil aviation, thus creating a harmonized basis for aviation security rules.

The most important document that regulates the issue of civil aviation security is the Regulation of the Council and the European Parliament No 300/2008<sup>461</sup> on common rules in the field of aviation security and the repeal of Regulation No. 2320/2002. This Regulation establishes general rules for the protection of civil aviation against acts of unlawful

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<sup>456</sup> Law of Ukraine. On the State Program of Aviation Security of Civil Aviation. February 20, 2003, N 545-IV.

<sup>457</sup> Ibid., Art. 2.

<sup>458</sup> Doc 8973. The ICAO Aviation Security Manual.

<sup>459</sup> Resolution 1373 (2001) / adopted by the Security Council at its 4385th meeting, on 28 September 2001.

Available at: <https://digitallibrary.un.org/record/449020?ln=ar>

<sup>460</sup> 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. Official Journal L 355, 30.12.2002, p. 1–21

<sup>461</sup> 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, Official Journal L 97, 9.4.2008, p. 72–84

interference and provides a basis for a uniform interpretation of Annex 17 to the Chicago Convention<sup>462</sup>.

The means of achieving the goals should be in the form of: (A) establishment of general rules and general basic standards for aviation security; (B) compliance mechanisms.

The scope of the Regulation covers:

- all airports or parts of airports located on the territory of the member state, which are not used exclusively for military purposes;
- all operators, including air carriers, providing services;
- all persons applying standards in the field of aviation security.

Common aviation rules (standards) are defined in this Regulation, which concern: permitted screening methods; categories of items that may be prohibited; access control requirements, grounds for granting access to the controlled zone and protected restricted access zone; methods allowed for vehicle inspection, aircraft security inspection, and aircraft security searches; criteria for recognizing the equivalence of security standards of third countries; conditions under which cargo and mail must be scanned or subjected to other security measures; conditions under which air carrier mail and air carrier baggage must be scanned or subjected to other security measures; hiring criteria and personnel training methods; conditions under which special security procedures or exceptions to security measures may apply; general measures aimed at changing non-essential elements of common basic standards.

Member states must ensure the application of common basic standards (rules) on their territory. If a Member State has reason to believe that the level of aviation security has been compromised due to a breach in the security system, it must take prompt action and undertake to remedy this breach and ensure the continued security of civil aviation.

Taking into account the relevant legal norms, each Member State may determine under what circumstances and to what extent it will establish the costs of security measures adopted based on this Regulation to protect civil aviation from acts of unlawful interference, which must be covered at the expense of the State, airports, air carriers, other responsible authorities, or users. If necessary and in accordance with EU legislation, member states may contribute to the costs of more stringent security measures adopted based on this Regulation.

Member States may apply more stringent measures than the common basic standards. They must act based on risk assessment and in accordance with EU legislation. These measures must be appropriate, objective, non-discriminatory, and proportionate to the existing risk. Member States shall inform the Commission of such measures as soon as possible after their application, and the Commission must transmit this information to other Member States.

The Member State shall notify the Commission of the measures required by the third country if they differ from the common basic standards, without prejudice to any bilateral treaties to which the EU is a party, regarding flights from an airport in the Member State to or via that third country. Regarding cooperation with the ICAO, without prejudice to the provisions of Article 300 of the EU Treaty, the Commission may enter into a memorandum of understanding regarding inspections with the ICAO to avoid duplication of control of

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<sup>462</sup> Supra note 323, Annex 17.

Member States' compliance with Annex 17 to the Chicago Convention. If two or more authorities are involved in civil aviation security within one Member State, the Member State shall appoint a single authority (designated authority) responsible for coordinating and monitoring the implementation of common core standards.

The National Aviation Security Program stipulates that each member state must establish, implement, and maintain a national civil aviation security program. This program should define the responsibilities for the implementation of the common basic standards and describe the measures required by operators and enterprises for this purpose<sup>463</sup>.

**Airport security program:** Each airport operator must establish, implement, and maintain an airport security program.

This program shall contain a description of the methods and procedures subsequently maintained by the airport operator to comply with this Regulation and the national civil aviation security program of the Member State in which the airport is located. The program must include internal quality control provisions describing compliance with these methods and procedures.

The same provisions apply to the Air Carrier Security Program and the Enterprise Security Program. The Commission, in cooperation with the relevant body of the Member State, carries out inspections, including inspections of airports, operators, and enterprises that apply aviation security standards, to monitor the application of this Regulation by Member States and, if necessary, make recommendations for improving aviation security. For this purpose, the relevant authority shall inform the Commission in writing about all airports on its territory serving civil aviation.

Each inspection report by the Commission regarding inspections is submitted to the relevant authorized body of the Member State, which must, in its response, indicate the measures taken to address any identified deficiencies. The report, together with the response of the relevant authorized body, must be sent to other Member States. Every year, the EU Commission must submit a report to the European Parliament, the Council, and the Member States, informing them about the application of this Regulation and its impact on improving aviation security.

**Stakeholder Advisory Group:** The Commission should establish an Aviation Security Stakeholder Advisory Group consisting of European authorized organizations whose field of activity is aviation security.

As a general rule, the Commission publishes measures that directly affect passengers. However, the following documents may be considered EU classified information in accordance with Decision 2001/844/EC, ECSC, Euratom<sup>464</sup>:

- measures and procedures if they contain confidential security information;
- inspection reports of the Commission and responses from relevant bodies.

In appropriate cases and in accordance with EU legislation, agreements recognizing that security standards applied in a third country are equivalent to EU standards may be considered in aviation agreements between the EU and a third country, in accordance with

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<sup>463</sup> Sobakar, A. A. (2011). 'Flight safety on air transport: categorical and legal analysis'. Law Forum 1, p. 934 (In Ukrainian).

<sup>464</sup> Commission Decision No 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure (notified under document number C(2001) 3031). Official Journal L 317, 3.12.2001, p. 1–55

Article 300 of the Treaty, to achieve the goal of a 'security approach' for all flights between the EU and third countries. Member States must establish rules on sanctions applicable to violations of the provisions of this Regulation and take all necessary measures to ensure their implementation. Sanctions must be effective, proportionate, and dissuasive. The annexes contain a more detailed description of the Unified basic standards (rules) for the protection of civil aviation from acts of illegal interference, which were listed in Article 4 of the Regulation:

1. Security of airports. Airport design requirements: When designing and building new airport facilities or modifying existing ones, the requirements for implementing uniform basic standards must be fully taken into account. The following areas are established at airports: ground areas, air zone, protected areas of restricted access, as well as critical parts of protected areas of restricted access.

2. Aircraft security: Before departure, the aircraft must undergo an aircraft security check to ensure that no prohibited items are on board. An aircraft in transit may be subject to other appropriate measures. Every aircraft must be protected from unauthorized interference.

3. Passenger and hand luggage screening: All travelers and their carry-on baggage must be screened to prevent prohibited items from entering restricted access areas and aircraft. Transfer passengers and their hand luggage may be exempted from screening if:

- They arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be checked in accordance with the Common Basic Standards, or
- They come from a third country where the security standards applied are recognized as equivalent to the common basic standards. Transit passengers and their hand luggage may be exempted from screening if:
  - They remain on board the aircraft, or
  - They do not mix with passengers who are screened when boarding the same aircraft, or
  - They arrive from a Member State, unless the Commission or that Member State has provided information that those passengers and their cabin baggage cannot be checked in accordance with the Common Basic Standards, or
  - They come from a third country where the security standards applied are recognized as equivalent to the common basic standards. Passengers and their hand luggage must be protected from unauthorized interference from check-in to the departure of the aircraft they are on. Potentially suspect passengers must undergo appropriate security measures before departure.

4. Baggage: All baggage must be screened before being loaded onto the aircraft to prevent prohibited items from entering restricted access areas and aircraft.

5. Cargo and mail: All cargo and mail must undergo security screening before being loaded onto the aircraft. The air carrier does not accept cargo or mail for transportation on the plane unless the appropriate security measures have been applied. Transfer cargo and transfer mail may be subject to alternative security measures, which will be detailed in the implementing act. Cargo in transit and mail in transit may be exempt from security controls if they remain on board the aircraft.

6. Cargo and mail protection: Cargo and mail on the aircraft must be protected from unauthorized interference until the aircraft arrives. Cargo and mail that are not adequately protected from unauthorized interference after security control must be screened.

The regulation also includes a list of joint measures that provide criteria and conditions for amending non-essential elements of the common basic standards. The Regulation lists specific measures that provide requirements and procedures for the implementation of common basic standards. In determining these measures, the Commission is assisted by the Committee of EU country representatives, which receives recommendations from the stakeholders of the advisory group comprising representatives of European organizations working in, or directly interested in, aviation security. According to the Regulation, Member States appoint the relevant body responsible for implementing the common basic standards. In cooperation with the relevant body of the EU Member State, the Commission conducts inspections to control the application of the common basic standards of EU countries. This includes inspections by relevant authorities in EU countries and unannounced inspections of airports, operators, and individuals. If necessary, the Commission prepares recommendations for improving aviation security. The inspection report by the Commission is sent to the relevant body of the concerned EU country, which must then respond by indicating the measures taken to address the identified deficiencies. Member States are responsible for establishing rules on penalties for violating the provisions of the Regulation and for ensuring the enforcement of these penalties. Member States also have the right to apply more stringent measures than the common basic standards if the risk assessment justifies it, provided that these measures are relevant, objective, non-discriminatory, and proportionate to the risk being addressed. EU countries must inform the Commission of these measures, and the Commission will transmit this information to other EU countries.

The provisions of the EU regulation must be implemented by all airports located on the territory of the EU, and since they relate to civil aviation, they should not be applied to military aviation facilities. These provisions also apply to all operators, including air carriers, providing transportation services at the aforementioned airports. This Regulation is an internal legislative act.

This applies to all categories of persons who are at the airport or working there from outside the airport premises.

Common core standards for the protection of civil aviation cover:

- Airport security;
- Delimitation of the airport zone;
- Aircraft security;
- Passengers and hand luggage;
- Baggage security;
- Cargo and mail;
- Air carrier mail and air carrier baggage;
- Security measures during the flight;
- Hiring and training of personnel;
- Procurement of appropriate equipment for ensuring security.

The regulation includes a list of general measures that provide criteria and conditions for common basic standards to be used by air carriers and as a basis for making amendments to these standards. This document also lists detailed measures that ensure the requirements and procedures for the implementation of these standards by EU member states.

When determining the measures, the Commission is assisted by the Committee of the EU countries, and recommendations are provided to them by the advisory groups of European representatives working directly in the field of civil aviation.

EU countries must designate one relevant body responsible for the implementation of common basic standards.

Each EU country must develop and implement the following programs: national civil aviation security programs to determine obligations to implement common basic standards and a national quality control program to monitor compliance with these rules, national civil aviation security programs of the country.

Each operator and organization must develop and implement one of the following programs:

- The airport security program to establish the methods and procedures to be used by the airport operator to ensure compliance with these regulations and the national civil aviation security program of the country.
- The security program of the air carriers themselves to outline the methods and procedures that will be used by the air carriers themselves.

In cooperation with the relevant body of the EU country, the Commission conducts inspections to control the application of common basic standards in EU countries. This includes inspections of EU countries by relevant authorities and unannounced inspections of airports, operators, and individuals.

If necessary, the Commission will prepare recommendations to improve aviation security. The Commission's inspection report is forwarded to the relevant EU country authority, which must then respond by stating the measures taken to remedy any identified deficiencies.

EU countries are responsible for setting rules on penalties for regulatory violations and ensuring that these penalties are enforced. EU countries are allowed to set standards that are higher and more stringent than the general ones after assessing possible risks to ensure flight security.

The issue of aviation security is also regulated at the EU level by Directive 2004/82<sup>465</sup> of April 29, 2004, regarding the carrier's obligations to receive information about passengers. According to this Directive, air carriers are obliged to transfer information about their passengers traveling to the EU. This information is provided at the request of the authorities responsible for carrying out checks on persons at the external borders of the EU in order to improve border control and effectively combat illegal immigration. This data is transmitted to authorities for passenger registration purposes. In principle, they are transmitted electronically by these bodies. Carriers are required to transmit the following information: number and type of travel document used, citizenship, name, and date of birth of the passenger, EU border crossing point, departure and arrival time of transportation, total number of transported passengers.

In principle, this data is deleted by these authorities within 24 hours after the transfer, provided that the passengers have arrived on the territory of the member states. Personal data will be deleted by the carrier within 24 hours of arrival from the vehicles. Member States should adopt dissuasive, effective, and proportionate sanctions if carriers fail to fulfill this obligation. Such sanctions are applied to carriers who, as a result of a malfunction in the

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<sup>465</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data. Official Journal L 261, 6.8.2004, p. 24–27



transmission of data or transmit incomplete or false data. The maximum amount of these sanctions is at least EUR 5,000, and their minimum amount is at least EUR 3,000 for each flight. Member States may also provide for other types of sanctions in the event of a serious breach of the communication requirement.

Another direction of the reform of the flight management system in the EU was the improvement of the flight security system. Establishing norms regarding measures to improve the safety of air transportation belongs to the sphere of competence of the EU institutions. Security issues have always been given special attention by the member states and the EU. Thus, at the international level, the states signing the Declaration of Global Principles of Liberalization of International Air Transport (the so-called Montreal Declaration)<sup>466</sup>, recognized that flight safety and aviation security should play a primary role in the functioning and development of international air transport. It is the states that must assume the main responsibility for ensuring regulatory control in the field of flight safety and aviation security, regardless of changes in the system of economic regulation. States should cooperate to exercise control over the provision of flight safety and aviation security in accordance with the obligations provided for in the Chicago Convention. Among the general principles established in this Declaration is that measures to ensure flight safety should be cost-effective and not burden civil aviation as a whole. Also, measures to ensure aviation security, as far as possible, should not disrupt or complicate the flow of passengers, cargo, mail, and aircraft. At the same time, the states recognized that further economic liberalization should be carried out in such a way as to ensure clearly established responsibility for flight safety and aviation security.

Europe has a long tradition of regulatory cooperation in aviation security, with the first common standards developed back in 1990 under the now-defunct JAA. At that time, European aviation security authorities cooperated in the development of JAR files and related procedures, initially in the field of aircraft construction and design, and then in flight, maintenance, and crew licensing. Common aviation requirements, although aligned with the initial significant efforts to harmonize security standards in Europe, were not mandatory, and the JAA did not have the necessary capacity to ensure their uniform application across Europe.

Although the scientific and legal approach assumes a high level of objectivity, the topic of aviation security is particularly interesting for the author, who was formerly an inspector of the aviation security service. Therefore, not without personal satisfaction, based on a thorough legal and scientific analysis of the level of implementation of Ukrainian legislation in the field of aviation security, the author of this study concludes that the above-described EU standards in this field are most fully implemented in Ukrainian legislation compared to other areas of civil aviation.

In addition to the above-mentioned program, a number of normative legal acts are designed to establish the foundations for ensuring aviation security, regularity, and efficiency of flights by introducing rules, practices, and procedures that provide measures to protect against acts of illegal interference.

The main ones are as follows:

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<sup>466</sup> The Declaration of Global Principles of Liberalization of International Air Transport. Available at: <https://www.icao.int/Meetings/atconf6/Documents/WorkingPapers/ATConf.6.IP.013.2.en.pdf>

1. On the approval of the Aviation Rules of Ukraine 'Regulations on the aviation security service of the subject of aviation activity' Order of the State Aviation Service of Ukraine dated 05.11.2020 No. 1762 (registered: Ministry of Justice of Ukraine dated 23.12.2020 No. 1282/35565)<sup>467</sup>;
2. On the approval of the Aviation Rules of Ukraine 'Rules for certification and approval of registered agents, known consignors' Order of the State Aviation Service of Ukraine dated 14.09.2020 No. 1276 (registered: Ministry of Justice of Ukraine dated 09.11.2020 No. 1099/35382);
3. On Amendments to the Aviation Rules of Ukraine 'Instructions for the Organization and Implementation of Security Control at Airports of Ukraine' Order of the State Aviation Service of Ukraine dated 24.06.2020 No. 870 (registered: Ministry of Justice of Ukraine dated 07.10.2020 No. 647/34930);
4. On the approval of the Instructions for assessing the level of threat to the security of civil aviation of Ukraine Order of the Ministry of Infrastructure dated 17.06.2020 No. 356 (registered: Ministry of Justice of Ukraine dated 01.10.2020 No. 960/35243);
5. On the approval of the Aviation Rules of Ukraine 'Rules for certification of aviation security services of aviation entities' Order of the State Aviation Service of Ukraine dated 05.02.2020 No. 218 (registered: Ministry of Justice of Ukraine dated 21.05.2020 No. 458/34741);
6. On the approval of the Aviation Rules of Ukraine 'Rules for the protection of aircraft and other important objects of civil aviation, ensuring access control to them' Order of the State Aviation Service of Ukraine dated 07.08.2019 No. 1017 (registered: Ministry of Justice of Ukraine dated 28.08.2019 No. 991/33962);
7. On the approval of the Aviation Rules of Ukraine 'Instructions for the organization and implementation of security control at the airports of Ukraine' Order of the State Aviation Service of Ukraine dated 15.03.2019 No. 322 (registered: Ministry of Justice of Ukraine dated 07.06.2019 No. 594/33565);
8. On the approval of the Aviation Rules of Ukraine 'Rules for the certification of technical means of protecting civil aviation against acts of illegal interference' Order of the State Aviation Service of Ukraine dated 19.12.2018 No. 1339 (registered: Ministry of Justice of Ukraine dated 22.02.2019 No. 188/33159);
9. On the approval of the Aviation Security Personnel Training Program Order of the Ministry of Transport and Communications of Ukraine dated 18.06.2007 No. 508 (registered: Ministry of Justice of Ukraine dated 05.07.2007 No. 769/14036);
10. On the approval of the Instructions on the procedure for the transportation of weapons and ammunition by passenger flights of air transport State Aviation Service Order No. 199 dated 18.03.2005 (registered: Ministry of Justice of Ukraine dated 11.04.2005 No. 378/10658);
11. Law of Ukraine dated 20.03.2003 No. 638-IV 'On Combating Terrorism'<sup>468</sup>.

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<sup>467</sup> Order of the State Aviation Service of Ukraine No. 322 of March, 15 2019 'On the approval of the Aviation Rules of Ukraine 'Regulations on the aviation security service of the subject of aviation activity'

<sup>468</sup> Law of Ukraine of March 20, 2003 No. 638-IV 'On Combating Terrorism' The Bulletin of the Verkhovna Rada of Ukraine (BVR) 2003, No. 25, Article 180.

## D. Comparative analysis of compliance of Ukrainian legislation with EU requirements regarding environmental protection



Environmental safety and protection involve reducing the negative impact of aviation activities on the environment, determining the environmental capacity of airports, strengthening the role of environmental management, improving and developing the national legal framework, and adapting it to international requirements.

To regulate environmental protection activities, the State Aviation Service of Ukraine develops and implements a legal framework that allows for the implementation of ICAO practices and recommendations in the aviation environmental protection policy.

Ukraine fully supports ICAO's policy and practice in the field of environmental protection, as defined by the Resolution of the ICAO Assembly A39-2<sup>469</sup>. It strives to achieve the global goal of maintaining carbon emissions from international aviation at a neutral growth level starting from 2020. Additionally, Ukraine supports the introduction of a global market mechanism in 2020, aimed at reducing emissions from civil aviation. The market mechanism should consider the principles of common but differentiated responsibility, appropriate opportunities, special circumstances, as well as non-discrimination and equal and fair opportunities.

The main problems identified in protecting the natural environment from the impact of aviation include pollution of atmospheric air, soils, and water bodies due to emissions of harmful substances from aircraft engines and stationary sources; noise pollution; irrational planning and organization of land use; and the negative impact on the environment during the transportation of dangerous and radioactive substances, including accidental pollution resulting from the use of low-quality, outdated equipment.

**Table 9.1. Environmental factors of aviation and their harmful consequences**

<b>Aircrafts</b> 	Noise	Deterioration of health Hearing loss Obstacles to speech communication and listening to television
	Emission	Respiratory diseases Toxic symptoms Discomfort
	Sound impact of a supersonic passenger plane.	Approximate reaction of people Twitching Sleep disorders
	Emissions of greenhouse gases	Global warming Climate change
	Ecology of the airport territory	Environmental pollution

<sup>469</sup> ICAO. Resolution A39-2: Consolidated statement of continuing ICAO policies and practices related to environmental protection – Climate change. Available at: [https://www.icao.int/environmental-protection/documents/resolution\\_a39\\_2.pdf](https://www.icao.int/environmental-protection/documents/resolution_a39_2.pdf)

Compared to other modes of transportation, aviation is a specific polluter with a wide range of impacts on the environment. The negative impact of air transport on the environment can be categorized into global and local influences.

The global influence primarily involves the formation of the greenhouse effect and the depletion of the ozone layer.

When considering the sources of negative influence of air transport on the environment, the following are distinguished: ground sources, air sources (aircraft), and aviation fuel supply enterprises.

Ground sources of pollution are conventionally divided into those within the airport and those outside of it. The latter primarily include thermal power plants that operate on various types of local fuel. The nature of pollution is determined by the types of fuel, burning methods, and emissions control measures.

Intraport sources of environmental pollution include:

- Ventilation systems used in specific areas for aircraft maintenance.
- Aviation fuel supply enterprises.
- Specialized vehicle transport.

If the air extracted from workplaces contains significant quantities of harmful substances, it is cleaned in dust collection and gas cleaning installations before being released into the atmosphere.

From the airport's industrial premises and separate objects, the following pollutants enter the atmosphere:

- Vapors of petroleum products, solvents, paint materials, alkalis, and acids.
- Aerosols of aqueous solutions containing caustic, sodium carbonate, sodium phosphate, sulfur dioxide, nitrogen oxides, carbon monoxide, and dust.

The amount of harmful substances entering the atmosphere from the airport's industrial premises or aircraft repair plants through ventilation systems may exceed the maximum permissible values, leading to the exceedance of the maximum permissible concentrations of these substances. This often occurs with grouped ventilation shafts, where the cumulative effect of harmful emissions takes place, sometimes resulting in the formation of even more toxic substances.

Aircraft contribute to atmospheric pollution through the emission of harmful substances from aircraft engines' exhaust gases.

As airplanes travel from one airport to another, they cause significant pollution both within airport areas and along flight paths. Although pollution at altitudes of 8–12 km on flight paths poses insignificant risks (as flights at high altitudes and speeds disperse combustion products across upper atmospheric layers and large areas, reducing their impact on living organisms), such pollution cannot be ignored within airport areas.

Gases are released into the atmosphere through nozzles and exhaust pipes of aircraft engines, a process known as aircraft engine emissions. Emissions from aircraft engines

account for 87% of all emissions from civil aviation, including emissions from special vehicles and stationary sources<sup>470</sup>.

The most unfavorable emissions occur during low speeds and engine idling, where pollutants are released into the atmosphere in quantities significantly higher than during loading modes.

The primary function of aviation refueling enterprises is to ensure timely refueling of aircraft by maintaining the necessary fuel reserves, preparing for dispensing, and refueling the aircraft.

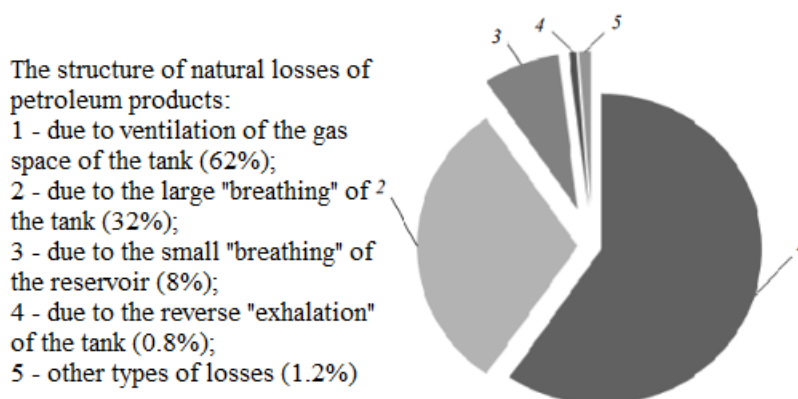
Currently, 75% of oil product losses in the tank farms of these enterprises are attributed to evaporation losses. This not only deteriorates the quality of the products but also leads to significant environmental pollution from toxic substances.

Regarding environmental safety, the fuel storage process contributes the most to atmospheric pollution. This is influenced by the physico-chemical properties of fuels, storage conditions, and the design and operation of the technological equipment.

The main factor contributing to fuel evaporation is the high pressure of saturated vapors of petroleum products, which increases the transition of volatile fractions into the gas phase. Evaporation is also influenced by an increase in the temperature of the oil product surface or a decrease in pressure within the tanks' <sup>471</sup> gas space.'

The framework document in the field of civil aviation for the purpose of environmental protection is the norms of the Air Code of Ukraine (ACU). Chapter X of the ACU specifically addresses these aspects. It has been established that aviation entities are obligated to comply with established standards for pollutant content in exhaust gases and the influence of physical factors during aircraft operation on the ground and in the air<sup>472</sup>. They are also required to take measures to reduce emissions and noise levels, as well as electromagnetic and radiation radiation<sup>473</sup>.

**Figure 9.1. The structure of natural losses of petroleum products**



<sup>470</sup> Isayenko, V. M., S. V. Boychenko, K. O. Babikova, and O. O. Vovk. (2020). Environmental protection in air transport processes. Kyiv: National Aviation University (In Ukrainian), p. 35.

<sup>471</sup> Ibid, p. 112.

<sup>472</sup> On the protection of atmospheric air: Law of Ukraine dated October 16, 1992 No. 2701-12 // The Official Bulletin of the Verkhovna Rada of the Ukraine (BVR), 1992. - No. 73. 22.

<sup>473</sup> Supra note 338, Art. 83.

The inclusion of environmental protection in the provisions of the 2011 ACU indicates a gradual improvement in Ukraine's environmental protection system, influenced by EU law. The environmental policy of the European Community is based on the following special principles of European environmental law: the 'polluter pays' principle, the preventive principle, the principle of origin, and the precautionary principle. The 'polluter pays' principle, which requires the polluter to compensate for environmental damage caused, has a preventive effect on violations of environmental safety standards. It contributes to the realization of goals and the implementation of relevant EU policies in this area. The preventive principle aims to achieve the safe and rational use of natural resources. To apply the preventive principle, certain conditions must be observed: information must be available to all responsible parties, relevant data should be considered in the decision-making process, and the implementation of adopted measures should be monitored for correct implementation and adaptation to new conditions. The principle of origin emphasizes the importance of preventing environmental damage at the source rather than dealing with damage already caused. The precautionary principle is used when there is scientific evidence of a dangerous impact but uncertainty remains about the level of risk. These principles are reflected in the ACU norms, albeit with clear limitations. Let's illustrate this with examples. While the ACU obligates aviation entities to compensate citizens for damage to their health and property resulting from aviation activities, in accordance with the law<sup>474</sup>, this wording cannot be compared to the clear establishment of obligations to compensate for environmental damage provided for in the TFEU.

The policy of the Union in the field of the environment is aimed at achieving a high level of its protection, taking into account the differences in situations in different regions of the Union<sup>475</sup>.

To align with EU regulations, the ACU prohibits the discharge of substances, waste, and materials harmful to human health and the natural environment from aircraft, except in cases of emergency and for aviation chemical operations. Persons responsible for such actions are liable under the law<sup>476</sup>.

The Law of Ukraine 'On Protection of the Natural Environment'<sup>477</sup> corresponds to Directive 2001/42/EC<sup>478</sup>, Directive 2004/35/EC<sup>479</sup>, Directive 2003/35/EC<sup>480</sup>, and Council

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<sup>474</sup> Supra note 338, Art. 84.

<sup>475</sup> Supra note 468, Art. 191.

<sup>476</sup> Supra note 338, Art. 83.

<sup>477</sup> Law of Ukraine 'On environmental protection' The Official Bulletin of the Verkhovna Rada of the Ukraine (BVR), 1991, No. 41, Article 546

<sup>478</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, Official Journal L 197, 21.7.2001, p. 30–37

<sup>479</sup> Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, Official Journal L 143, 30.4.2004, p. 56–75

<sup>480</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, Official Journal L 156, 25.6.2003, p. 17–25

Regulation 1210/90/EEC<sup>481</sup>, regarding the creation of an information and monitoring network for the environment. It includes conducting environmental assessments of programs and projects that may negatively affect the environment, public participation in discussions and the submission of proposals related to projects impacting the environment, and free access to environmental information for citizens. It also allows citizens to file lawsuits regarding violations of their environmental rights.

The Law of Ukraine 'On Environmental Impact Assessment'<sup>482</sup> complies with Directive 2001/42/EU<sup>483</sup> on conducting environmental assessments of programs and projects that may negatively affect the environment. However, Article 10 of the Ukrainian law 'On Environmental Impact Assessment'<sup>484</sup> does not align with Clause 4 of Article 4 of Directive 85/337/EEC<sup>485</sup> concerning public access to the conclusions of environmental assessments. The Ukrainian law does not guarantee the appropriate level of public access to the conclusions, particularly through mass media, once the environmental assessment is completed.

Ukraine also has a system of environmental standards and regulations, but it requires refinement to unify terminology, monitored and measured parameters, and methods of environmental quality control. It is important to use measurement units consistent with European standards and certified measuring and control instruments and methods.

Legal regulations for environmental protection in aviation are carried out through various normative acts, including the Law of Ukraine 'On the National Security of Ukraine'<sup>486</sup>, Requirements for airport operators regarding spatial zoning to address aviation noise<sup>487</sup>, and Aviation Regulations No. 1001 dated 08/02/2019, which cover monitoring emissions by civil aircraft operators<sup>488</sup>. Noteworthy international achievements for Ukraine include signing the UN Framework Convention on Climate Change<sup>489</sup> and ratifying the Kyoto Protocol.

In Ukraine, environmental insurance in civil aviation can be viewed from two aspects. Firstly, it serves as a mechanism to protect the property interests of enterprises, addressing prevention, mitigation, or reduction of risks related to environmental pollution and

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<sup>481</sup> Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network, Official Journal L 120, 11.5.1990, p. 1–6

<sup>482</sup> Law of Ukraine 'On Environmental Impact Assessment' (The Official Bulletin of the Verkhovna Rada (BVR), 2017, No. 29, Article 315)

<sup>483</sup> Supra note 477.

<sup>484</sup> Law of Ukraine 'On Environmental Impact Assessment' (The Official Bulletin of the Verkhovna Rada (BVR), 2017, No. 29, Article 315)

<sup>485</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, Official Journal L 175, 5.7.1985, p. 40–48. Art. 4

<sup>486</sup> Law of Ukraine 'On the National Security of Ukraine'. The Official Bulletin of the Verkhovna Rada (BVR), 2018, No. 31, Article 241

<sup>487</sup> Order of the State Aviation Service of Ukraine No. 381 of March, 26 2019 'On approving of Requirements to the airport operator regarding spatial zoning of the territory around the airport in terms of exposure to aviation noise', Official Bulletin of Ukraine, official edition, 2019, No. 39, p. 269, article 1399, act code 94501/2019

<sup>488</sup> Order of the State Aviation Service of Ukraine No 1001 of August, 02, 2019 'On the approval of the Aviation Rules of Ukraine 'Technical requirements and administrative procedures for monitoring emissions (emissions) by civil aircraft operators' Official Bulletin of Ukraine, official edition of 2019, No. 70, p. 409, article 2497, act code 95889/2019

<sup>489</sup> UN Framework Convention on Climate Change – UNFCCC. Available at: <https://enb.iisd.org/negotiations/un-framework-convention-climate-change-unfccc>

compensating associated costs. Secondly, environmental insurance ensures the principle of environmental responsibility within market conditions. It guarantees compensation for damage caused to life, health, property, and the environment due to the production, purchase, transportation, storage, sale, and use of hazardous substances. Environmental risks can be managed through liability insurance, property insurance (e.g., for aircraft operation), and personal insurance (e.g., for passengers and crew during transportation). The fundamental act regulating this field is the Law of Ukraine 'On Insurance'<sup>490</sup>.

The State Aviation Service of Ukraine occupies a central position among specialized institutions in the field of civil aviation, and its authority includes issues related to environmental protection.

According to the Regulations on the State Aviation Service, this governmental body is also responsible for environmental protection functions. Therefore, the State Aviation Service performs the following tasks: monitors compliance with regulations for the transportation of dangerous substances and objects by air transport, controls the effective utilization of airspace, develops and implements instructions for reporting administrative offenses in air transport, develops and implements guidelines for assessing the level of threat to civil aviation security, develops and implements instructions for investigating violations of the airspace usage procedures in Ukraine, develops and implements regulations for issuing noise compliance certificates for Ukrainian civil aircraft, develops and implements standards and regulations for environmental protection in aviation-related activities, organizes the development of measures to reduce the harmful impact of aviation activities on the natural environment, and monitors their implementation.

However, the environmental protection powers of the State Aviation Service in the field of civil aviation should be considered as evolving, as ongoing work is being carried out on the development and implementation of national standards for environmental protection.

One method to improve the environmental situation during the operations of airline companies is the emergence of a series of international standards for environmental management systems known as ISO 14000.

Unlike many other environmental protection standards, the ISO 14000 standards system does not primarily focus on quantitative parameters (such as emission volume or substance concentrations) or specific technologies. The main subject of ISO 14000 is the Environmental Management System (EMS). These standards typically require the introduction and adherence to certain procedures within an organization, preparation of specific documents, and the appointment of responsible individuals for specific branches.

The primary document in the ISO 14000 series is ISO 14001, titled 'Specifications and Guidelines for Environmental Management Systems.' This document does not contain 'absolute' requirements for an organization's environmental impact, except for the organization's declaration of its intention to meet national standards in a specific document. All the requirements are 'auditable,' meaning that compliance or non-compliance can be determined with a high degree of certainty. Compliance with the ISO 14001 standard can be formally certified.

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<sup>490</sup> Law of Ukraine 'On Insurance'. The Official Bulletin of the Verkhovna Rada (BVR), 1996, No 18, Article 78



The ISO 14000 standards are considered 'voluntary.' They do not replace legal requirements but provide a system for determining how a company affects the environment and how legal requirements are met.

Since 2015, the 'Boryspil International Airport' State Enterprise has been providing services to airlines, passengers, and other customers in the aviation and non-aviation sectors while ensuring flight safety, aviation safety, and flight regularity based on the Quality Management System and ISO 14001:2015 'Environmental Management Systems - Requirements and Guidelines for Use.' The system covers the activities of structural divisions that directly or indirectly impact service quality and the surrounding natural environment.

To protect the environment, the International Civil Aviation Organization (ICAO) has established limits for aircraft noise and emissions of harmful substances from aircraft engines. The international environmental standards for civil aviation are outlined in Volume 1 'Aviation Noise' and Volume 2 'Aircraft Engine Emissions' of Appendix 16 to the Chicago Convention.

The standard parameter for aircraft aviation noise is the maximum value of EPN (Effective Perceived Noise level) measured in decibels during take-off, climb, and landing. The aviation noise standards for subsonic jet aircraft, which have submitted applications for certification since October 6, 1977 (with certain exceptions), are specified in Chapter 2, while stricter standards are detailed in Chapter 3, Volume 1, Appendix 16<sup>491</sup>.

The Agreement on Common Aviation Area (CAA) defines two EU directives on noise regulation in the aviation sector that Ukraine should implement. These directives are Directive Directive 2002/49/EC<sup>492</sup> of the European Parliament and of the Council of 25 June 2002 on the assessment and management of environmental noise (applicable requirements and standards: Articles 1 to 16, Annexes I to VI) and Directive 2002/30/EC<sup>493</sup> 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 (applicable requirements and standards: Articles 1 to 15, Annexes I and II).

Both in international EU legislation and in the legislation of Ukraine, relevant requirements for airport operators regarding spatial zoning of the airport surroundings to address aviation noise are established in the respective aviation rules<sup>494</sup>.

There are still provisions that need to be implemented in Ukraine. Specifically, Ukrainian legislation lacks a mechanism for applying collected information on the level of harmful noise effects. Additionally, the principle of predictability of future ecologically hazardous

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<sup>491</sup> Environmental protection: Annex 16 to the Convention on International Civil Aviation / ICAO. – Montreal, 2001

<sup>492</sup> Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise - Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise, Official Journal L 189, 18.7.2002, p. 12–25

<sup>493</sup> 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, Official Journal L 85, 28.3.2002, p. 40–46

<sup>494</sup> Supra note 487.

noise impact, which is essential for achieving one of the goals set by Ukrainian legislation—prevention and mitigation of harm from noise as a physical factor—is absent from Ukrainian legislation.

Considering the above, it is advisable to introduce the following changes and additions to the legislation of Ukraine in order to align it with European legislation regarding legal means of assessing and regulating noise pollution:

1. Supplement the Resolution of the Cabinet of Ministers of Ukraine 'On Approval of the Regulation on the State Environmental Monitoring System'<sup>495</sup> with regulations that contain requirements for the content and format of information on noise impact, which is analyzed and summarized during environmental monitoring. Additionally, these regulations should include provisions on the principle of predictability of future ecologically hazardous noise impact, which is vital for achieving the goals set by Ukrainian legislation regarding prevention and mitigation of harm from noise as a physical factor.

2. Supplement the Resolution of the Cabinet of Ministers of Ukraine 'On the Procedure for Developing and Approving Standards for the Maximum Permissible Level of Influence of Physical and Biological Factors from Stationary Sources of Pollution on Atmospheric Air'<sup>496</sup> dated March 13, 2002, No. 300 with regulations that require the application of relevant international ISO methods when performing tasks and developing projects for standards on the maximum permissible harmful effects of noise on atmospheric air.

The legislation of the EU and Ukraine establishes requirements for minimizing the acoustic noise generated by motorized transport vehicles. Both the EU and Ukrainian legislation aim to achieve this goal by implementing appropriate noise level restrictions. Ukrainian legislation mandates an approval procedure for newly designed motor vehicles and their spare parts, ensuring compliance with noise standards. This process results in the issuance of permits for production and sale of such vehicles, along with corresponding technical documentation.

The provisions of Directive 2002/30/EC<sup>497</sup> on aircraft noise are not currently reflected in Ukrainian legislation. The directive states that member states should adopt a balanced approach to addressing noise issues at airports within their territories. Economic incentives can also be considered as a means to tackle noise problems. When assessing operational restrictions, authorized bodies must consider the potential costs and benefits of various options for addressing the issue, taking into account the specific conditions of each airport. Measures or sets of measures implemented based on this directive should not exceed what is necessary to achieve the environmental objectives of a particular airport. They should also not discriminate based on nationality, airline name, or aircraft manufacturer. Performance

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<sup>495</sup> Resolution of the Cabinet of Ministers of Ukraine No. 391 of March 30, 1998 'On approval of the Regulation on the state environmental monitoring system' Official Bulletin of Ukraine official publication 1998, No. 13, page 91, act code 5112/1998

<sup>496</sup> Resolution of the Cabinet of Ministers of Ukraine 'On the procedure for developing and approving standards for the maximum permissible level of influence of physical and biological factors of stationary sources of pollution on atmospheric air' No. 300 of March 13, 2002. Official Bulletin of Ukraine, official edition of 2002, No. 12, p. 57, article 572, act code 21871/2002

<sup>497</sup> 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, Official Journal L 85, 28.3.2002, p. 40–46

limitations should be based on aircraft noise performance determined through a certification procedure conducted in accordance with Annex 16 to the Chicago Convention<sup>498</sup>.

The provisions of Directive 2002/49/EC<sup>499</sup> address several aspects, including the development of a scheme to display noise pollution levels in specific areas<sup>500</sup>, application of noise indicators<sup>501</sup>, action plans to combat noise pollution<sup>502</sup>, determination of day-evening-night noise level<sup>503</sup>, methods for assessing noise indicators<sup>504</sup> and their harmful effects<sup>505</sup>, basic requirements for creating noise pollution<sup>506</sup> schemes, and minimum requirements for action plans to combat noise pollution<sup>507</sup>.

In summary, it is necessary to acknowledge that Ukraine has established a cross-sectoral legal mechanism to regulate the environmental aspects of civil aviation safety. However, further improvements are needed to ensure practical implementation. Precautionary measures in line with international requirements and standards should be developed, with an emphasis on increasing environmental norms in Ukrainian aviation legislation. Despite the priorities declared by the Air Code of Ukraine (ACU), the absence of a mechanism to enforce legal responsibility for violations of environmental norms hinders the recognition of the environmental component's importance in civil aviation safety.

## **E. Comparative analysis of compliance of Ukrainian legislation with EU requirements regarding the regulation of economic activity in the field of air transportation**

### **1. Licensing**

The legislation of Ukraine has undergone reforms to comply with the requirements of Regulation 1008/2008<sup>508</sup> on common rules for the provision of aviation services in the EU. The legislation of Ukraine incorporates the following provisions of the Regulation.

1.1. Enterprise: Any natural person, legal entity (profitable or not), or official body, irrespective of legal personality, is considered an enterprise. An air carrier is an air transport

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<sup>498</sup> Supra note 12.

<sup>499</sup> Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise - Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise, Official Journal L 189, 18.7.2002, p. 12–25

<sup>500</sup> Ibid., Art. 4, 7

<sup>501</sup> Ibid., Art. 2, 5

<sup>502</sup> Ibid., Art. 2,8

<sup>503</sup> Ibid., Appendix I

<sup>504</sup> Ibid., Appendix II

<sup>505</sup> Ibid., Appendix III

<sup>506</sup> Ibid., Appendix IV

<sup>507</sup> Ibid., Appendix V

<sup>508</sup> 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 (Recast), Official Journal L 293, 31.10.2008, p. 3–20.

enterprise that holds a valid operating license. The concept of a license (activity license) in Ukrainian legislation aligns with the Regulation, granting permission to the enterprise for the transportation of passengers, mail, and/or cargo by air for remuneration and/ hire<sup>509</sup>.

The general principles of licensing outlined in this Regulation are also taken into account. An enterprise has the right to obtain an activity license, which does not automatically grant access to specific routes or markets. Conducting air transportation of passengers, mail, and/or cargo for remuneration and/or hire without an operating license is prohibited<sup>510</sup>.

The Regulation also specifies that, upon request, an air carrier must demonstrate at any time to the Member State responsible for the operating license that it meets the air transport requirements. A newly licensed air transport undertaking must demonstrate to the satisfaction of the competent authorities of the granting state that it can fulfill its actual and potential obligations within 24 months from the start of activity and cover its fixed and operating costs, determined by its business plan, within a three-month period from the start of activity<sup>511</sup>, without considering any income from its operations.

The operating license remains valid as long as the air carrier fulfills its obligations. However, the state may include a review provision in the current legislation, one year after granting a new operating license and every subsequent five years. Furthermore, the provisions regarding mandatory insurance are taken into account as one of the essential licensing requirements. The Regulation states that an air carrier must have insurance coverage for civil liability, particularly concerning passengers, baggage, cargo, mail, and third parties<sup>512</sup>.

Another consideration is the inclusion in national legislation of the provisions of Regulation (EC) 785/2004<sup>513</sup>, which determine the minimum insurance requirements for air carriers and aircraft operators conducting flights to, over, from, and through the territory of a member state (excluding model aircraft with a maximum takeoff mass (MTOM) of no more than 20 kg, hang gliders, tethered balloons, kites, parachutes, aircraft (including gliders) with a MTOM of no more than 500 kg, and ultralight aircraft used for non-commercial purposes or local flight training that does not involve crossing international borders). These provisions aim to promote consumer protection and require air carriers and aircraft operators to be insured. Risk insurance should also cover military actions, terrorism, kidnapping, acts of sabotage, illegal seizure of an aircraft, and causing public disorder. Air carriers and aircraft operators must ensure that their insurance policies cover each flight, regardless of ownership, leasing, joint ventures, franchise, shared operations, or any other similar agreement<sup>514</sup>. Member states are obligated not to permit any aircraft to take off until the relevant air carrier or aircraft operator provides confirmation of appropriate insurance indemnity<sup>515</sup>.

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<sup>509</sup> Ibid., Art. 2 (a), (b), (c).

<sup>510</sup> Ibid., Art. 3.

<sup>511</sup> Ibid., Art. 5 para 1.

<sup>512</sup> Ibid., Art. 11.

<sup>513</sup> 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, Official Journal L 138, 30.4.2004, p. 1–6

<sup>514</sup> Ibid., Art. 4 para 1, 2.

<sup>515</sup> Ibid. Art. 8 para 7.

***a) Licensing of business entities: procedures and licensing requirements***

An air carrier engaged in the transportation of passengers and/or cargo for a fee and/or hire must obtain a license for the activity of air transportation of passengers and/or cargo. This license is issued by the authorized body for civil aviation in accordance with Ukraine<sup>516</sup> legislation.

The Law of Ukraine 'On Licensing of Certain Types of Economic Activities' stipulates that the provision of services for the transportation of passengers and cargo by air is subject to licensing<sup>517</sup>. Licensing conditions establish mandatory requirements, including qualifications, organization, technology, and other aspects related to providing passenger and cargo transportation services by air. These conditions apply to all business entities engaged in providing services for the transportation of passengers and cargo by air transport. The license is valid for three years. The economic activity of providing services for the transportation of passengers and cargo by air transport includes two types of services: a) transportation of passengers by air transport (regular and/or charter flights), and b) transportation of cargo by air transport (regular and/or charter flights).

The main requirements for conducting business activities related to providing passenger and cargo transportation services by air transport are as follows: a) Qualification requirements. b) Organizational requirements. c) Technological requirements.

Qualification requirements involve meeting the criteria outlined in the Rules of Air Transport and Passenger and Baggage Service<sup>518</sup>. Organizational requirements include having staff members with specialized training necessary for the various aspects of air transport operations, such as flight, technical operation, aviation works, and air transportation, in compliance with the regulations defined in civil aviation requirements. The business entity must also have various types of support, including legal, financial and economic, material and technical, flight operation, engineering and aviation, air traffic control, navigational, aeronautical, meteorological, airfield, commercial, insurance, aviation security, regime, medical, production management, search and emergency rescue, and fire fighting. Additionally, border, customs, and sanitary-epidemiological control (for international flights) must be addressed in accordance with the Operator Certification Rules. Technological requirements state that the business entity must adhere to the Flight Operations Manual, Maintenance Regulation Manual, Flight Safety Program, and Personnel Training Program.

The approved license conditions provide a comprehensive list of other requirements for the business entity. Business entities providing services for the transportation of passengers and cargo by air must fulfill the following criteria:

- Possess a valid operator's certificate<sup>519</sup>.
- Meet the conditions specified in intergovernmental agreements on air transport, information about which is provided by the State Aviation Service.

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<sup>516</sup> Supra note 338, Art. 92.

<sup>517</sup> On Licensing of Certain Types of Economic Activity No. 222-VIII of March, 02 2015, Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2015, No. 23, Article 158.

<sup>518</sup> Rules of air transport and service of passengers and baggage № 1239 dated 26/11/18. Order of State aviation service of Ukraine.

<sup>519</sup> Supra note 338, Art. 5.

- For regular transportation of passengers and cargo on a specific international air route, hold the appropriate assignment for that route and comply with the conditions and requirements specified in the Rules of Air Transport and Passenger and Baggage Service<sup>520</sup>. The license indicates the international air route assigned to the business entity.
- Ensure the level of passenger service during the flight, adhering to the traffic schedule approved by Ukravialtrans when performing regular flights in accordance with the Operator Certification Rules.
- Use aircraft specified in the special operational provisions of the operator's certificate and have valid Airworthiness Certificates issued in accordance with the Maintenance of airworthiness of aircraft and aircraft products, components, and equipment and approval of organizations and personnel involved in the performance of these tasks<sup>521</sup>.
- Ensure a standardized level of aviation security that meets the requirements established by the state for the protection of civil aviation from acts of illegal interference and other illegal encroachments on aviation activities<sup>522</sup>.
- Provide mandatory aviation insurance for civil aviation in accordance with the Law of Ukraine 'On Insurance'<sup>523</sup>. It is prohibited to transport passengers and cargo by air if there are arrears in payment of insurance premiums as per concluded insurance contracts.
- Carry out work related to ensuring aviation safety and flight safety, as specified in the current normative legal acts in the field of civil aviation<sup>524</sup>.
- Timely transfer state fees to the State Specialized Fund for financing national expenses for aviation activities and Ukraine's participation in international aviation organizations.

Among the rights of business entities, it is worth highlighting their right to perform charter flights in accordance with the requirements of the ACU and the Rules for the Performance of Charter Flights<sup>525</sup>. When performing international charter flights, the international airlines for performing charter flights to or from Ukraine are specified in the license. In this case, charter flights for the transportation of passengers and cargo on airlines with regular flights are added to the licensing requirements, subject to state regulation by the State Aviation Service.

The implementation of state policy in the field of licensing activities for the provision of passenger and cargo transportation services by air is carried out by the State Committee of Ukraine on Regulatory Policy and Entrepreneurship, which is a specially authorized licensing body, and the Ministry of Transport of Ukraine through the State Aviation Service as a licensing authority.

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<sup>520</sup> Supra note 517.

<sup>521</sup> Order Of State Aviation Service Of Ukraine No. 286 of June, 03 2019. 'Maintenance of airworthiness of aircraft and aircraft products, components and equipment and approval of organizations and personnel involved in the performance of these tasks'. Official Bulletin of Ukraine official publication dated 04/16/2019 — 2019, No. 29, p. 47, article 1036, act code 94045/2019

<sup>522</sup> Supra note. 338, Chapter XIII.

<sup>523</sup> Supra note 489.

<sup>524</sup> Supra note 489, Art. 71, 82.

<sup>525</sup> Order of the Ministry of Transport No 297 of May, 18 2001 'On approving of Rules for the Performance of Charter Flights', Official Bulletin of Ukraine, official edition, 2001, No. 22, p. 237, article 1024, act code 19035/2001

The right to operate an air route is granted by the authorized body on civil aviation issues upon a written application of the air carrier regarding certain air routes for:

1. Regular air transportation within Ukraine.
2. Regular international air transportation from/to Ukraine.
3. Chartered international air transportation from/to Ukraine or within Ukraine, constituting a systematic series of at least one flight per week or at least three flights per month.
4. Air transportation in other countries.

***b) Access to air transportation services for foreign entities***

A mandatory condition for the granting and use by a foreign air carrier of the right to operate an air route is the presence of an appropriate license and certificate or a similar document issued by the aviation authority of another state or a competent organization, if provided for by an international treaty of Ukraine and relevant international legal acts, as well as the absence of overdue arrears for payment of air navigation services to Ukrainian providers of air navigation services and/or airport services to state-owned airports.

To carry out air transportation, a foreign air carrier must have an appropriate license and certificate from the relevant state body of the country where it received the license. Regular air transportation is carried out by a foreign air carrier in accordance with the requirements of international treaties of Ukraine, aviation rules of Ukraine, and agreements between aviation authorities<sup>526</sup>. Charter or non-scheduled air transportation is carried out by a foreign air carrier in accordance with the aviation rules of Ukraine.

An air carrier has the right to obtain a license under the condition that Ukraine, legal entities of Ukraine, and/or natural persons-residents own more than 50 percent of the authorized capital (a package of shares) of this enterprise, unless otherwise stipulated by international treaties of Ukraine<sup>527</sup>.

A foreign air carrier may carry out air transportation to/from Ukraine, within the territory of Ukraine, and air transportation involving landing for commercial purposes on the territory of Ukraine, exclusively in the volumes and under the conditions determined by the rights to operate certain air routes granted to it by the authorized body on civil aviation. At the same time, the State Aviation Service has the right to: recognize the appointment of a state body of a state other than the one in which the license was issued; refuse to recognize the appointment of a foreign air carrier if its effective control is carried out by a person or persons of a state other than the one that appointed it; conduct an additional check of a foreign air carrier for compliance with the requirements established by international treaties of Ukraine and aviation regulations of Ukraine.

A foreign air carrier has the right to carry out regular international air transportation to/from Ukraine, including as an authorized air carrier from Ukraine; regular air transportation within Ukraine; charter air transportation to/from Ukraine or within Ukraine, constituting a systematic series of at least one flight per week or at least three flights per month. This provision opens up opportunities for the liberalization of cabotage transportation.

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<sup>526</sup> Supra note 338, Art. 95.

<sup>527</sup> Supra note 338, Article 93.

A foreign carrier receives such a right after approval by its authorized civil aviation authority upon its written application.

If stipulated by an international treaty of Ukraine or the legislation of the state to which air transportation will be carried out, the authorized civil aviation authority, in addition to the granted right to operate the air route, appoints in writing a foreign air carrier authorized to carry out air transportation on certain air routes to or between such states, having informed the competent authority of this state.

Approval of schedules of foreign air carriers for regular flights and departure-arrival plans of aircraft of foreign air carriers for non-regular flights is carried out using communication networks and taking into account the conditions determined by the air carrier's rights to operate air routes and destinations in accordance with the aviation rules of Ukraine.

The right to operate an air route may be granted to a foreign air carrier if:

1. It complies with the legislation of Ukraine.
2. Ukrainian air carriers enjoy the same rights in the state of registration of a foreign air carrier or acquire other rights on the basis of reciprocity.
3. Ukrainian airports provide the possibility of servicing such flights and air transportation.
4. In the case of non-scheduled air transportation, such transportation cannot be carried out by Ukrainian air carriers, or such transportation cannot be carried out within the framework of regular flights between the same airports or cities if the city is served by two or more airports.

The authorized civil aviation authority has the right to deny a foreign air carrier the right to operate an air line, the destination, limit the scope of the right to operate an air line, and/or refuse to approve the traffic schedule if this is due to restrictions established by international treaties of Ukraine and agreements between aviation authorities, or the applicant's non-compliance with their conditions.

The authorized civil aviation authority has the right to cancel or suspend the right to operate an air line if a foreign air carrier does not meet the requirements of international treaties of Ukraine and aviation regulations of Ukraine or violates the conditions or restrictions established by the right to operate an air line.

A foreign air carrier is obliged to inform the authorized body on civil aviation about the termination of regular air transportation on the air line for which it has the right to operate and destination, 30 days before the planned date of termination, indicating the reasons.

The conditions and procedure for granting and canceling the rights to operate an air line to foreign air carriers are established by the aviation rules of Ukraine.

## **2. Consumer protection**

The basic rights of passengers and their protection are specified in the ACU<sup>528</sup>. The air carrier is obliged to comply with the rules of air transportation and service of passengers, baggage, cargo, and mail, as well as industry standards and service quality regulations. These

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<sup>528</sup> Supra note 338, Art. 100.



regulations ensure that passengers have a minimum set of rights in relation to the carrier. Additionally, the criteria for assigning service class (business class, economy class, premium class) must be the same for both domestic and international flights.

According to the rules of air transportation, the air carrier must establish its own rules aimed at improving the efficiency and quality of transportation. These rules cannot contain quality standards or regulations that are lower than the established requirements. Prior agreement with the State Aviation Service is required. Moreover, a minimum level of service quality is set for passengers, which is fixed at the regulatory level.

A foreign air carrier operating in Ukraine is obligated to inform the State Aviation Service of its rules and requirements, which determine the conditions for air transportation of passengers, baggage, cargo, and mail. The State Aviation Service has the right to demand that a foreign air carrier align its rules and requirements with the legislation of Ukraine, including the aviation rules of Ukraine. Rules and requirements that do not comply with Ukrainian legislation are not binding for the foreign air carrier's counterparts. Furthermore, a non-discriminatory level of obligations of air carriers to passengers is established.

The air carrier must establish and inform passengers of the procedure for paying compensation and providing assistance in case of refusal to board, flight cancellation, flight delay, or reduction of the passenger's service class. The air carrier must also establish the refund of fees for non-provided air transportation services, specify the amount and method of payment for compensation, and outline the services for passengers who are refused boarding. This provision sets the basic rules for compensation for non-fulfillment of the air carrier's obligations to the passenger.

During the organization of air transportation, the air carrier must take measures to inform consumers through information and advertising channels, including automated reservation systems. This includes providing information about air routes, aircraft flight schedules, tariffs for passenger, baggage, cargo, and mail transportation by air, as well as the conditions of passenger service and cargo handling on the ground before, after, and during the flight. Every passenger has the right to access information related to the transportation itself, its order, and conditions.

The air carrier, when placing data in the automated reservation system, must guarantee the accuracy, reliability, and comprehensiveness of the information provided. Passengers should only receive reliable and factual information about transportation.

The air carrier is responsible for the loss or damage that occurs during the transportation of passengers, baggage, cargo, and mail. The requirements and rules for such liability are stipulated by the international treaties of Ukraine, the legislation of Ukraine (including the aviation rules of Ukraine), and the amount of liability should be the same for both domestic and international flights. This rule establishes the financial responsibility of the air carrier to the passenger.

The passenger has the right to freely familiarize themselves with the rules of air transportation of the air carrier and to receive service according to the class of the purchased ticket. The air carrier must ensure the realization of this right.

The passenger has the right to refuse air transportation and receive a refund for the services according to the procedure established by the aviation rules of Ukraine and the rules of the air carrier.

The passenger has the right to compensation from the air carrier and assistance in case of refusal of transportation, flight cancellation, long delay, or reduction of the service class. These rights are provided in accordance with this Code, the aviation rules of Ukraine, and the international treaties of Ukraine.

The air carrier bears full responsibility for damage caused during international air transportation that begins or ends on the territory of Ukraine or involves a commercial landing on the territory of Ukraine, as well as for domestic air transportation. The same applies to contracts for air transportation, including charter transportation and other civil legal relations related to air transportation, which are not regulated by the provisions of the Air Code. In such cases, the provisions of the Civil Code of Ukraine apply.

The rights of passengers also include rights related to the protection of consumer rights, in addition to the issues already regulated by the ACU<sup>529</sup>. The ACU separately highlights the rights of passengers with limited physical abilities. These passengers should be provided with free special assistance, guaranteeing that they receive the same services provided to all passengers. Such assistance includes the provision of information and instructions in a form understandable to passengers with functional impairments of the organs of perception<sup>530</sup>.

Therefore, the ACU contains a fairly detailed list of passenger rights when receiving air transportation services, such as in cases of flight delays, cancellations, service class changes, etc. The ACU stipulates that if the air carrier reasonably expects passengers to be refused boarding, it is obliged to conduct a survey to identify passengers who are willing to voluntarily give up their confirmed reservation in exchange for an agreed reward offered by the carrier<sup>531</sup>.

In addition to the payment of compensation, the air carrier must offer the passenger a choice between:

- receiving compensation within seven days, which must be paid in cash, electronic bank transfer, bank orders, or bank checks, or with the passenger's written consent, in the form of traveler's checks. The compensation includes the full price of the ticket at the purchased price, covering the unused part of the ticket and, if applicable, the used part or parts of the ticket. Additionally, if the flight no longer meets the passenger's needs, the carrier must provide a return flight to the original point of departure at the earliest opportunity.
- changing the route, which should be carried out under appropriate transport conditions. The air carrier must offer the passenger the earliest opportunity to reach their final destination, or if requested by the passenger, at a later time, provided there are available seats.

If there are no passengers willing to give up their travel on the flight, or if their number is insufficient, the carrier has the right to deny the passenger transportation against their will. In such cases, the carrier must pay compensation to the passengers as follows: EUR 250 for flights with a distance of up to 1,500 kilometers, EUR 400 for flights with a distance ranging

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<sup>529</sup> Supra note 338, Art. 100.

<sup>530</sup> Supra note 338, Art. 102.

<sup>531</sup> Supra note 338, Art. 104.

from 1,500 to 3,500 kilometers, and EUR 600 for flights with a distance of more than 3,500 kilometers<sup>532</sup>.

When determining the distance, the last point is considered as the basis, where the refusal of carriage or failure to perform a previously scheduled flight, for which at least one seat is booked, would result in a delay in the arrival of passengers at the scheduled time. The carrier has the right to reduce the amount of compensation specified in the fifth part of this article by 50 percent if the passenger is offered alternative flights to their destination, with arrival times not exceeding the scheduled duration by: two hours for flights with a distance of up to 1,500 kilometers, three hours for flights with a distance ranging from 1,500 to 3,500 kilometers, and four hours for flights not specified in the previous parts<sup>533</sup>.

In case of flight cancellation, passengers must be offered service<sup>534</sup>, and the passenger has the right to compensation if he was not informed about the cancellation of the flight:

- at least two weeks before the scheduled departure time;
- in a period not more than two weeks and not less than seven days before the scheduled time of departure and proposed a change of route that will allow you to depart from the point of departure no later than two hours before the scheduled time of departure and arrive at the final destination no later than four hours after the scheduled arrival time;
- less than seven days before the scheduled time of departure and proposed a rerouting that will allow you to depart from the point of departure no later than one hour before the scheduled time of departure and arrive at the final destination no later than two hours after the scheduled time of arrival.

If the flight is canceled by the air carrier and the passenger continues the journey on another flight(s) or on another route, the passengers must be offered and provided free of charge:

- 1) food and soft drinks according to the waiting time for the new flight;
- 2) places in the hotel in case the passengers have to wait for the departure for one or more nights or if the additional waiting time for the departure is longer than expected;
- 3) ground transfer along the airport - hotel - airport route;
- 4) two phone calls or telex, fax messages, or e-mail messages if there are technical conditions for this at the airport<sup>535</sup>.

The air carrier is obliged to pay special attention to the needs of passengers with limited physical capabilities (disabled) and persons accompanying them, as well as to the needs of unaccompanied children.

Moreover, these provisions fully correspond to the provisions of Regulation 1107/2006<sup>536</sup>. Ukrainian lawmakers have even improved these implementation norms. Compensation to passengers for changing the class of service is provided<sup>537</sup>. The air carrier does not have the right to demand any additional payment if it accommodates the passenger in a class higher

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<sup>532</sup> Supra note 338, Art. 104 para 2.

<sup>533</sup> Supra note 338, Art. 104 para 3.

<sup>534</sup> Supra note 338, Art. 104 para 2.

<sup>535</sup> Supra note 338, Art. 105 para 1.

<sup>536</sup> 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, Official Journal L 204, 26.7.2006, p. 1–9

<sup>537</sup> Supra note 338, Art. 107

than that specified in the ticket. If the air carrier accommodates the passenger in a class lower than that specified in the ticket, it must reimburse the passenger within seven days: 30 percent of the fare for flights with a distance of up to 1,500 kilometers, 50 percent of the fare for flights with a range of 1,500 to 3,500 kilometers, and 75 percent of the fare for other flights not specified in the second and third paragraphs of this part<sup>538</sup>.

### **3. Protection of competition and control over pricing**

In accordance with the Constitution of Ukraine, the state ensures the protection of competition in business activities<sup>539</sup>.

The Antimonopoly Committee of Ukraine (ACU) also defines the main principles of tariff regulation in the air transportation market, which takes place within Ukraine or begins or ends within Ukraine. These principles are based on factors such as cost-based pricing with consideration of profit, the correlation between tariffs and the level of services provided to passengers during air transportation, and the prevention of dumping or discriminatory pricing by individual airlines.

Tariffs for air transportation within Ukraine or involving the territory of Ukraine, which determine the payment amount for air transportation and related services, as well as the conditions for such payment including remuneration and conditions offered to entities providing agency services for the sale of air transportation, are determined by the airlines themselves in a manner established by them. These tariffs must be made public in a format accessible to users.

The State Aviation Service, as the authorized body for civil aviation, has the authority to cancel excessively high tariffs, particularly in cases of insufficient competition, or to halt the operation of excessively low tariffs, particularly if they fall below cost price. In order to assess the reasonableness of established air transportation tariffs, the authorized body may require comprehensive information from the airline within a specified period. This information allows for a proper evaluation of the tariff, including the underlying costs on which the tariff level is based. If the airline fails to provide the necessary information within the specified period or provides incomplete information, the authorized civil aviation authority has the right to cancel such a tariff and remove it from sales and reservation systems through its decision. When the procedure for determining air transportation tariffs is regulated by international treaties of Ukraine, the authorized body for civil aviation takes measures and makes decisions regarding airline tariffs in accordance with the rules set forth in those treaties<sup>540</sup>.

The CAA Agreement between Ukraine and the EU includes provisions for the further implementation of competition protection norms in the aviation field. Specifically, the implementation of Regulation 1008/2008<sup>541</sup> on pricing into Ukrainian legislation is

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<sup>538</sup> Supra note 338, Art. 108

<sup>539</sup> Supra note 368, Art. 42 para 2.

<sup>540</sup> Supra note 338, Art. 99

<sup>541</sup> 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 (Recast), Official Journal L 293, 31.10.2008, p. 3–20

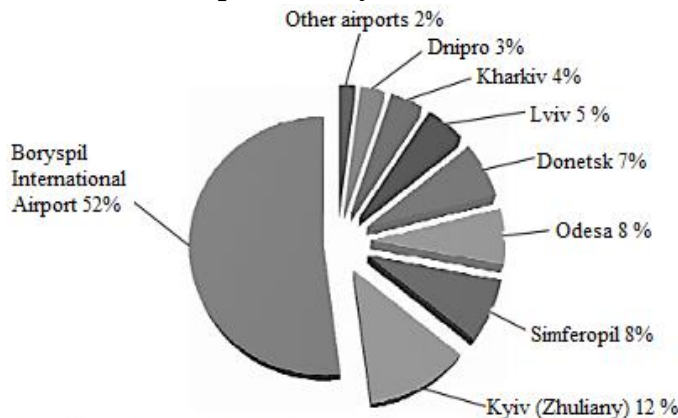
envisioned. Therefore, articles 22-24 are not considered in Ukrainian legislation. Instead, it should be stipulated that the state has the right, without discrimination based on the nationality or identification of the airline, to require the registration of air tariffs in a specified format. Furthermore, it is mandated that flight costs and airfares must be made available to the general public and must include appropriate conditions when offered or published in any form, including on the Internet, for air services from an airport within a member state. The final price to be paid must always be provided, including the relevant airfare and all taxes, duties, fees, and charges that are unavoidable and foreseeable at the time of the offer. Along with the final price, the following should be indicated at a minimum: the cost of the air ticket or the fare, taxes, airport taxes, and any additional costs or fees such as those related to security or fuel. Additionally, the principle of non-discrimination in cost or fare setting should be legislatively noted<sup>542</sup>. To ensure effective application of these provisions, the regulation introduces the possibility of imposing sanctions for violations, which must be effective, proportionate, and have a deterrent effect.

#### 4. Access to airport infrastructure

There are 30 main airports of civil aviation operating within the territory of Ukraine. These airports handle significant passenger and cargo transportation. Among them, only 16 airports hold international importance. Before the war in Ukraine (as shown in Figure 9.2), the highest congestion was observed in 10 airports.

The mentioned figure represents the pre-war and pre-pandemic period, as the civil aviation of Ukraine was severely impacted by the COVID-19 restrictions and the subsequent war. At the time of conducting this research, all airports were closed and airport services were not being provided.

**Figure 9.2. The specific weight of Ukrainian airports in the total volume of passenger transportation by airlines**



The specific weight of Ukrainian airports in the total volume of passenger transportation by airlines

<sup>542</sup> Supra note 338, Art. 23.

BIA is the largest and most influential airport in Ukraine. It accounts for over 52% of passenger transportation, serving more than 8 million passengers annually. The airport enjoys a strategic location, situated at the intersection of air routes connecting Asia, Europe, and America. Approximately 50 national and foreign airlines operate from Boryspil, facilitating both passenger and cargo<sup>543</sup> transport. With over 100 regular routes, it is the only airport in Ukraine offering transcontinental flights<sup>544</sup>.

The second major airport, Kyiv International Airport named after I. Sikorskyi, commonly known as Zhulyany, is located 8 km from the capital city center. The airport collaborates with various airlines that operate regular and charter flights, as well as business flights on private planes. Regardless of the type of flight, every passenger can expect a high level of service comparable to European and international airports. Notably, the airport hosts the largest aviation museum in Ukraine, showcasing a wide range of civil and military aircraft on its open-air platform.

Following Boryspil and Zhulyany, Lviv International Airport is the third busiest airport in Ukraine. It serves as the largest air hub in the western region and underwent extensive reconstruction in 2012, extending its runway length to 3305 meters. As a result, Lviv airport became capable of accommodating medium-haul aircraft like Boeing 737/Airbus A320, as well as long-haul aircraft such as Il-62 and Boeing 767. The airport catered to 2 domestic and 30 international flights operated by more than 20 airlines, connecting major cities across Europe, Asia, and Africa. Before the war, the annual passenger traffic exceeded 2 million people<sup>545</sup>.

Simferopol and Donetsk are two other significant Ukrainian airports, though they have been inaccessible due to the country's ongoing conflict. The international airport in Simferopol, the domestic airport in Belbek near Sevastopol, and Mariupol, which is situated close to the battlefield, have been nonoperational since 2014. Additionally, the airports in Donetsk and Luhansk were destroyed as a consequence of hostilities<sup>546</sup>.

Odesa International Airport stands as one of the largest and busiest airports in southern Ukraine. It handled an annual passenger flow exceeding 400,000 people. With the emergence of new destinations and the introduction of low-cost carriers, the number of passengers steadily increased. Odesa airport provided services for international and domestic regular and charter flights operated by 24 airlines, serving major cities across Europe, Asia, and Africa<sup>547</sup>.

Located in eastern Ukraine, Kharkiv International Airport serves as the largest air hub in the region. In preparation for the Euro 2012 World Cup, the airport underwent extensive reconstruction, including the construction of a new terminal meeting international standards, the extension of the runway to 2,500 meters, and the beautification of the station square. Following the completion of reconstruction, the airport was capable of accommodating class A, B, and C aircraft without restrictions and class D aircraft with prior approval. Kharkiv airport facilitated 3 domestic and over 40 international regular and seasonal flights operated

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<sup>543</sup> International Airport Boryspil. Available at: <https://kbp.aero>

<sup>544</sup> Smolii, V. A. (1999). History of Boryspil Airport since 1959. Kyiv: Znannya (In Ukrainian), p. 12.

<sup>545</sup> Trotsenko, A.M. (2002). Airports of Ukraine. Kyiv: European University (In Ukrainian), p. 49.

<sup>546</sup> Air gates to the Crimea. Available at: <https://maps.visicom.ua> ›

<sup>547</sup> Airports of Ukraine. Available at: <https://kiyavia.com/aeroporty>

by 15 airlines, connecting major cities across Europe and Africa. The airport recorded an annual passenger traffic exceeding 1 million people<sup>548</sup> in 2018.

Dnipro International Airport celebrated its 100th anniversary in 2018. The last infrastructure reconstruction took place in 1996, and the airport was preparing for completion of reconstruction in 2022 before the war erupted. The reconstruction aimed to establish Dnipro as one of the largest airports in Ukraine, with a capacity of up to 3 million passengers per year. The project included the construction of a modern parking lot for 500 cars, a new single complex comprising a VIP terminal, a passenger terminal with cafes and restaurants, and a large Duty-Free area. The airport was also slated to be equipped with two teleports for receiving planes, but due to cost-saving measures, airlines opted for special pedestrian zones instead. Additionally, the new runway with advanced navigation systems would have enabled the airport to receive class 4D aircraft, including Boeing 777s. Previously, such aircraft could only land at Boryspil International Airport. Unfortunately, all these ambitious plans for Dnipro airport, along with numerous other plans in Ukraine, were derailed by an aggressive attack aimed at capturing Ukrainian<sup>549</sup> territory and infrastructure.

It is expected that Ukraine will require considerable time to restore its airport infrastructure in civil aviation following the war, making it a subject worthy of separate research. Consequently, this section will focus on the role of ground handling services during discussions on the CAA Agreement draft and the remaining challenges Ukraine faces in aligning its national legislation with EU standards in this field.

This section's topic is closely related to the previous one, as the issue of inflated prices for ground handling at Ukrainian airports was one of the reasons behind the prolonged delay in signing the CAA Agreement. This problem remains unresolved due to the absence of competition regulation in the service market.

Traditionally, airports operate as natural monopolies in the ground handling market, responsible for regulating and coordinating access for other service providers and airlines.

The lack of a clear access order to the ground handling market at Ukrainian airports, coupled with insufficient market volume, hampers competition development. To address this issue, the Antimonopoly Committee of Ukraine (AMCU) provided the State Aviation Service with binding recommendations on September 29, 2015. These recommendations aimed to develop a normative legal act<sup>550</sup> that would establish transparent, objective, and non-discriminatory criteria for competitive access conditions to the market of ground handling services at airports.

Currently, the State Aviation Service has developed the Draft Aviation Rules of Ukraine titled 'Access to the market of ground handling services at airports'<sup>551</sup>. This draft was formulated based on working meetings between the AMCU and representatives from the State Aviation Service, and it has been published on the official website of the State Aviation Service for public discussion. However, the project has received several comments regarding

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<sup>548</sup> Kharkiv Airport. Available at: <https://hrk.aero>

<sup>549</sup> Dnipropetrovsk International Airport. Available at: <http://www.dnk.aero>

<sup>550</sup> Anti-Monopoly Committee of Ukraine. Recommendations. September 29, 2015. Kyiv No. 14-rk. Antimonopoly Committee of Ukraine Annual Report 2017.

<sup>551</sup> Draft Aviation Rules of Ukraine 'Access to the Market of Ground Handling Services at Airports'. Available at: <http://avia.gov.ua/uploads/documents/11069.pdf>

its non-compliance with EU Directive 96/67<sup>552</sup>. Consequently, the adoption of such rules has been delayed for the following reasons:

- The draft aviation regulations do not include the categorization of airports, whereas EU Directive 96/67 regulates the application of certain provisions based on the volume of transportation, specifically concerning the implementation of independent ground handling<sup>553</sup>.
- In the draft aviation rules, the Committee of Air Carriers may consist of permanent representatives from air carriers performing regular or chartered international air transportation to/from Ukraine or within Ukraine, with a minimum frequency of one flight per week or at least three flights per month to the airport. Conversely, EU Directive 96/67 stipulates that all airport users have the right to participate in this Committee or be represented by a designated organization if they wish<sup>554</sup>.
- EU Directive 96/67 specifies that at least one of the authorized service providers must not be directly or indirectly controlled by the airport authority, the controlling authority, or any body controlled by the airport authority. However, these provisions are absent in the draft aviation rules, which instead state that one of the suppliers cannot be controlled by the airport operator, and another provider of ground handling services operating at the same airport<sup>555</sup>.
- In EU Directive 96/67, Member States are required to take the necessary measures to ensure the freedom of independent ground handling. However, the draft aviation rules state that the implementation of independent ground handling may create conditions that pose a threat to flight safety and airport capacity. Airlines can engage in independent ground handling activities only after obtaining a certificate of compliance for the specific type of ground handling activity<sup>556</sup>.

Furthermore, there is an issue of overcharging for ground handling services by airports. This is evident from the Ukrainian Chamber of Commerce and Industry's consideration of a case involving the violation of legislation on the protection of economic competition by the BIA. The violations include unjustified refusal to approve applications for obtaining a certificate of compliance for airport operations and delays in approving internal documentation for business entities.

- Additionally, the airports are setting fees for airport infrastructure use services at an unreasonable level and increasing these fees<sup>557</sup>.

It is worth noting that in 2010, the increase in fees for air navigation services on the approach, in the airfield area, and on flight routes, as established by Order No. 669 dated September 15, 2010, from the Ministry of Transport and Communications, resulted in the postponement of the signing of the CAA Agreement to 2011<sup>558</sup>. International aviation organizations such as IATA, EUROCONTROL, and AEA opposed the rate increase,

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<sup>552</sup> Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, Official Journal L 272, 25.10.1996, p. 36–45

<sup>553</sup> Ibid., Art. 880.

<sup>554</sup> Ibid., Art. 5.

<sup>555</sup> Ibid., Art. 6 para 3.

<sup>556</sup> Ibid., Art. 7 para 1.

<sup>557</sup> Boryspil Airport paid a 13 million fine. Available at: <https://www.epravda.com.ua/news/2018/08/9/639468/>

<sup>558</sup> Order of the Ministry of Transport and Communications of Ukraine No. 415 of April, 06 2019 'On the establishment of rates of fees for services for aeronautical maintenance of aircraft in the airspace of Ukraine'. Official Bulletin of Ukraine, official edition, 2019, No. 52, p. 113, article 1809, act code 95153/2019



considering it unjustified. Aerosvit Airlines also appealed the Order in court<sup>559</sup>. In March 2011, the District Court of Kyiv ruled that Order No. 669 was illegal and invalid<sup>560</sup>.

Furthermore, Ukrainian legislation does not take into account the provisions of Regulation (EEC) 95/93<sup>561</sup>, particularly regarding the designation of any airport as a schedule facilitation airport or a coordinated airport. This designation should be based on a thorough analysis that considers environmental obstacles at the airport and the airport's capacity, whether it has the status or not. Additionally, an airport can be designated as a schedule facilitation airport by the airport authority or any other competent authority within six months, based on new or upgraded infrastructure, operational changes, or any other significant changes that affect its capacity and usage. The designation can be made upon a written request from air carriers representing more than half of the airport's operations or from the airport's managing body if they believe the capacity is insufficient for actual or planned operations during specific periods. It can also be designated if the airport effectively serves only air carriers to which slots have been granted or if new operators, particularly, encounter difficulties in securing landing and take-off slots at the concerned airport.

When a coordinated airport reaches sufficient capacity to handle actual or planned operations, it loses its fully coordinated<sup>562</sup> status. The Member State responsible for the coordinated or schedule facilitation airport should appoint a qualified natural or legal person as a schedule broker or independent airport coordinator after consulting with the air carriers regularly using the airport, their representative organizations, the airport management body, and the coordination committee, if it exists<sup>563</sup>.

The coordinator's responsibilities include participating in international conferences on schedule planning permitted by Community law, providing advice and recommendations to air carriers regarding alternative arrival and departure times in the event of congestion, allocating slots, and ensuring the provision of slots outside of business hours during emergencies. The coordinator should also provide, upon request and within a reasonable time, written or readily accessible information to interested parties. This includes historical slots allocated to airlines in chronological order, slots requested and allocated by carrier for all carriers, outstanding slot requests listed separately by air carrier, remaining available slots, and comprehensive information on allocation criteria<sup>564</sup>,

The member state should establish a coordination committee at the coordinated airport, open to the participation of at least air carriers regularly using the relevant airport(s) and organizations representing them, the management body of the relevant airport, relevant authorities of air traffic control, and general aviation representatives who regularly use the airport. The coordination committee's tasks include providing proposals or advice to the coordinator and/or the member state on increasing the airport's capacity, coordination parameters, monitoring slot usage, instructions on slot allocation or usage, considering environmental considerations, and improving transportation conditions at the airport. The

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<sup>559</sup> Kosse, I. (2011). Europeanization of the airspace of Ukraine: advantages and problems associated with the signing of the Agreement on Common Aviation area. Institute of Economic Research and Political Consultation. (In Ukrainian), p. 13. <http://eu.prostir.ua/files/1322828931580/2811ukrfinal.pdf> (In Ukrainian).

<sup>560</sup> Resolution of the District Administrative Court of Kyiv dated 03/14/2011 No. 2a-421/11/2670 <http://zakon5.rada.gov.ua/rada/show/v-421805-11>

<sup>561</sup> Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, Official Journal L 14, 22.1.1993, p. 1–6

<sup>562</sup> *Ibid.*, Art. 3.

<sup>563</sup> *Ibid.*, Art. 4 para 1.

<sup>564</sup> *Ibid.*, Art. 4 para 2.

committee should also mediate between all interested parties in cases of slot allocation complaints.

The Member State responsible for the coordinated airport should determine slot<sup>565</sup>; allocation parameters twice a year, taking into account relevant technical, operational, and environmental obstacles, as well as any changes that may occur. This should be based on an objective analysis of air traffic service possibilities, considering different types of air traffic and potential airspace congestion during the coordination period and the capacity situation<sup>566</sup>. The coordinator should maintain a general slot pool containing all slots<sup>567</sup>;

Rules should be in place to grant slot series to an air carrier for scheduled or non-scheduled air services. However, this does not automatically entitle the carrier to the same slot series in the next equivalent schedule planning period unless the carrier can demonstrate to the coordinator that it used those slots with the coordinator's permission for at least 80% of the previous planning period's time. If the carrier can prove 80% utilization, all slots in the series will be placed in the common slot pool, unless non-utilization can be justified based on unforeseen and unavoidable circumstances beyond the carrier's control, delays due to factors making it practically or technically impossible to operate as planned, significant financial losses resulting in temporary licensing until financial restructuring, or legal proceedings regarding routes subject to public service obligations were imposed in accordance with Article 16 of Regulation (EC) 1008/2008<sup>568</sup>, which temporarily suspend operations on those routes<sup>569</sup>.

The provisions of Directive 96/67/EU, specifically concerning ground handling at airports, are considered in Ukraine's legislation. According to the Directive, if an airport managing body, an airport user, or a ground handling service provider offers ground handling services<sup>570</sup>, they must clearly separate the accounts for these activities from their other activities, following current trade practices. An independent inspector appointed by the member state verifies the separation of accounts<sup>571</sup>. The state ensures the establishment of a committee comprising representatives of airport users or organizations representing airport users for each relevant airport<sup>572</sup>. Member states may limit the number of authorized providers for specific categories of ground handling services, including baggage handling, runway operations management, fuel and lubricant provision, and freight and mail loading and unloading during transit between the terminal and the aircraft. However, the number cannot be limited to fewer than two providers per category of ground handling services<sup>573</sup>.

The selection of authorized suppliers for ground handling services at airports is conducted through a tender procedure lasting no longer than seven years. The selection of providers follows the following criteria: (i) consultation of the airport authority with the Airport Users' Committee, provided that the authority does not provide similar ground handling services, has no direct or indirect control over any enterprise providing such services, and does not

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<sup>565</sup> Ibid., Art. 5.

<sup>566</sup> Ibid., Art. 6.

<sup>567</sup> Ibid., Art. 10 para 1.

<sup>568</sup> 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 (Recast), Official Journal L 293, 31.10.2008, p. 3–20

<sup>569</sup> Supra note 95/93. Art. 10 para 2 and 4

<sup>570</sup> Supra note 551, Annex I.

<sup>571</sup> Supra note 551, Art. 4.

<sup>572</sup> Supra note 551, Art. 5.

<sup>573</sup> Supra note 551, Art. 6 para 2.

have the right to participate in any such enterprise. In all other cases, the competent authorities of the Member State, independent of the airport managing body concerned, conduct the selection after consulting the Airport Users' Committee and the managing body<sup>574</sup>.

## 5. Computer reservation systems

Reservation systems have become one of the primary technological and marketing tools in the aviation and tourism industry. They are designed not only for product distribution but also for structuring information flows and market analysis by agents, tour operators, and airlines.

Travel agencies participate in IATA activities through a specialized division of IATAN<sup>575</sup> to sell airline tickets and tours to passengers.

Each accredited travel agency that meets specific requirements is assigned a number that serves as a form of identification for payments with airlines. IATAN monitors compliance with rules and standards of activity, as well as uniform financial requirements for travel agencies selling international flight tickets. It acts as a link between travel agencies and airlines that are members of IATA<sup>576</sup>.

Prominent regional tourism organizations include the Asia-Pacific Travel Association, the North American Tourism Industry Association, the National Tourist Association of Great Britain, the German National Tourist Association (Deutscher Reiseverband or DRV<sup>577</sup>), agencies in Turkey, the Japan Association of Travel Agents, the Arab Tourism Union, the Caribbean Tourism Association<sup>578</sup>, and others.

In Europe, the European Tourist Commission is a notable regional organization established in 1948, uniting 21 countries. Its work is supported by the EU, which recognizes tourism as an industry of significant economic and social importance. The commission aims to accomplish the following tasks<sup>579</sup>:

- Promotion of international tourism cooperation in Europe.
- Conducting research.
- Exchange of information for tourism development and marketing schemes.
- Promoting tourist products within European countries and European tourist products worldwide, particularly in North America and Japan.

In addition, various organizations operate in Europe, such as the European Organization for Rest and Recreation (1972), the European Walking Tourism Association (1969), the International Federation of Non-Governmental Associations for the Protection of Cultural Heritage and Natural Monuments in Europe (1963), and the Federation of Scandinavian Associations of Travel Agencies (1939)<sup>580</sup>.

Currently, there are four global reservation systems worldwide:

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<sup>574</sup> Supra note 551, Art. 11.

<sup>575</sup> Why IATAN Accreditation? Available at: <https://www.iatan.org/en/accreditation/become-accredited/>

<sup>576</sup> Promoting Professionalism & Industry Integrity. Available at: <https://www.iatan.org/en/about/our-mission/>

<sup>577</sup> Die Solidaraktion der Reisebranche. Available at: <https://www.driv.de/wir/hilfe-ohne-grenzen.html>

<sup>578</sup> Tourism Organizations. Available at: <https://www.tourism-review.org/travel-and-tourism-organizations-list>

<sup>579</sup> European Tourist Commission What we do? Available at: <https://etc-corporate.org/>

<sup>580</sup> Pestushko, V. Yu. (2018). 'Aviation passenger transportation and tourism: features of interaction'. Geography and tourism 44, p. 4 (In Ukrainian).

- Amadeus/System One.
- Galileo/Apollo.
- Saber/Fantasy.
- WorldSpan/ Abacus<sup>581</sup>.

Amadeus and Galileo are more popular in Europe, including Ukraine, while the USA predominantly uses Saber. Amadeus, created in 1987 by major European airlines (Air France, Iberia, Lufthansa, SAS), is one of the most widely used reservation systems. It is the largest system globally for international bookings, serving over 70% of European travel agencies and handling 36 million tourists (daily)<sup>582</sup>. The system offers several booking modules, including flights (Amadeus Air), car rentals (Amadeus Car), hotel reservations (Amadeus Hotel), tickets for sports and cultural events (Amadeus Tickets), ferry services (Amadeus Ferry), hotel search by points of interest (Amadeus Pro Tempo), displaying area maps to locate desired hotels (Amadeus Mapping), and facilitating communication between travel agents and consumers (Amadeus Videotext).

In 2007, new additional modules were introduced in the market:

- Amadeus Service Fee Manager: a solution for efficient data storage, calculation, and collection of payment for all services provided in the sales process. It automatically calculates service fees and displays them at points of sale during any stage of the booking.
- Amadeus Quality Control: a service that increases agency productivity by continuously and automatically checking each received PNR during the booking process, providing tips to the manager on booking progress and additional sales opportunities.
- E-Power: a program for creating online booking systems on agencies' websites.
- Amadeus Worldwide Commission Manager: an electronic product designed to manage commission payments for booking hotel rooms<sup>583</sup>.

Galileo, founded in 1987 by British Airways, Swissair, KLM, and Covia, is one of the world's largest CRS, operating in hundreds of countries. It provides information about tourist products and services to tourists and travel agents, automates the booking process for airline tickets and additional services, and facilitates direct messaging<sup>584</sup>.

The Saber reservation system was created in 1964 by American Airlines, with the hotel reservation subsystem established in 1976. Operating in 45 countries worldwide, Saber offers access to a wide range of tourist services, including information about translators, multilingual guides, car rental, hotel reservation, excursion organization, attendance at cultural events, weather forecasts, currency exchange rates, and more. It simplifies flight searches by enabling queries based on specific criteria and introduced a new program for booking seats on railways, buses, and passenger ships. It also provides geographical maps, videos, and photos of vacation spots, hotels, and places of interest, offering approximately 150 criteria to help client<sup>585</sup> choose suitable accommodations.

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<sup>581</sup> What is the Computer Reservation System? Available at: <https://colorwhistle.com/computer-reservation-system/>

<sup>582</sup> Bugaiko, D. O. (2007) 'Analysis of trends and perspectives of world development civil aviation'. Problems of the systemic approach in economics. Volume 2. No. 2, p. 8 (In Ukrainian).

<sup>583</sup> Powering better journeys through travel technology. Available at: <https://amadeus.com/en>

<sup>584</sup> Lozhachevska, O., K. Sydorenko, S. Sidenko (2018). 'Global trends in the development of the world air transport market'. International economic policy 2 (In Ukrainian), p. 56.

<sup>585</sup> Sabre – An innovative technology company. Available at: <https://www.sabre.com>

The Worldspan computer reservation system was created in 1990 as a result of the merger between the Datas 11 and Pars systems of TWA and Delta Airlines. It became operational in 1993 and primarily handles reservations for air transport, hotel rooms, tour bureaus, theaters, and other cultural enterprises. Worldspan also provides reference information related to tourism. In the early 21st century, Worldspan actively promoted tourism internet technologies for e-commerce. The Dates&Destinations program allows the creation of an Internet Booking Engine, a booking system through Worldspan on a travel agency's website, enabling clients to independently select flights, hotels, and make reservation<sup>586</sup>.

**Table 9.2. Short description of the largest computer reservation systems in the world**

<b>Title of the computer reservation system</b>	<b>Description</b>
SABRE	Year of foundation — 1960 (released as a full-fledged GDS - 1964) The staff is about 6500 people in 45 countries of the world Income for 2002 — \$ 2 000 000 000 Resource — about 400 airlines, 58,000 hotels, 53 car rental companies, 9 cruise lines and 33 railways, 232 tour operators Users — more than 60,000 travel agencies
WORLDSPAN	Year of foundation — 1976 (creation of PARS — progenitor of Wspan, 1990 — appearance of the trademark Worldspan) Owners — Delta Airlines, Northwest Airlines, US Airlines Personnel — 3000 people in 50 countries of the world Resource — about 400 airlines, about 50,000 hotels, car rental companies, all major cruise lines, the largest US tour operators Users — about 20,000 travel agencies
GALILEO	Year of establishment — 1970 Owners — Aer Lingus, Air Canada, Alitalia, Austrian Airlines, British Airlines, KLM, Olympic Airways, Swissair, TAP Air portugal, United Airlines and US Airways Personnel — about 3,000 people in 116 countries of the world Resource — about 500 airlines, about 51,000 hotels, 31 car rental companies, all major cruise companies, 430 tour operators Users — more than 47,000 travel agencies
AMADEUS	Year of foundation — 1987 (released as a full-fledged GDS — 1992) Owners — Air France, Iberia, Lufthansa Personnel — 4250 people Income for 2002 — approx. \$ 1900000000 Resource — about 470 airlines, 59,500 hotels, 48 car rental companies, all major cruise lines, railways, ferries, insurance companies and hundreds of tour operators Users — more than 70,000 travel agencies and check-in desks of airlines

<sup>586</sup> Worldspan computer reservation system. Available at: <https://www.travelopro.com/worldspan-gds.php>

Regulation (EC) No 80/2009<sup>587</sup> of the European Parliament and of the Council, dated 14 January 2009, on a Code of Conduct for computerized reservation systems, and the repeal of Council Regulation (EEC) No 2299/89<sup>588</sup>, is defined among the EU regulations that Ukraine needs to implement. It is listed in the 'G. COMPUTER RESERVATION SYSTEMS' section of Annex 1 to the Agreement on CAA<sup>589</sup>.

Aviation rules of Ukraine, even before the official signing of the Agreement on CAA, were intended to bring the national legislation of Ukraine into compliance with the norms of Regulation 80/2009 regarding the implementation of the computerized reservation systems, which practically were functioning before the legislative adoption<sup>590</sup> - since the late 90s.

In 2007, the Ministry of Economy of Ukraine introduced a remote trading system through the Order dated 19 April 2007, No. 103, 'On approval of the Rules for the sale of goods to order and outside retail or office premises<sup>591</sup>.' This system allows selling goods (including tickets) outside retail or office premises, where the selection and ordering of the product do not occur simultaneously with the direct transfer of the selected product to the consumer<sup>592</sup>.

To develop Ukraine's aviation industry and maintain a high level of passenger service quality and competitiveness, Aviation Rules No. 1239, 'Rules of Air Transportation and Passenger and Baggage Service<sup>593</sup>,' were adopted on 26 November 2018. These rules establish general conditions for passenger and baggage transportation by air, ensure flight safety and service quality, and regulate the procedure for computer reservation of tickets using the ARS/GDS.

These Rules define provisions on ARS/GDS. This system that provides information on the flight schedule, availability of seats and tariffs of air carriers and with the help of which booking of air transportation services is carried out<sup>594</sup>.

The aviation rules define the general norm for the ARS/GDS and state that it is used for booking air transportation. A reservation is considered confirmed when it is made in the ASB/GRS and confirmed by the air carrier. However, alternative reservation methods are also allowed, such as telephone, mobile communication, website, specialized self-service machines, and others, for seat and tonnage reservations. In all cases, a mandatory requirement for using such reservation methods is the display of the reservation made in the air carrier's reservation system<sup>595</sup>.

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<sup>587</sup> Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89, Official Journal L 35, 4.2.2009, p. 47–55

<sup>588</sup> Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems, Official Journal L 220, 29.7.1989, p. 1–7

<sup>589</sup> Supra note 12. Annex I.

<sup>590</sup> Supra note 586.

<sup>591</sup> Order of the Ministry of Economy of Ukraine of No. 103 April, 19 2007 'On approval of the Rules for the sale of goods to order and outside retail or office premises' Official Bulletin of Ukraine, official edition, 2007, No. 80, p. 52, article 2982, act code 41287/2007

<sup>592</sup> Karas O. S. State and prospects of the development of passenger air transportation in Ukraine. Bulletin of the Ternopil National Economic University. 2012. No. 1. P. 73–80 (In Ukrainian).

<sup>593</sup> Order of the State Aviation Service of Ukraine No. 1239 of November 11 2018. 'Rules of Air Transportation and Passenger and Baggage Service' Official Bulletin of Ukraine, official edition of 2019, No. 18, p. 65, article 626, act code 93542/2019

<sup>594</sup> Supra note 592, Clause 6 of Section I of the Aviation Rules

<sup>595</sup> Supra note 592.

## F. Appraisals

The systems of the European air traffic control network, their components, and related procedures must meet certain requirements. These requirements include general requirements such as complex use, support of new operating principles, security, civil-military coordination, limitations caused by the surrounding environment, principles of logical building systems, and principles of building systems. Special requirements encompass systems and procedures used for airspace management, systems and procedures used for air traffic flow management, systems and procedures used for air traffic services, and systems and procedures for the use of meteorological information.

The Aviation regulations of Ukraine, 'Air Traffic Management,' approved by Order No. 1920 dated 9 December 2021 of the State Aviation Service of Ukraine, were adopted with the aim of aligning the normative legal acts of Ukraine in the field of civil aviation with the standards and recommended practices of the ICAO. These regulations establish general rules and procedures for the organization and provision of civil aviation air traffic services.

However, the provisions of Regulation No. 549/2004 were not taken into account in the legislation of Ukraine. These provisions pertain to the creation of an agreed regulatory structure for the establishment of a SES (Single European Sky), increasing current safety standards and overall efficiency for general air traffic in Europe, optimizing airspace capacity to meet the requirements of all users, and minimizing delays, among other objectives.

The unification of aviation markets is beneficial for the Ukrainian aviation industry, primarily because Ukrainian-made aviation products, from airplanes to their parts, will be certified and able to be sold in EU countries.

The Agreement explicitly states that the annexes provide for Ukraine's accountability for standardization by the EASA (European Union Aviation Safety Agency). However, the certificates themselves should be issued by the national authorities of Ukraine, not by the Agency, as is the case in EU member states. In this regard, it is clearly stated that Ukraine reserves the right to issue certificates, licenses, and other technical documentation. At the same time, Ukraine must provide mechanisms for conducting inspection checks and audits regarding standardization by the Agency in the order specified by Regulation 628/2013.

Ukraine's CAA Agreement differs from similar agreements with Georgia and Moldova, among other things, in that Ukraine demanded recognition of its aircraft certification system. This requirement is justified by the fact that transitioning to the European certification system would incur higher costs for obtaining certificates. Additionally, specialized experts from the EU are not sufficiently familiar with the Ukrainian certification system, especially regarding the recognition of certificates for AN aircraft, particularly for older models that do not adhere to European standards. Furthermore, the Antonov State Enterprise holds intellectual property rights to its aircraft and has the obligation to collect information on the condition of aircraft and cases of failure since AN aircraft are utilized in over 70 countries worldwide.

The maintenance of aircraft airworthiness and aviation products, components, and equipment, as well as the approval of organizations and personnel involved in these tasks, are regulated by the relevant Aviation Rules No. 286 dated 6 March 2019.

Compared to other areas of civil aviation, EU aviation security standards are most fully implemented in Ukrainian legislation. Numerous normative legal acts and Aviation Rules have been established to ensure aviation security, flight regularity, and efficiency by introducing rules, practices, and procedures that protect against acts of illegal interference.

To regulate environmental protection activities, the State Aviation Service of Ukraine develops and implements a legal framework that allows for the implementation of ICAO practices and recommendations in aviation environmental protection policies.

The Law of Ukraine 'On Licensing of Certain Types of Economic Activities' stipulates that services for the transportation of passengers and cargo by air transport are subject to licensing. Together with a few other legislative acts of Ukraine, it forms the core of reformed standards to meet the requirements of Regulation 1008/2008 on common rules for the provision of aviation services in the EU.

The basic rights of passengers and their protection are prescribed in the ACU (Aviation Code of Ukraine) and the Law of Ukraine 'On the Protection of Consumer Rights.' These rights fully correspond with European standards, including the provisions of 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 traveling by air.

The CAA Agreement between Ukraine and the EU includes provisions for the further implementation of norms regarding competition protection in the aviation field. This includes the implementation of Regulation 1008/2008 on pricing into Ukrainian legislation. In accordance with the Constitution of Ukraine, the state ensures the protection of competition in business activities. The ACU also defines the main principles of tariff regulation in the air transportation market conducted on the territory of Ukraine or commencing or ending on the territory of Ukraine. These principles are based on factors such as the cost of services with consideration of profit, the level of tariffs depending on the services received by passengers during air transportation, and the prevention of dumping or discriminatory pricing by individual air carriers. However, this area still requires the implementation of an effective mechanism of legal regulation.

Regarding access to airport infrastructure, the legislation of Ukraine takes into account the provisions of Directive 96/67/EU, particularly regarding ground handling at airports. This includes the separation of accounts for ground handling activities from other activities in accordance with current trade practice. However, the legislation of Ukraine does not consider the provisions of Regulation (EEC) 95/93, specifically those concerning the designation of any airport as a schedule facilitation airport or a coordinated airport. This designation requires a thorough analysis, taking into account environmental obstacles and the airport's capacity. The legislation does not address this designation either by the airport authority or any other competent authority, even within six months through new or upgraded infrastructure, changes in operations, or any other modifications at the airport.

Aviation rules, even before the official signing of the CAA Agreement, aimed to align Ukraine's national legislation with the provisions of Regulation 80/2009 concerning the implementation of computerized reservation systems. These systems were already operational before legislative adoption, dating back to the late 1990s.

To develop Ukraine's aviation industry and maintain a high level of passenger service quality and competitiveness, Aviation Rules No. 1239, 'Rules of Air Transportation and Passenger and Baggage Service,' were adopted on 26 November 2018. These rules define the general conditions for passenger and baggage transportation by air, ensure flight safety and service quality, and regulate the procedure for computer reservation of tickets using the ARS/GDS.

Thus, it can be concluded that the achievements of Ukrainian aviation legislation indicate a relatively high level of aviation organization. However, there are still numerous gaps that need to be addressed in order to align Ukraine's aviation norms with the EU standards outlined in the CAA Agreement.



## PERSPECTIVES

The SES is an initiative of the European Commission aimed at unifying the distribution and management of airspace for most European countries. It has gradually led to the creation of the CAA. The 'Open Sky' policy does not imply completely open markets in the traditional economic sense, as there are 'nationality clauses' that affect the entry of carriers into markets. The main goal of the SES is to reform the architecture of European air traffic control to meet future capacity and safety needs.

The CAA is a bilateral agreement between the EU and third countries that establishes common safety standards and liberalizes market relations in the aviation field, enabling more efficient and safer use of airspace. After the creation and development of the CAA among the European Community countries, it became necessary to extend the influence of the 'open sky' to neighboring countries, both as part of integration processes and to ensure flight safety and unified rules of air transportation. The CAA is seen as the basis for achieving multi-level collaboration between the EU and neighboring countries and is likely to drive large-scale harmonization of political, economic, social, and other systems.

As a result of signing the CAA Agreements, the process of aviation sector liberalization has spread to Western Balkan countries (through the ECAA Agreement), Mediterranean neighborhood countries (through 4 EMAA Agreements), and EaP countries (through 4 CAA Agreements). The ECAA Agreement allows complete reciprocal ownership and requires Balkan states to apply EU law regarding the licensing of air carriers. The purpose of the EMAA Agreements is to create a framework that extends the CAA to neighboring countries, forming part of the EU's neighborhood policy to replace bilateral agreements and establish a Common Euro-Mediterranean Area. The EaP policy, which is gaining significance, serves as a continuation of the European Neighborhood Policy in Eastern Europe and provides the fundamental pillars for creating the CAA with Eastern European countries.

Ukraine, as an important partner within the EaP, is actively working on integration into the European CAA, even during war conditions, especially after the conclusion of the CAA Agreement. The successful functioning of the signed CAA Agreement requires harmonizing Ukrainian legislation with European regulations and decisions related to the 'open sky.' Thus, the CAA Agreement aims to implement 64 EU regulations and directives in the field of aviation into Ukrainian legislation, enabling Ukrainian air carriers to obtain unlimited commercial rights for transportation to and from the EU, as well as within the EU member states if the route starts or ends in Ukraine. Similarly, EU air carriers will have unlimited commercial rights for flights to and within Ukraine.

The signing and implementation of the CAA Agreement are outlined in the Association Agreement between Ukraine and the EU (2014). Ukraine, in accordance with the clauses of Annex XXII of the Association Agreement, undertakes to gradually align its legislation with

EU legislation, particularly in the aviation industry, as required by the CAA Agreement<sup>596</sup>, which was initialed on November 28, 2013, in Vilnius. On October 12, 2021, the CAA Agreement between Ukraine and the EU was signed, and soon after, on February 17, 2022, the Verkhovna Rada ratified the long-awaited Agreement on 'visa-free aviation.'

According to the CAA Agreement, Ukraine is obligated to incorporate EU legislation and requirements into its civil aviation sector, including market access, air traffic organization, flight safety, environment, and other issues. This incorporation is divided into two stages, marked by two transitional periods. The first transitional period began after the signing of the CAA Agreement. Successfully meeting the requirements of the first transitional period will enable Ukrainian and EU air carriers to operate between any points in the EU and Ukraine. Ukraine will participate as an observer in the committee responsible for slot allocation at EU airports, while continuing the harmonization and implementation of its legislation, ultimately leading to the start of the second transitional period.

During the second transitional period, the EU will recognize crew certificates issued by Ukraine, and ground handling service providers will be able to operate in the territory of the other party. Ukraine will also participate as an observer in the committee determining which airlines are prohibited from operating within the EU. Once Ukraine organizes its airspace according to EU requirements, the CAA will be fully operational. The most significant effect of signing the CAA Agreement will be the mutual 'opening' of the sky for Ukrainian and European carriers. Passengers and airports will benefit from an increase in the number of flights between cities in Ukraine and the EU, as well as increased competition between airlines. Politically, Ukraine will strengthen its position as a European player by gaining access, at least as an observer, to the decision-making process of European aviation authorities.

Therefore, the European integration of Ukraine in the aviation industry goes beyond the signing of the CAA Agreement. It is a comprehensive and long-term effort. Even amidst the challenging political, economic, and social situation resulting from a full-scale military invasion by its northern neighbor, Ukraine continues to carry out legislative and executive activities to fulfill its international obligations. On July 12, 2022, the Action Plan for the implementation of the CAA Agreement<sup>597</sup> was adopted and approved by Decree of the Cabinet of Ministers of Ukraine No. 593-r.

This Action Plan outlines the stages for fulfilling the conditions of the signed and ratified Agreement. It includes the following areas of implementation:

1. Establishing cooperation with the EU Party based on the principles of the Agreement, particularly in terms of the commercial operation of airlines, guided by the provisions of the consultation protocol signed by the heads of the Ukrainian and EU delegations during the negotiations for the Agreement's conclusion.

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<sup>596</sup>Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. Official Journal of the European Union L 161, 29.5.2014, p. 3–2137. Annex XXII

<sup>597</sup>Decree of the Cabinet of Ministers of Ukraine No. 593-r dated July 12, 2022 'On the approval of the plan of measures for the implementation of the Agreement between Ukraine, on the one hand, and the European Union and its member states, on the other hand, on CAA'. Government Courier official publication dated 07/20/2022 — No. 157

2. Organizing the work of the Joint Committee as provided for in Article 29 of the Agreement.

3. Updating the list of applicable requirements and standards adopted by the EU in the field of civil aviation to be incorporated into Ukrainian legislation.

Furthermore, on April 21, 2023, a new European integration law was adopted and signed. This law outlines procedures for implementing several European standards, simplifying state regulation in the civil aviation field, and establishing additional mechanisms for effective safety control in aviation (Law of Ukraine No. 6405).

The main provisions of the law simplify the process of issuing airworthiness certificates and flight permissions for certain aircraft imported to Ukraine. If an aircraft is certified by the EASA, it is not necessary to undergo separate re-certification in Ukraine.

The law eliminates the requirement for Ukrainian air carriers to obtain operating rights within Ukraine for regular domestic and international air transportation, as well as charter flights by Ukrainian and foreign air carriers in Ukraine. Certified air carriers will only need to agree on slots at national airports to begin commercial operations in Ukraine.

Certification of enterprises providing ground handling services in civil aviation will no longer be necessary. The transition to the declarative principle of responsibility by ground handling service providers is envisaged.

The requirement to obtain permits from the authorized civil aviation authority for aircraft departure from Ukrainian airfields and arrival at or overflights of the country is abolished.

The certification process for enterprises, which previously took 3-6 months to start operations at airports, is canceled. Work can commence immediately after submitting the necessary documentation.

The law also removes the need for certification of business entities involved in agency services for the sale of air transportation. This applies to entities specializing in personnel training for organizing or selling air transportation.

Changes are introduced to align Ukrainian legislation with EU norms in the civil aviation field, including the provisions of EU Regulation 2018/1139 and the CAA Agreement.

Based on the provisions of this law, airlines will be able to resume air services in Ukraine as soon as the security situation allows. According to estimates by the ICAO, Ukraine has achieved 76% compliance with its obligations under the CAA Agreement, which is quite significant and productive considering the challenging war conditions.

The State Aviation Authority and the Ministry of Infrastructure consider it essential to establish an effective dialogue with aircraft manufacturers, operators, and air carriers to ensure that all market participants can experience the benefits of the CAA with the EU as soon as possible after Ukraine's victory. It is expected that the benefits of the CAA Agreements will play an important role in fostering exchanges and travel in a free, peaceful, and strong Ukraine.

## **LIST OF PHD-RELATED PUBLICATIONS AND PRESENTATIONS DURING THE RESEARCH PERIOD**

1. Vodolaskova, K.Yu. & Makeieva O.M. BASIC PRINCIPLES OF THE WARSAW SYSTEM OF INTERNATIONAL CIVIL AVIATION AND ITS INFLUENCE ON THE DEVELOPMENT OF THE NATIONAL AVIATION UNIVERSITY. Scientific works of National Aviation University Series Juridical Bulletin Air and Space Law. Volume 4 (69) (2023). P. 11-19.
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3. Vodolaskova, K.Yu. & Holovko S.H. HISTORICAL ASPECTS AND OVERVIEW OF LEGAL UNDERSTANDING OF AIRSPACE SOVEREIGNTY CONCEPT. Scientific works of National Aviation University Series Juridical Bulletin Air and Space Law. Volume 1 (66) (2023). P. 9-16.
4. Vodolaskova, K.Yu. & Holovko S.H. NATIONAL INTEREST AND RULES OF INTERNATIONAL AVIATION. 'Aviation in the XXI century'- 'Safety in aviation and space technologies'. National Aviation University (2022). P. 10.22-10.30.
5. Holovko S.H. & Vodolaskova, K.Yu. EU-UKRAINE RELATIONS DEVELOPMENT POLICY: HISTORICAL BACKGROUND AND CURRENT STATE. Scientific works of National Aviation University Series Juridical Bulletin Air and Space Law, Volume 2(63), 35–41. (2022). doi.org/10.18372/2307-9061.63.16707
6. Vodolaskova, K.Yu. ASSURING GROUND HANDLING SAFETY AVIATION STANDARDS AFTER THE COVID-19 CRISIS WITHIN THE GLOBAL COOPERATION. Materials of the XV International Scientific and Technical Conference 'AVIA-2021'. National Aviation University (2021).
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9. Vodolaskova, K.Yu. & Makeieva O.M. & Shapenko L.O. E-GOVERNMENT AS A METHOD FOR LEGAL COMMUNICATION BETWEEN CIVIL SOCIETY AND PUBLIC ADMINISTRATION. The Journal of International Legal Communication (JILC) – Vol. 1 No. 1 (2021). P. 123-138

10. Vodolaskova, K.Yu. LEGAL BASIS OF METEOROLOGICAL PROVISION FOR CIVIL AVIATION. Scientific works of National Aviation University Series Juridical Bulletin Air and Space Law. Volume 2 (55) (2020). P. 15-20.
11. Vodolaskova, K.Yu. & Borodin, I. L., et.al. EUROPEAN COMMON AVIATION AREA AS A WAY TO AVIATION LIBERALISATION: UKRAINE'S CASE. Conference Paper: International Conference on Business, Accounting, Management, Banking, Economic Security and Legal Regulation Research (2021) doi.10.2991/aebmr.k.210826.032.
12. Vodolaskova, K.Yu. COMPETITION LAW AND PUBLIC PROCUREMENT: RETHINKING THE COOPERATION BETWEEN EUROPEAN UNION AND POST-SOVIET COUNTRIES. Materials of the International Scientific-Practical Conference 'Domestic Legal Science in the Conditions of Modernity'. NGO 'Association of Postgraduate Lawyers' (2020).
13. Vodolaskova, K.Yu. RUSSIAN-UKRAINIAN CONFLICT: LEGAL PROSPECTS AND PARAMETERS OF SUSTAINABLE PEACEBUILDING AND HUMAN RIGHTS PROTECTION. Materials of the International Scientific-Practical Internet Conference on 'Current Studies in Legal and Historical Science (Issue 20)' (Scientific Community NGO and Wyższej Szkoły Społeczno- Gospodarcza wPrzeworsku (2020).
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18. Vodolaskova, K.Yu. ENVIRONMENTAL SUSTAINABILITY OF AVIATION: AIRPORT DEICING OPERATIONS. Scientific works of National Aviation University Series Juridical Bulletin Air and Space Law. (2020) doi. 3. 10.18372/2307-9061.44.12057.
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## LEBENS LAUF

Ich wurde am 05. November 1984 in die Ukraine Stadt/Boryspil geboren. Nach dem Abitur an der Sekundarschule der Stufen I-III im Jahr 1999, studierte ich von 1999 bis 2002 an der Wirtschafts- und Rechtsschule der Interregionalen Akademie für Personalmanagement und erhielt ein Diplom als Junior-Spezialist mit Auszeichnung im Fachbereich „Junior Rechtsanwalt“.

Von 2002 bis 2006 habe ich an der Kiewer Universität für innere Angelegenheiten (Ukraine) studiert und einen ‘Bachelor of Laws’ mit Auszeichnung erhalten, anschließend 2007, einen Meister in Rechtswissenschaften, ebenso mit Auszeichnung.

Im Juni 2003 während meines Studiums an der Universität begann ich meine berufliche Laufbahn. Mein erster Job war ein Junior Inspektorin der Abteilung für Flugsicherheit am staatlichen Unternehmen „Internationaler Flughafen Boryspil“ (BIA SE).

Seit 2004 habe ich meine Karriere als Rechtsanwältin begonnen. Zuerst arbeitete ich im neu gegründeten staatlichen Unternehmen „Ukrainisches Luftfahrt Meteorologisches Zentrum“, dann in privaten Unternehmen, in einer privaten Anwaltskanzlei, nachdem ich eine Anwaltslizenz erhalten hatte - begann ich meine eigene Anwaltskanzlei und nachdem ich den Status erhalten hatte außerordentlicher Professorin - Lehrtätigkeit an der Juristischen Fakultät der Nationalen Luftfahrtuniversität.

Jetzt arbeite ich wieder bei Internationaler Flughafen Boryspil, aber jetzt als leitender Anwältin. Ich hoffe, dass meine wissenschaftliche Forschung weiterhin zur Entwicklung der Zivilluftfahrt in der Ukraine beitragen wird.

Den Erfolg meiner Forschung verdanke ich der Nationalen Luftfahrtuniversität (Ukraine), der Universität des Saarlandes (Deutschland) und natürlich der Universität zu Köln (Deutschland), wo ich trotz aller Hindernisse unter der maßgeblichen und professionellen Leitung von Professor Dr. Dr. h. c. Dr. h. c. Stephan Hobe, L.L.M, Direktor des Instituts für Luftrecht, Weltraumrecht und Cyberrecht, stand wurde diese Arbeit zu ihrem logischen Abschluss gebracht.