

Shifting power between European  
institutions:

The EU-US Open Skies Agreement

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- Which power shifts did OSA bring about?
- 1) Sole negotiation power to Commission
- 2) Commission empowered in environmental policy vis a vis member states and EP
- 3) Joint decision committee: Loss of influence of legislatures in EU and US
- 4) Role of EP in stage three negotiations

# 1) Sole negotiation power to Commission

- Question:
- How did Commission obtain negotiation mandate for the European Union in transatlantic aviation regulation?
- And what was its outcome?

- Commission seeks exclusive competence to negotiate OSA:
- Argument:
- Member states with bilateral agreements with US - because of nationality clause -
- cannot grant right of establishment to other European carriers

- Commission initiates infringement procedures:
- 8 member states threatened
- Council of transport ministers 1998 agree to limited mandate to negotiate OSA in *technical* issues.

- Commission seeks extension of mandate to *traffic* rights
- Sends letter of warning to a number of other member states
- Member states restate opposition to *extended* mandate
- Commission resumes infringement procedures

- 2002 ECJ condemns 8 countries
- - for violating Commission's external competence over airfares on intra-Community routes and computerized reservation systems
- - nationality clauses relating to ownership and control of airlines = infringement against principle of free establishment

- As a result....
- Transport Council grants extended negotiation mandate to Commission
- Commission becomes sole negotiator



# Outcome OSA 2007

- Important steps in liberalization of transatlantic aviation market
- number of new *traffic rights* for European and US carriers from cities in EU to cities in US and vice versa
- But asymmetrically in favor of US
- US *cabotage* right in EU
- EU no cabotage right in US

- *Ownership and control*: No extension of rights of European carriers to acquire American carriers
- Introduction of *joint decision committee*:
- Safety, security, environment, competition, labour law

- In view of *asymmetric* outcome in favour of US:
- Renegotiation beginning in 2007

*Negotiation stage 2 2007 -2010*

- US seeks to maintain status quo
- EU seeks additional liberalization

- US: request of lifting of night flight prohibitions as bargaining chip
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- ...to fend off EU request of liberalization of ownership and control

- Outcome:
- *Asymmetric basket:*
- a) Under condition that both parties will allow majority of ownership and control of airlines,
- ...airlines of US will have right to provide passenger combination services between points in EU and 5 countries

- b) under condition that laws and regulations of EU night flight restrictions (Commission review plus court procedure prior to imposition)
- ...EU will get right of passenger combination services from points in US and 5 countries

## 2) Empowerment of Commission under Art.21 (Ex. Environment – noise)

- If night flight bans in European cities as requested by US realized,
- IF Commission can take member governments to court prior to imposing night flight bans,
- THEN extension of traffic rights for European carriers through US.

- Institutional implications:
- Power shift from member states to Commission
  
- Policy implications:
- Restrictions according to International Civil Aviation Organization (ICAO) rules....
- = Cost benefit approach, more lenient than national regulations



- *EP's objection 2010:*
- Aviation regulation including noise restrictions and night flight limitations
- should be determined at local level according to subsidiarity principle

### 3) Joint Committee

- Decision-making organization to review and develop implementation of OSA
- Traffic rights, competition, security, safety, environment
- Key role in identifying whether conditions of asymmetric basket are given (see 2)

- With Joint Committee quasi-legislative transatlantic decision-making body created
- *Outside* scrutiny of legislatures in EU and US
- Role of EP: only informed and consulted as other stakeholders

## 4) EP in future negotiations:stage three?

- OSA 2010 prior to entering into force of Lisbon Treaty
- EP only resolution
- Now to be involved in future negotiations,
- But important structures already created, i.e. Joint Committee,
- And Art. 21