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**EUROPEANIZATION OF AIR TRANSPORT: LIMITS
OF CONVERGENCE**

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THESIS APPROVAL PAGE



DECLARATION

I hereby declare that this master's thesis/non-thesis master's term Project titled as "Europeanization of Air Transport: Limits of Convergence" has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

06/07/2022

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ABSTRACT
Doctoral Thesis
Doctor of Philosophy (Phd)
Europeanization of Air Transport: Limits of Convergence
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Department Of European Union
European Studies Program

The European Union (EU) has impact on both members and candidate countries in various ways; it affects their economies, politics, social and institutional structures. The EU deliberately affects the members or candidate countries through its political, administrative or legislative tools and occasionally the countries just constrained to come in line with the general policies and practices in the EU. Recently, the "Europeanization" approach is quite frequently used to explain the European Union impact.

In this dissertation, the impact of the European Union on Air Transportation, change in economic and policy behaviour and institutional change are researched. The reason for choosing air transportation policy as a research area is the extensive economic and technical harmonization among EU member states, but lack of cohesion at policy level. This situation facilitates to analyze the impact of the EU and the change occurred after this impact indicating limits of convergence. In order to realize this research, firstly, a theoretical framework is drawn accompanied by 'Institutionalism' and then the Air Transportation Policy of the European Union evaluated taking Deregulation, Europeanization and Liberalization into consideration while limits of convergence determined.

Keywords: Air Transport, Liberalization, Europeanization, Deregulation.

ÖZET

Doktora Tezi

Hava Taşımacılığının Avrupalaşması: Yakınsamanın Sınırları

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Avrupa Çalışmaları Programı

Avrupa Birliği hem üye hem de aday ülke ekonomileri politikaları, sosyal ve kurumsal yapıları üzerinde bir dizi etkiye sahiptir. Avrupa Birliği, siyasi, idari veya yasama araçları aracılığıyla üye veya aday ülkeleri Avrupa Birliği'ndeki genel politika ve uygulamalara uyum sağlamaya yöneltmektedir. Avrupa Birliği'nin söz konusu süreçlerdeki rolü ve etkisini açıklamak için “Avrupalaşma” yaklaşımı sıklıkla kullanılmaktadır.

Bu tez çalışmasında, Avrupa Birliği'nin Hava Taşımacılığı üzerindeki etkisi bağlamında ekonomik ve siyasa alanlarındaki değişim ile birlikte kurumsal değişim araştırılmıştır. Hava taşımacılığı politikasının araştırma alanı olarak seçilmesinin nedeni, bu alanda AB üyesi ülkeler arasında geniş kapsamlı ekonomik ve teknik uyuma rağmen politika alanlarındaki uyum eksikliği ve AB etkisinin meydana getirdiği değişikliklerin yakınsama sınırlarını analiz etmeye uygun bir araştırma alanı olmasıdır. Bu araştırmayı gerçekleştirmek için öncelikle ‘Kurumsalcılık’ kavramı eşliğinde teorik bir çerçeve çizilmiş, ardından Avrupa Birliği'nin hava ulaştırma politikası Deregülasyon, Avrupalaşma ve Liberalleşme kavramları dikkate alınarak bu alandaki yakınsamanın sınırları belirlenmiştir.

Anahtar Kelimeler: Hava Taşımacılığı, Liberalleşme, Avrupalaşma, Deregülasyon.

EUROPEANIZATION OF AIR TRANSPORT: LIMITS OF CONVERGENCE

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ABBREVIATIONS

ASA	Air Services Agreement
ATC	Air Traffic Control
ATM	Air Traffic Management
CAA	(UK) Civil Aviation Authority
CAB	(US) Civil Aeronautics Board
CAP	Common Agricultural Policy
CEES	Central and Eastern European Countries
COM	European Commission
COMP	Competition
COREPER	Committee of Permanent Representatives
DG	General Directorate
DGAC	Direction Generale de l'Aviation Civile
EASA	European Aviation Safety Agency
EATMN	European Air Traffic Management Network
EC	European Communities-Council
ECAA	Common European Aviation Area
ECAC	European Civil Aviation Conference
ECJ	European Court of Justice
EEC	European Economic Community
EU	European Union
EUROCONTROL	European Organization for the Safety of Air Navigation
FSC	Full Service Carrier
IATA	International Air Transport Organization
ICAO	International Civil Aviation Organization
JAA	Joint Aviation Authorities
JARs	Joint Aviation Rules
KLM	Royal Dutch Airlines
LCC	Low Cost Carrier
MS	Member States
NATS	UK National Air Traffic Control Service Provider

O&D	Origin and Destination
OCF	Open Coordination Process
OECD	Organization for Economic Cooperation and Development
OMC	Open Method Coordination
PDA	Path Dependency Approach
R&R	Rescue and Restructuring
RLD	Air Transport Department (Rijksluchtvaartdienst) of the (Netherlands) Ministry of Transport
SEA	Single European Act
SES	Single European Sky
TCAA	Transatlantic Common Aviation Area
TFEU	Treaty on the Functioning of the European Union
TREN	Transport and Energy
UK	United Kingdom
US	United States of America

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INTRODUCTION

Both the European Union (EU) members and candidate nations are influenced by the EU in a variety of ways, including their economy, politics, social structures, and institutional frameworks. EU members and candidate or even third countries has been faced with significant consequences as a result of their reliance on the EU's political, administrative, and legislative mechanisms, whereas non-EU members are just obliged to adopt its policies and procedures. As a result, the term 'Europeanization' has become a popular notion to describe the European Union integration and impact.

The main objective of this thesis is to discover how the EU has impact on countries' policy and politics, and in line with that prove the existing integration theories, such as Europeanization and New Institutionalism, taking the air transport sector as a case study. To do so, some arguments and problematics are fallowed. For instance, in spite of all the difficulties, the Community (EEC) has not only participated in the air transport industry but it has also implemented a comprehensive strategy that has changed many things. Therefore, this thesis is dedicated to exploring the evolution of the single market in air service development, as well as the further advancement and expansion of the EU's liberalized air transport market. It is impossible to simplify or make sense of these different but interconnected processes by using a specific hypothesis or theoretical framework. Therefore, in analyzing institutional change, this dissertation takes an eclectic approach, making use of various tools from different subgroups of institutionalism. Since an eclectic method is more helpful, given that none of the existing institutional subgroups alone is sufficiently capable of dealing with institutional change. Hence, this thesis needs to borrow from historical and rational-choice (RI) institutionalisms excluding sociological one owing to not necessarily identities, values or even norms being focused mainly on member states and foreign regime. An analysis of structural change requires more attention to be paid to the agency. In parallel with that logic, institutionalism's rational choice subhead, becomes useful in the analysis of change. On the other hand, historical institutionalism (HI) provides useful methods (e.g. logic of suitability) so as to explain how institutional structure forms the interests and behaviors of actors through structural changes. Such an approach is necessary because there is no strategic interaction in a vacuum. Actors

behave in a hierarchical sense and both these experiences and their effects are defined by this standard, social context. As a consequence, in evaluating institutional change, borrowing from these two but mostly relying on the HI method becomes a necessity.

The thesis provides three arguments. The first and the most important one concerns about current integration theories analyzing the EU. Accordingly, both older integration studies and the more contemporary Europeanization research have neglected the international perspective of EU policies. One field of research that focuses on how competencies are transitioned from the national to the EU level is the integration literature, which pays less attention to whether foreign regimes, third-country interventions, or alternative intergovernmental cooperation venues are relevant to EU policymaking. These possibilities are ignored because of the distribution of power, principles, and institutions, as well as the attitudes of actors to the system, may or may not impact the incentives for Community participation. Outer influences, like the activities of third countries, could have an impact on whether or not it is in the interests of the Commission and other actors to provide backing for or in contradiction of EU action.

Focusing on the internal implications of EU policy, Europeanization literature is relatively neglectful of the wider international context. Despite academics' shifts toward including this critically understudied and historically undervalued part of integration in their work (Kassim and Menon, 1996: pp. 10-12), the study agenda just dealt with the EU's domestic impact produces conclusions that are too limited. Europeanization academics may overlook external factors in dynamic causal chains because they concentrate their focus to EU–Member State relations.

The thesis' second point examines the European Union's aviation policy. Although the Union's involvement in that strategically important, diplomatically complex, and extremely publicized sector has gained consideration, the three major studies in the current literature that power indices approach (Berglöf, 1997), historical institutionalist analysis (Thelen and Steinmo, 1992) and neo-functionalist viewpoint (Rosamond, 2013, Wallace, Pollack and Young, 2010) are the integration literatures that are not adequately sensitive to broader global trends, predominantly with regard to how the international aviation system has influenced by EU intervention. A further weakness is the scant coverage of EU action, with evaluations frequently focusing

exclusively on liberalization and excluding other areas of policy change. Indeed, they frequently present the second and third liberalization packages as a natural extension of the first, as well as the process for establishing the single market. As the succeeding chapters demonstrate, the first package's progressive transformation of the conventional system did not entail the complete liberalization that the third package entails. In truth, each of the bundles that follows was the result of lengthy negotiations.

Thirdly, Europeanization scholarship is presented as framework argument in the thesis. A significant body of research examining how the EU affected national policies and policymaking was emerged since the early 1990s. While academics are working to evaluate the impact of the Union within member states, they employ a variety of different concepts when seeking to analyze change. For instance, the authors studied over the terms 'communitarization', 'Europeification' and 'supranationalization' (Kasim and Menon, 1996: 1). When it became clear that implementing a single policy approved in Brussels, was unlikely to bring about political cohesiveness across the Member States (Jordan and Liefferink, 2004: 13).

Throughout the last couple of decades, Europeanization studies have become more ordered and cohesive. The prevailing top-down method uses domestic transformation and EU behavior as the source of its dependent variable. (see Cowless, Caporaso and Risse, 2001; Börzel and Risse 2003; Van der Eijk and Franklin 2004). On the other hand, bottom-up approaches offer a more bidirectional perspective on EU-Member State interaction. (See, for example, Goetz 2002, Dyson 2002, Radaelli 2004, Howel 2004, Kassim 1996, Schmidt 2000, Giuliani 2014). Contrary to persistent criticism of the top-down approach, efforts to ascertain the Union's domestic influence will begin with an assessment of the Member States' status quo ante, followed by the discovery of domestic change processes and their subsequent tracking back to their origin.

The thesis claims that EU intervention is more useful to examine when approached from a bottom-up perspective than from a top-down viewpoint because of Klaus Goetz's heightened sensitivity to time, timing, and speed (Goetz, 2000: 223; see also Goetz and Meyer-Sahling 2009). When it comes to examining how national policy has changed over time, the top-down approach is only capable of showing that change has occurred, whereas the bottom-up approach enables it possible to find out which

change occurred, how rapidly the EU activity has taken place, and how well it has been enforced. It is especially useful for international studies since it offers a thorough and comprehensive account of domestic development.

Furthermore, the thesis makes an attempt to illustrate the viewpoints supplied by the bottom-up strategy used to shape the subsequent chapters' research. To that extent, it reflects a bottom-up evaluation of the Union's influence over politics and policymaking. Moreover, while many of the arguments advanced in studies on Europeanization are based on an examination of the impact of a specific regulation or the experience of a specific sub-sector over a relatively short period of time, this analysis examines trends in the policy sector as a whole and over a longer period of time. This permits the investigation of EU impact across many aviation sectors, while the time frame chronologically sequences changes at the Union level and their impacts. Additionally, it is a comparative research. If the emphasis is placed exclusively on the history of a particular state, the conclusions that can be formed are limited. As such, it analyses trends in four European Union member countries: France, Germany, the Netherlands, and England. The countries were chosen not only being Europe's major aviation countries, but also for the reason that they represent a range of political traditions and encompass both large and small governments.

Ultimately, the aim of this thesis is to examine the transition of the EU's governance by examining historical trends, including deregulations emerged initially in the US and eventually in EU air transport policy. Until discussing the situation, it is important to explain the nature of air transport policy. So that, European air transport policy is part of the EU regulatory mode in the first instance and part of the negative integration category in the second place. Wallace and Wallace (2007: 341) describes the EU's five policy mechanisms as; standard Community method, EU regulatory mode, EU distribution mode, policy coordination mode, and intensive trans-governmentalism. Air transport is more consistent with the regulatory mode. Such categorization is similar to the regulatory policies of Majone (1993: pp.153-170). On the other hand, with regard to negative integration, whereas Europeanization academics have a tendency to invest in the impact of the EU either in the policy coordination areas of positive integration (Scharpf, 1996: pp.15-39) or in sectors where national policies were not developed extensively before the intervention of the Union,

this thesis scrutinizes negative integration in an area where national policies are concerned long before the EU involved.

There is a need to clarify what deregulation means when applied to air transport policy in order to analyze deregulation in the EU. Although there is a great deal of variety in the literature about the meaning of deregulation, the thesis would follow Brown's (1987: pp.27-28) definition of commercial aviation deregulation as the simultaneous termination of a regulatory tool and the adoption of non-regulatory forms of intervention. By using this definition in this thesis, a discussion on what is an end and what begins with the experiences of the Common European Air Transport Policy would take place.

The structure of the thesis is organized into four sections. The first chapter develops the theoretical framework of thesis that encompass a general overview and then the detail definitions of Europeanization and New Institutionalism. By highlighting that the international context has had an impact on the evolution of the common air transport policy, the second chapter emphasizes the significance of knowing the international context in order to better understand EU policy dynamics in general. A critical analysis of the three main explanations of liberalization packages and the detailed development of EU aviation policy is provided in the second chapter. The thesis also outlines a competing explanation, which is given and built upon across the chapters. As one of the crucial part of the liberalization and Europeanization, expansion of the EU air transport policy handled accompanied by competition policy from the respect of the EU aviation in third chapter. Impact of the EU action shown in the fourth chapter of thesis and last but not least, evolution of the EU air transport policy determined. Ultimately, a conclusion was drawn about the thesis.

CHAPTER ONE

THEORETICAL FRAMEWORK : EUROPEANIZATION & NEW INSTITUTIONALISM

In order to analyze the impact of Europeanization on institutional change and determine the extend of change; the main question designed in this dissertation is:

How Europeanization bring about an institutional change in domestic structures of the EU and what is the limits of convergence among member states?

The case of air transportation policy in the EU is chosen to be researched for answering the question. In order to make the research more systemically, four secondary questions have been formulized as:

- ✓ What is Europeanization from the respect of air transportation in the EU?
- ✓ What is Institutionalism and institutional change?
- ✓ What is the impact of traditional regime on the EU aviation policy, what is the impact of the EU action on member states (Europeanization) and what is the impact of the EU on the regulation of international air transportation?
- ✓ While creating a policy in the EU, what were the conflict and negotiation points among member countries, among EU institutions and in between member states and institutions?
- ✓ What are the main characteristics of the European Air Transportation Policy and how this policy can prove the integration theories of the EU in terms of Europeanization and New Institutionalism?

So to say, the main objective of this thesis is “analyzing the change occurred in aviation sector in the EU as a consequence of Europeanization and prove the limits of convergence”

The hypothesis of this thesis is:

The EU had impact not only on member and candidate countries but also internationally in revising its air transportation legislation and creation of new policies; the affects of Europeanization can be found in member’s implementation of the revised legislation and actualizing the newly formed and re-formed policies and institutions. This impact fostered aviation sector in terms of not only legal status but also economic and institutional behaviour despite limits of convergence.

1.1. EUROPEANIZATION OF DOMESTIC POLICIES

Along thesis, the two notions in traditional European integration research that international relations and comparative politics are demonstrated. Creating supranational institutions and formulating policy are at the heart of each of these study approaches. Because of this, they are unable to give a clear picture of how European integration affects the domestic market. The influence of these advances on domestic institutions and processes is often ignored in these studies because their primary focus is on the supranational level. Structures at the local level are not treated as dependent variables, but rather as influences on the supranational-domestic interactions. There is no relevance to this study's purpose since these methodologies lack theoretical generalizations that can be used to hypothesize about domestic policy and administrative reform.

Risse's analytical framework can be taken as the main reference point for Europeanization in this study which is: "emergence and the development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem solving that formalizes interactions among the actors and of policy networks specializing in the creation of authoritative European rules (Risse, Cowles, Caporaso, 2001: 3)". Europeanization is defined as the process of creating European institutions to examine how this process affects the member nations.

The concept of Europeanization in this thesis is used as 'the effect of European Integration and policies on national policies' (top-down effect) and policy-making or institution-building at supranational level (bottom-up effect) for the EU member country's analysis. In other words, Europeanization would be an already-established independent variable which has a direct impact on national policies. As discussed before, the thesis would be in favour of bottom-up approach before mentioned reasons.

As Hix and Goetz argue, Europeanization has two types of potential impact upon domestic institutions and private and public actors:

“(1) the delegation of policy competences to the European level and the resulting political outcomes constrain domestic choice, reinforce certain policy and institutional developments, and provide a catalyst for change in others; and

(2) the establishment of a higher level of governance institutions provides new opportunities to exit from domestic constraints, either to promote certain policies, or to veto others, or to secure informational advantages (Hix and Goetz, 2000: 10).”

Political institutions and processes at the state level are described as dependent factors in the Europeanization literature, whereas European integration is explained as an independent variable. In actuality, the connection is cyclical and mutually reliant on one another (Bache and Marshall 2004: 8). It is important to cognitively disentangle the ways in which European integration and governance effect domestic political formations in order to discover if these consequences will lead to change or continuity.

In contrast to the vast majority of other research on European integration, the field of Europeanization seeks to understand and explain whether, how, when, and to what extent European integration and governance leads to change or continuity in domestic level structures and institutions. This sets it apart from other forms of European integration scholarship. According to Hix and Goetz (2000: 24), European integration as an explanatory element in domestic political continuity or change is the primary emphasis of Europeanization.

Hence, this thesis aims to assess the degree to which EU air transport policy is in line with European processes of policy and decision-making in general. According to Europeanization literature, measuring domestic systems’ compatibility with European-level or multi-level governance has been a key component. European integration institutions and processes are compared to those of the member states to see if there is a suitable match.

Moreover, Europeanization would not be dealt as the only theoretical insight in this thesis; some theoretical orientations in new institutionalist theory would also be handled. The term ‘new institutionalism’ is difficult to define since it does not exist as a cohesive and unified body of thinking (see, for example, Lowndes 2002 and Hall and Taylor 1996), but three primary aspects may be distinguished: ‘historical’ ‘sociological’ and ‘rational choice’ (Hall and Taylor, 1996: pp.936-957).

Assessing institutional change from a variety of institutionalist perspectives is the methodology used in this thesis, which is characterized by its eclectic approach. Because neither of the present institutional approaches is able to address institutional change solely, so that an eclectic approach is needed. Consequently, this research relies

on both historical and rational-choice institutionalisms. An examination of structural changes necessitates a greater focus on the role of agency. Change can be better understood using the rational choice (RI) variation of institutionalism, which provides a more robust explanation of agency. Comparatively, sociological and historical institutionalism give valuable tools (logic of appropriateness) for figuring out how institutional structure affects actors' motivations and actions throughout structural shifts. Both interactions and results are shaped by the normative, social environment in which they occur. In this thesis most importantly RI and HI approach would be used as framework excluding SI.

A certain deterministic tendency of institutional-based explanations assumed that everything could be accounted by institutional forces. This institutionalist predictability may be restricted to higher levels of abstraction. In other words, we can only define the range of alternatives for sectoral adjustment from a macro-level institutional perspective (Hall and Taylor, 1996: 587). While the institution-based view limits the alternatives for sectoral transformation, it does not explain whether sectoral change occurs or which specific option is chosen. To answer this topic, we need to focus on the agency-based viewpoint of rational choice and historical institutionalism.

The level of abstraction necessary to use agency-based techniques when the adaptational needs arising from the EU policies stay within the macro-institutional context's alternatives. There are limited insights from the institution-based viewpoint regarding how sectoral changes really occur (Knill and Lenschow, 2005: 589). Answering these concerns requires a less conceptual, agency-based viewpoint. If the EU policies have sufficiently changed domestic opportunity structures, national actors can effectively challenge current institutional mechanisms. How well can domestic actors take use of new chances created by European policy to upset the prevailing institutional balance?

This dissertation examines one type of qualitative change that occurs throughout time. It is the goal of this research to introduce new concepts and standards to an already established institutional setting. If new normative features are introduced into an institution, it will undoubtedly change. As a result, this study not concerned with societal norms being altered. On the other hand, it examines the micro-level

changes in normative structure and questions how and when existing institutions come to incorporate new norms, principles, and values. Moreover, it determines the support and resistance points of Europeanization process in the EU, searching air transport sector and policy indicating out limits of convergence.

1.1.1. Why Europeanisation?

The interaction and connection among the European Union and its member states has long been a focus of European Union integration studies. It has been widely discussed that member states (MS) voluntarily transfer powers to the EU, allowing EU law that is compulsory on MS research within the framework of integration theory to be implemented. The Europeanization agenda didn't really take off until the early 1990s, when the EU's ability to define common goals sparked a new wave of interest in EU studies. Indeed, a number of academics claim that Europeanization theory is still in its 'adolescent' stage, which leads us to wonder if it is not time for it to mature? Is there a limit to how much and how often Europeanization theory may be applied in any research?

Europeanization and Europeanization of domestic policy are not new concepts, but research initiatives that take this approach have developed tremendously in recent years despite the fact that they aren't new concepts in general (see Cowles, Caporaso and Risse, 2001; Featherstone, 2003). There are additional significant causes for this topic's increased attention. European integration and internal dynamics of policy and public policy development study agendas are examined in this research.

It is important to recognize that Europeanization is not simply a matter of increasing the number of EU-level policies as a result of market-driven as opposed to macro-dynamic systems. As regulatory rivalry evolved, it played a significant role in facilitating the Single Market's development. In Europe, until recently, little was understood about market competition, and as a result, politicians were worried about the outcomes that were hard to predict. The idea of Europeanization can be described as a policy that would see national laws adapt to ensure the country's advantage in the immense context of EU regulations. In other words, EU policy modifications are not just a condition of the EU, but instead an instance of the global economy's modification

caused by a mixture of EU rules, which has been shaped by EU laws (Bulmer and Radaelli, 2004: 2).

Therefore, Europeanisation allure to political scientists as it is an invaluable exercise to create a model. According to Olsen (2002: 6), the task is to model the domestic policy effect of European integration, recognizing that domestic politics is at the same time a major factor in EU political change at work. As Börzel argues about Europeanization in terms of uploading and downloading (2002: 198), the distinctions between cause and effect, independent and dependent variables are ill-defined. As if the difficulty of Europeanization modeling was not enough, two extra complications should be addressed. First, the EU and member states do not have a fixed character, therefore Europeanization is a question of mutuality between constantly shifting characteristics. The second is that when evaluating internal change, one must take into consideration not only the EU, but also globalization. The process of Europeanization also gives policymakers a unique opportunity to revisit formerly controversial domestic issues because of the free and interconnected marketplaces in which we all now live. A re-conceptualization of international political economy, proposed by Bulmer and Radaelli (2004: pp.32-44), looks at the effects of globalization on domestic policy decisions and examines the limitations placed on national governments. Questions posed by new research objectives tied to Europeanization complement this situation:

- Is Europeanization a bulwark against globalization? (defined in that context as Americanization?)
- As contrast to globalization, is Europeanization a good argument for internal change? What this thesis trying to ask is: Is Europeanization trend toward European integration a sign of increased globalization?
- Or is it a combination of the two, depending on the circumstances inside the various member states?

1.1.2. Definition of Europeanization

The term ‘Europeanisation’ has been widely used over the past decade to examine the ability of the EU to influence many policy areas of its members and

candidate countries (Grabbe, 2001; Kelley, 2004; Pridham and Dimitrova, 2004; Schimmelfennig and Sedelmeier, 2002). Before Europeanization studies, the first wave of European scholars analyzed European integration through international relations perspectives just after the end of the Second World War. The theories of integration discussed the ontology of European integration, that is, the explanation behind the growth of European Union institutions by the member states. For example, according to the liberal intergovernmentalist argument of Moravcsik (1998: 34), Europeanization takes place in a top-down way in which the member states integrate into the EU. As scholars were unable to clarify the EU's state-like structure, after the end of the Cold War, a second wave of European studies was launched that replaced the first wave by using comparative politics to grasp multi-level governance. Bulmer explained (2008: 49), the multi-level governance as “the independent variable that defines domestic results or adjustments was European integration”.

The late 1990s marked the beginning of the third wave of European studies on the post ontology of the adjustment of the Member States to the policies and institutions of the EU; that is, the theory behind Europeanization recognizes the EU institutions as a given, so that the integration process is not considered, but what happened after it was analyzed. The third wave of European studies, in line with this, analyzes the impact of the European Union on the institutions and policies of its member states (see Dimitrova, 2002 and Goetz, 2001). Europeanization is not seen as constituting European integration, but is closely related to it, according to the third wave of European studies. The third wave of European research is borrowing from modern institutionalisms grouped into three sub-categories: Rational Choice Institutionalism, Historical Institutionalism, and Sociological Institutionalism.

The EU may act as the strongest actor in advancing Europeanization by utilizing all of the instruments at its disposal, including trade agreements, technical and monetary help, association agreements, and EU membership. For the purpose of this explanation, Europeanization refers to the overall effect of cross-border and cross-cultural influences on domestic institutions, cultures, national political views, agendas, and regional governing practices. Compared to other forms of international political transition, such Euro-Atlantic integration, domestic political transition that is made possible by European integration can be said to be the most thorough and precise. (for

different approaches see Olsen 2002, pp. 923-924; Ladrech, 1994: 17; Harmsen and Wilson, 2000: pp.14-18; Vink, 2003: pp. 63-74; Bache and Jordan, 2006: pp. 20-23; Featherstone, 2003: pp. 6-12; Risse et al., 2001: p. 3; Radaelli, 2003: 30; Héritier, 2001: 13).

European integration has significantly transformed social, political, cultural, and economic behavior and state and political structures. Defining Europeanization as the adoption of norms while permitting national variances diminishes the impact of European integration and governance on national political systems. First, integration has sectoral economic repercussions. Europeanizing national monetary, fiscal, transportation, telecommunications, agricultural, energy, environment, mining, industrial, banking, insurance, and financial markets can transform the relationship between the state, national markets, firms, subnational governments, interest groups, and other actors (Kurtzer, 2001: 42). This is the result of subordinating state policy to European policy. While they are mostly policy adjustments, termed as harmonization or adaptation, state political structures may also shift. There are sector- and policy-specific disparities in the European integration initiative. In certain sectors, like agriculture and trade policy, the implications of integration on state policy have been institutionalized for a long time. In others, like education, immigration, and home affairs, the European Union's stance and influence on the policy field is still evolving (Harmsen, 2000: 76).

Wallace (2000) and Vink (2003) argue that the EU is the main focus of Europeanization scholars, although there are other European institutions, such as the CoE, OSCE or EFTA which are associated with Europe as well. However, the EU has remained the focus of Europeanization scholars due to its political and economic impact on the European countries. Europeanization scholars, such as Radaelli (2003), Börzel and Risse (2003), are concerned with the Europeanization of Member States; Schimmelfennig and Sedelmeier (2005) are concerned with the Europeanization of candidate countries; Giuliani (2003) sees Europeanization as a process of institutionalism; Lenschow (2005) sees Europeanization as both pressure and use; Blomberg and Grabble (2003: 303) sees Europeanization as an asymmetric relationship between the EU and the Member States or candidate countries.

Olsen (2002: pp.923-924) describes five different uses of the Europeanization definition as follows:

- Changes to external borders relating to what the EU request from the new entrants, such as from Central and Eastern European Countries (CEECs) in 2004.
- Creation of EU-level governance structures that involve building EU capability.
- Diffuse of national and sub-national governance rates relating to the adjustments of the Member States to EU laws, policies and regulations. This is the most widely used Europeanization term.
- Exporting modes of political governance and organization unique to the EU beyond its own territories that should be considered a two-way operation. On the one hand, via its foreign policy or trade or aid agreements, the EU can export its values to its member states, candidates, applicants or trade partners, and on the other, member states can export their values to others, mostly by means of the Open Method of Coordination (OMC).
- A political project aimed at a cohesive, politically and economically stable Europe, which can be described as an effort to build and improve the potential of the EU.

In Europeanization research, certain drawbacks should not be ignored. Europeanization, for example, is not convergence and should not be confused with globalization. Convergence, harmonization, political integration and the adoption of EU policies are synonymous but separate to Europeanisation. Europeanization is viewed either by many scholars of European studies as a governance, institutionalization, or discourse. As Featherstone discussed (2003: 12), Europeanisation is therefore not a 'autonomous intellectual structure'. Alternatively, over the years, new institutionalism, liberal intergovernmentalism, multi-level governance and political networks have been used to justify Europeanisation.

There are three main questions that can be taken into account so as to understand well the term Europeanisation: What is Europeanized (Domains), To what extend Europeanized? (Directives) and How is the Europeanisation? (Mechanisms). In relation to the first, according to Radaelli (2003), polity, policy and politics are the main areas impacted by the process of Europeanisation.

1. Politics: This can also be defined as the domestic system that consists of a country's political and legal structures. These are legislative administrative partnerships, intergovernmental relationships, and court positions.

2. Policy: This is public policy that actors will Europeanize, their material and ideational tools, as well as new policy instruments and style of policy.

3. Politics: “The political aspect of Europeanization refers to the impact on public opinion and electoral behavior, political competitiveness, pressure groups, and social movements” (Radaelli and Exadaktylos, 2010: 196).

In addition, Radaelli (2003) attaches cognitive and moral aspects to the ‘three Ps’ described above. He claims that while a member state's political and legal systems are Europeanized, this phase can also affect its values, norms, and discourses. On the other hand, through the cognitive and normative structures, all the components of society and governance, such as political legitimacy, identities, state practices, ideological paradigms, frameworks and narratives can be transformed (Radaelli, 2003: pp.35-36).

Radaelli (2003) uses a fourfold classification system for retrenchment, inertia, absorption, and transformation in order to answer second, while Börzel and Risse (2003) give a threefold classification system focused on absorption, accommodation, and transformation. These five different elements were gathered below as:

1. Retrenchment: Domestic policy becomes less centralized than it once was after the Europeanization process is over. This is called a ‘paradoxical influence’ by Börzel (2003).

2. Inertia: Inertia happens when there is a lack of transition when European laws, policies, or politics are perceived to be distinct from domestic ones. It is important to note that inertia in the long term can lead to a political crisis and prevent domestic reform (Radaelli, 2003).

3. Absorption: Absorption is incorporating the regulatory criteria of the EU into domestic structures, laws and organizations without making any real improvements to them. The degree of change here is small.

4. Accommodation: this degree of Europeanization was introduced to the literature by Börzel and Risse (2003). Accommodation is more extreme than absorption, but less extreme than transformation. There, it is not the new ones that replace

domestic policies and institutions but are 'accommodated'. There is no change in the core and fundamental features of domestic policies and structures, and the degree of domestic reform is small.

5. Change: Transformation will take place when the conditions contribute to real change and even replacement of the EU institutions in domestic systems and political behaviors. Here, there is a high level of domestic transition. It should be remembered that absorption, lodging, and transition are hard to distinguish.

In order to understand the term Europeanization well third question handled in detail below in separate title.

1.1.3. Dynamics and Mechanisms of Europeanization

After describing Europeanization, it is also necessary to discuss it. The following description is crucial since it defines a range of Europeanization characteristics that will be used in the study's analytical section. It emphasizes three distinctive features of Europeanization:

- For instance, it can be generated from policy development (creation), implementation, or dissemination, where the EU's influence may be rather restricted, as in the case of policy diffusion.
- In addition to explicit policy rules, Europeanization includes concepts and goals that are less tangible.
- Member States are said to as "Europeanized" if they are influenced by European policy. EU-level implementation and subsequently domestic integration are necessary for this to be successful. Only a portion of the story may be gleaned from the previous action. Europeanization is a different idea from EU policy-making.

It will be difficult to shift from our current approach of qualitative findings to a more quantitative strategy that incorporates the concept of Europeanization. Europeanisation can be understood by looking at the several phases it goes through. A way to look at the diverse EU policy-making in the existing literature is to view them as various EU policy-making types (Wallace, 2008: pp.28-35). Despite all this, they were not invented because of Europeanization and the issues outlined in the third description above. The purpose of the thesis is to construct a typology that focuses on

Europeanization research issues based on analytical categories. This study looks at four governance patterns that apply in the European Union, all tied to a certain kind of policy. Also, it is worth noting that this does simplify a more complex scenario. Thus, the study sought to understand theoretical concepts such as the Europeanization process and the elements that play a role in helping one of the four patterns emerge. The thesis would then use these concepts to describe the ‘real world’ of national policy Europeanization. Therefore, each of the four government trends alluded to below in effect.

1.1.3.1. Governance by Negotiation

As Knill and Lehmkuhl, to compensate for Europeanization cycles, Radaelli also established a typology of EU strain. This typology is introduced in a 2004 paper in which Radaelli discusses latest developments in Europeanization analysis and specifically refers to elements of the typology of Knill and Lehmkuhl in his definition of three forms of EU control specific to various Europeanization processes (1999: 19). Radaelli (2004: 11) states:

“in phases of legislation development, transposition, understanding and sanctioning, the first form of governance bargaining and negotiation takes place. In this way, consultation and agreement exist in many phases of a reform process, all before an EU proposal is introduced at EU level (policy creation, e.g. at Council negotiations) and after it has been officially enforced in the Member States(MS).”

Additionally, Radaelli (2004) argues that reform would arise from the expected reactions of specific parties in cases of mediation and arbitration over EU conditions on MS. An indication of transition resulting from expected response during the Council’s discussion over policy development could be an MS predicting potential demands emanating from a directive.

Although the EU always looks to be in negotiation in a number of policy areas, its top priorities are agriculture, immigration, and foreign policy. EU authority varies substantially throughout the policy spectrum: in certain areas, the EU possesses unique authority, such as on the internal market, while in other areas, it possesses little to no jurisdiction, such as in the domain of employment policy. But, in every instance in

which the EU makes a vote, it is always the outcome of a negotiation process. Based on this discussion concerning the relative strength of supranational institutions and member states, the analytical core of how such choices are made is derived. How does the Europeanisation strategy use negotiation as a method of governance? (Lecher, Platzer, Rüb and Weiner, 2020: 36). EU approach is not merely something that we came up with, but is part of a bargaining process. The process depends on the willingness of member states to work together with one another and on the terms they adopt to delegate powers to supranational entities like the Commission or the European Court of Justice.

The standard method taken at this point by Europeanisation is the ‘uploading’ defined by Tanja Börzel (2001: 32). During EU-level agreements, national policy structures or regulations are introduced, with the most likely outcome being a convergence, while one state can be particularly influential only rarely. An example of the latter has been the policy on aviation and environmental emissions, especially with the directive on large combustion. This then became the foundation of intergovernmental negotiation. Most usually, EU reform models are a composite framework stemming from different national strategies and the necessary diplomatic horse trading (Radaelli, 2004: pp.21-25).

The aforementioned aspects arise from the negotiation process, including the development of reform when there is alignment of interests between Member States, Council voting procedures, and previous negotiation experience opportunities for national policies. The biggest concentration of Europeanization occurs if member states decide on policies to which they have secondary priorities as it would be addressed in aviation policy in which this thesis investigated. Where the laws of the Council allow them to employ majority voting and national veto power, it is also the most significant. In short, individual members of the Council of Ministers dread of being overridden, therefore they often shy away from behaving in an obstructive manner. By discussing these concerns frequently, anyone can foster a better understanding of new arrangements, as in the case of the three air transport liberalization packages (Armstrong and Bulmer, 1998: pp.169-197). Sharing a common concept of policy can make it easier for Europeanisation to put the policies in place. The chances of national policy being Europeanized are likely to be

significantly reduced in each of the three cases where the contrary requirements apply. Indeed, it is worth noting that agreed EU legislation is not always compatible with national trends. France and the United Kingdom, for example, have long histories of political unrest, necessitating a cultural shift toward negotiated government in order to accommodate those Europeanizations.

Completeness in understanding the process was the motivation this form of Europeanization in the thesis. However, the research indicates that Europeanization is distinct from both EU policymaking and European integration. The procedure of deciding EU policy is also linked to the likelihood of a later change in national policy. If national policy is to be Europeanized, EU legislation must have an effect on the domestic level (Knill, J Tosun and Bauer, 2009: 5). This next stage in the policy cycle looks at EU legislation's application at the domestic level through numerous governance structures. These structures are hierarchical governance and facilitated collaboration.

1.1.3.2. Governance by Hierarchy

According to Radaelli (2002: 12), governance by hierarchy applies to situations in which the supranational institutions have a significant amount of discretionary authority. The organizations listed in his article are the Commission, the Council and the ECJ. Normally, at the conclusion of the regulation negotiating process, the Council settled on Eu law that needs to be implemented in the Member States. At this point, a series of processes of command and control comes into practice. Both frameworks benefit from the EU's special supranational structure and help ensure member states enforce agreements. The compliance guidelines are intended to foster confidence by restricting the scope of negotiated arrangements that can be stolen by particular states. The precise nature of the mechanisms and subsequent explanations for the dynamics of Europeanisation differ according to what is described as positive and negative integration (see Scharpf, 1996: pp. 15-39 and Pinder, 1968: 21).

1.1.3.3. Positive Integration

Positive integration requires a proactive, supranational approach. Typically, the EU develops a regulatory framework, and it is up to the Member States to put it into practice. Additionally, this integration encompasses rules for market correction in areas of economic policy. In other words, policy is intended to mitigate the negative consequences of market processes: through emissions regulation, social policy, regional policy, and veterinary policy to supplement the Common Agricultural Policy (CAP), among other things. The EU must often engage in arduous negotiations in various policy areas in order to agree on policy regulations. However, it is critical to note that the agreed-upon policy model must be 'downloaded' to the level of the individual Member State. The Commission is accountable for the proper implementation of legislation and has the right to send disputing countries to the European Court of Justice if necessary. The prevalence of European law is indicative of the systems' bureaucratic existence. Such agreements have a strong coercive element, and it is up to the member governments to guarantee that the market correction is successfully implemented (Bulmer and Radaelli, 2004: 6).

There are new regulatory initiatives that employ this type of technique to mitigate internal market externalities (Knill and Lehmkuhl, 1999:2). Examples of positive integration mechanisms include environmental rules and policies pertaining to workplace health and safety, as cited by Knill and Lehmkuhl. The Member State (MS) adapts to positive integration activities because of its institutional capabilities and the compatibility of EU standards with present MS law. The possibility of a successful transition along the EU's proposed routes is enhanced by high institutional capacity for change, whereas inadequate institutional capacities preclude problem-free adaptation. As far as Europeanization is concerned, the 'goodness of fit' between EU criteria and national structures has an impact on it in that a severe mismatch between the two levels would cause the MS to reject EU policies because of popular opposition to large changes in the status quo. When all conditions are met, a lack of mismatch might lead to unadaptation. A mismatch between these extremes is more likely to lead to adaptation. The mismatch hypothesis presupposes that the more extreme the change necessary in the MS, the more the opposition and hence the less influence.

1.1.3.4. Negative Integration

Unlike positive integration, negative integration has to do with fields where eliminating national obstacle is enough to create a common policy. Scharpf (1996: pp.15-39) suggests that negative integration requires measures to increase market penetration by eliminating national trade restrictions and competition distortions. There is often no need for national legislation to put policy into practice. However, in other cases, the EU laws are no longer necessary because the recommendations may be included directly into the treaties. The Commission has been assigned extensive authority, and the European Court of Justice's judgment may be relied on to implement laws, such as those set down in supranational treaties, in a fair and consistent manner. The term 'market-making' is commonly used to refer to 'negative integration'. To put it another way, EU legislation is meant to ensure the efficiency of the market. A notable example is EU competition law, which establishes what is and is not acceptable in terms of mergers or joint ventures between enterprises, as well as price and market-sharing arrangements between them. Where there is dispute about the acceptability of a procedure, the enterprises involved must obtain clearance from the EU authorities. Parallel provisions exist in the Single Market, which prohibits national discrimination through physical obstacles such as border controls, monetary barriers such as tax systems, or technology barriers. Special rules, particularly in economic sectors, may be necessary to promote 'market-making'. As a result, specific policy frameworks exist for sectors such as telecommunications, electricity and air transport services. For those instances, positive integration procedures are required initially, but the purpose remains the same: to allow markets to operate under supervision, typically by the Commission.

The market is created as a result of two factors. There is a market among economic players, and then there is a market among various national administrations. If the UK's financial services, aviation, or media regulations are deemed to promote economic growth, other member countries may be forced to alter their own regulatory frameworks. To summarize, the market-making component of negative integration leads to a far more hierarchical government adjustment process connected with Europeanization. In the case of negative integration, competition between laws or

socioeconomic actors accounts for Europeanization rather than the requirement for national policies to comply to EU regulatory standards, as in the case of positive integration.

1.1.3.5. Facilitated Coordination

Bulmer and Radaelli (2004) believe that facilitated coordination is related to national governments in specific policy areas. This occurs where national legislation is not bound by European law, if government decisions are unanimous, and where the EU is only a venue for discussion. Situations of a similar nature exist in other sectors of action such as foreign policy, public coordination, and open process of coordination (OMC). International organizations have the same legal ability as national governments and other actors to impose norms of behaviour that are not legally enforceable (Wellens and Borchardt, 1980: 285; see also Snyder, 1994: 197-225). In order to avoid any legal complications, decisions made at the European Summit meetings generally make explicit political declarations. At the end of the day, European supranational institutions are unable to promote Europeanization. In other words, there is Europeanization, but it is non-hierarchical and voluntary. Politics is not Europeanized because of the vast difference, for instance, of opinion among EU member states over how to negotiate with the Saddam Hussein-led Iraqi government in 2003. The exchange of ideas and learning about labour laws is facilitated by shared experience. In this case, the convergence of concepts is based on the policies described here.

Europeanization as an analytical framework is often characterized in terms of domestic transition, i.e. how changes at the European level return to the domestic level as a result of EU influence. As a result of EU policy changes, domestic policies, institutions, and policy-making procedures are being reformed at the national level, whereas the top-down aspect refers to the acceptance or downloading-EU as a source of change among multiple choices (Harmsen and Wilson, 2000: 21). When it comes to Europeanization, the bottom-up approach, which is national projection or uploading-EU as a topic of change, may also be used to transfer their policies ideas, expectations, norms, or templates to the EU level in a positive way.

Top-down Europeanization means modifying and adjusting domestic policies, structures, decision-making processes, and institutions in order to fulfill the needs of the EU at the national and international levels (adaptational pressures). According to this approach, it is important to determine if and how European integration has contributed in the improvement of national policies, as well as whether and to what degree the improvement of national policies has resulted in convergence or continuity. Another way to put it is that Europeanization may be defined as the intrusion of the European component into national life (Major, 2005: 176). According to this viewpoint, the state adjusts and modifies its internal rules and policies in response to the requirements of European conditions (Wong, 2005: 8). Alternatively, the extent and nature of EU influence on Member States may be determined by a variety of internal factors impacting their capacity to respond (Wong, 2005:8). Additionally, in their different study Hill and Wong (2007: 326) describes a number of factors that contribute to Europeanization at the national level, including the increasing importance given to the European domestic political agenda; compliance with the Union's common goals and policies; involvement in common actions; prioritization of EU policy over national policy; and internalization of membership as it relates to domestic policies.

On the other hand, because this thesis is in favor of the bottom-up approach, a single European foreign policy is established when the rule, position, or model of one member state is projected or offered to the EU level. This component is critical to understanding how member states influence the outcomes and procedures of European integration. By contrast to the top-down model, member states serve as a change agent actively influencing legislation and procedures at the EU level (Wong 2005: 23), that they will adjust sooner (Börzel, 2005: 220). Based on that, the basic markers of national expansion would be the presence of an effort by a Member State to intensify its impact on the international stage; the attempt by a State to affect foreign policies of other members; the use by a State of its EU membership as a tool for pursuing its interests abroad; and the positive implementation by the EU of particular national foreign policy objectives; For instance, within the context of the Economic and Monetary Union, Germany was able to Europeanize its low shortfall and narrowly specified macroeconomic policies to be implemented as convergence requirements. In

comparison, during the 1982 Falklands crisis, the United Kingdom succeeded in Europeanizing the sanctions against Argentina (Wong, 2005: 9).

To conclude this section, three governance modes defined in the EU converge with different policy styles to create different Europeanization mechanisms. Such mechanisms can be horizontal or vertical (upload or download). In other terms, Europeanization does not follow a common principle (Bulmer and Radaelli, 2004: 32), due to the nature of various EU initiatives, and a number of theoretical methods are used to evaluate such policies.

Table 1: Governance, policy and the mechanisms of Europeanisation

MODE OF GOVERNANCE	TYPE OF POLICY	ANALYTICAL CORE	MAIN MECHANISM
Negotiation	Any of those below	Formation of EU policy	Vertical (uploading)
Hierarchy	Positive integration	Market-correcting rules; EU policy templates	Vertical (downloading)
Hierarchy	Negative integration	Market-making rules; absence of policy templates	Horizontal
Facilitated coordination	Coordination	Soft law, OMC, policy exchange	Horizontal

Source: Börzel and Risse (2005)

1.1.4. Process of Europeanization

So as to explain the process of Europeanization across national and EU levels, Börzel and Risse (2005: 14) developed the words “degree of fit” “misfit” and “adaptational pressure”. Unless, for example, the national and European standards and institutions are not the same in terms of aviation policy then there is misfit (200%) between member state and the EU. The EU exerts adaptational pressure on its member state to enforce its rules and regulations when there is misfit between the member state and the EU. Nevertheless, Börzel and Risse are the targets of controversy by stating

that there is never a need for adaptive pressure in order for Europeanization to take place (Jacquot and Woll, 2003: 9; Thatcher, 2004: 290) since, according to sociological institutionalism, a state can be Europeanized without any adaptive pressure by social learning and lesson drawing models (see discussion later). The word “goodness of fit” may also refer to vertical Europeanization, according to Heritier and Knill (2001:11).

Nevertheless, in conjunction with the other two forms of governance the key consequences of Europeanisation are felt:

Regulatory competition: This kind of competition in the sense of the EU negative integration is one of these variants. A legislative framework is either incomplete or plays a limited role in this situation. EU law forbids a range of actions and the law of the ECJ, most notably mutual recognition, provides certain key principles. Countries may play the game of regulatory competition in various ways. For instance, they may be more or less aggressive (Bulmer and Radaelli, 2004: 10). This performs a limited role to match in with EU standards. For instance, this situation occurs only when regulation is needed to achieve a liberalized economy, as has happened in the telecommunications and aviation sectors. During these transitional phases, adherence to an EU framework may be essential in such circumstances.

According to Bulmer and Radaelli (2004: 11), while the significance sometimes assigned to regulatory competition the reality is that there were few and far between competition studies among the rules. Nonetheless, when carrying out such projects there are some important issues to be addressed. Perhaps the most significant is to separate from those originating from the global economy the influence of European market rules. To illustrate this, consider how Europeanisation affects market competition in the aviation industry. First, two counter-arguments should be isolated: a) regulatory competition is a result of international regulatory activity, and the EU is irrelevant; and b) national regulatory practices are so ingrained in their national setting that change may not contribute to convergent regulation. It would be difficult to prove that Europeanization is the principal source of regulatory competition if other factors could not be ruled out.

Learning: At all stages of Europeanization, including negotiation, learning is critical. It becomes particularly critical, however, when the EU does not function as a

legislative body but rather as a forum for member states to exchange ideas and policy. That is particularly accurate in line with the Open Coordination Process (OCP). However, intergovernmental approaches to EU policymaking are decades old, and legal scholars have long recognized soft law (Snyder, 1994: 6). Nonetheless, as the Lisbon Council stated in 2000, the OMC is more of an attempt to characterize the decision-making processes that emerged in the 1990s across a range of policy sectors than a paradigm shift (Bulmer and Radaelli 2004: 13).

OMC is a method for facilitating progress in meeting EU goals, as well as learning from others' best practices. Using the EU as a transfer platform instead of legislation is the concept. Member states should be assisted by the OMC so that they can help create their own policies (Bulmer and Radaelli, 2004: 17). Thus, rather than relying on Brussels-imposed vertical models, it relies on horizontal governance procedures. These features define the methodology: EU guidelines and individual action plans for national and regional government; implementation of best practices through benchmarking and sharing of quality standards; qualitative and quantitative indicators where appropriate; a continuous, mutual learning cycle composed of processes such as monitoring, assessment and peer review (Presidency Conclusions, Lisbon European Council, 23-24 March 2000).

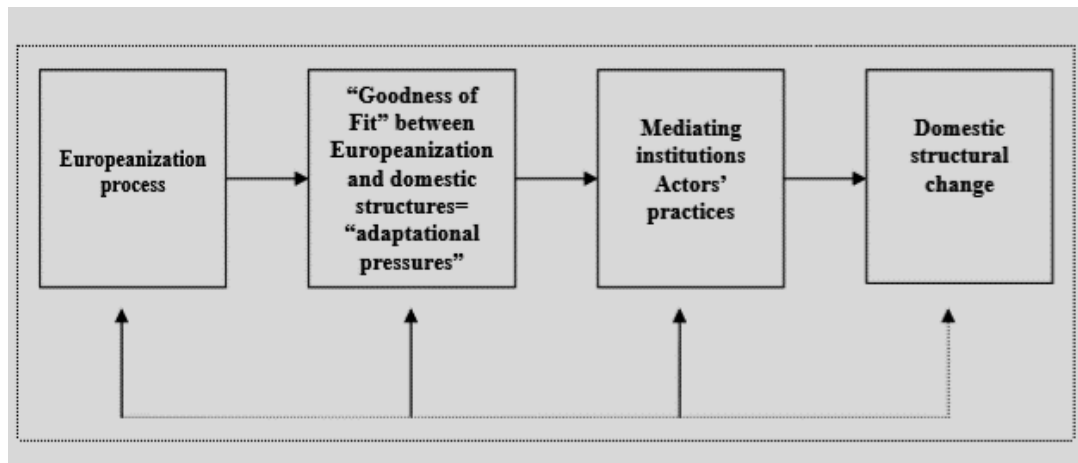
Table 2: Europeanisation and Policy Illustration

TYPE OF POLICY	ILLUSTRATIVE POLICY AREAS	‘DEFAULT’ EXPLANATION OF EURO-PEANISATION
Positive integration	Environment, social policy, EMU, CAP	Goodness of fit
Negative integration	Internal market in goods and services, utilities sectors (e.g. telecommunications, electricity), corporate governance	Regulatory competition
Coordination	CFSP, third pillar, OMC policies (e.g. employment, social inclusion, pensions, enterprise policy, asylum policy)	Learning

Source: Sharpf, 1998: 17

Europeanization imposes pressure on local institutions through two informal methods, as Risse, Cowles, and Caporaso (2001: 6) explain. As a result of first European-level policy, domestic legislation may conflict with EU regulations. Adaptational pressure would be exerted on home political and administrative systems, notably on formal domestic institutions and governments, under these conditions. Second, European government will put a lot of pressure on local institutions to change, including national governance models and even deeply ingrained perceptions of identity and political behavior. These circumstances impose strain on national traditions and beliefs, state-society relationships, and other institutional elements, causing them to evolve.

Figure 1: Model Of Europeanization



Source: Heritier, 2001: 20.

Heritier (2001: 21) argues that the degree of fit between national and European levels of governance and structure determines the degree of adaptation pressure created by multi-level and European governance. As a result, state-level reactions to such pressure are far from identical, as Schmidt claims (2002: 14). Many state-level systems are well-suited and experience little or no pressure to adapt, which means that little or no change is required or foreseeable. Institutions are more inclined to embrace small adjustments that are totally consistent with the current functional modes and values of the institution in question. However, even if the load of adaptation is rather low, the chance of improvement is not solely reliant on the presence of such constraints. In states that face comparable adaptational forces, the difference between similar structures does not always lead to a specific structure or pattern being established. (see Eyre and Lodge 2000, Schmidt 2008, Börzel 2003, and Knill 2001). The response of states and structures to adaptational stresses varies substantially in various scenarios. National institutions and regulations are often safeguarded at a high cost by identifying deviations from EU-level legislation, changing existing EU laws or competencies, or creating an opposition between EU and domestic governance levels. As Sbragia (2001, p.9) pointed out, domestic systems were altered despite substantial costs in monetary, political, or cultural aspects. The third phase of Europeanization in the Risse, Cowles, and Caporaso (2001) model aims to account for this diversity.

The existence or absence of mediating elements that are crucial for determining whether domestic structural change or continuity should be anticipated in circumstances of intense adaptational pressures resulting from governance mismatches between European and domestic levels. According to Risse, Cowles, and Caporaso (2001: 4), state-level responses to the burden of adaptation are rely on five contextual variable: various veto points, encouraging formal institution systems of organisation and policy making, unequal control of domestic actors, and learning.

In a particular state-level structure, the presence of several veto points impedes structural adaptability by decentralizing influence on the political system and granting more actors a voice in political decision-making. The more dispersed influence is, the more difficult it is to establish a domestic coalition to implement and enforce the necessary measures to minimize the adaptation demands on European-level government (Risse, Cowles and Caporaso, 2001: 6). According to H  ritier (2001: 11), the fragmented nature of the German and Italian political systems and policy-making processes impeded or prohibited the adoption of structural adjustment to the constraints of European level transport policy decision-making. Therefore, institutions that institutionalize several and powerful veto points may be more prone to impasses that impede structural transformation (see Harmsen 1999 and Schmidt 2006).

A category of domestic actors, whose participation is harmful to their relative strength, but whose assent is necessary to change the status quo, are known as veto players (Tsebelis, 2002: 12). A clear example of veto players are the EU's liberalization program, which is largely in transportation, and was carried out in states that have had some of the most restrictive regulations on their transportation sector. This resulted for actors in those countries pushing for greater deregulation. Although labor unions and sectoral groups in Italy, as significant filibuster forces, have been able to hinder the opportunity of domestic change, a reform alliance in Germany has been able to leverage European policy to go around opposition at home (H  ritier et al., 2001: 4). As well, Featherstone et al. (2001) found that the EU's external dominance, due to social and political limitations, was insufficient to solve the Greek fiscal crisis, thus the study team proposed the addition of technocratic control from within the context of EU monetary union obligations (See also Tinios, 2005 and Tsarouhas, 2012).

1.2. NEW INSTITUTIONALISM

Since the term ‘Europeanization’ is deficient in explaining the EU integration in theory, this thesis would borrow from ‘New Institutionalism’ theory. As a result, this chapter explores the importance of institutions in political life. Political actors’ actions are molded and restricted by the institutional frameworks in which they function. The so-called ‘new institutionalism’ in political science has a strong interest in this perspective and issue.

All throughout the history of political science, its fundamental interest has been the study of two concepts: power and institutions. While institutions make up a significant portion of the political scene, thus governance primarily takes place through them. Institutions are typically significant because they hold power and deploy institutional capital in political conflicts and governance relationships. In addition, it is claimed that institutions affect politics and political players’ attitudes and capabilities since they are seen in many ways, and they are also believed to have a role in both restraining and emboldening political behavior and decision-making. While it's difficult to nail down exactly what it means to say that a party system, electoral competition rules, government bureaucracies, parliaments, constitutions, and the judiciary have all been analyzed, in an institutional context, political analysts have studied a variety of organizational structures, from parliamentary systems to competition rules to government bureaucracies to the bodies of government we call the state (see Bell and Head 1984; Fenna 1998). Extensive research has also been done on supranational organizations such as the United Nations, the European Union, and other international organizations that control trade, the environment, or international commerce (such as the World Trade Organization). This thesis also studied organizations other than states, such corporations and trade unions.

Political science is the field that was established in the late nineteenth and early twentieth to define the formal institutions of government and the contemporary state. Most of the classic institutionalism in political science is focused on tracing the formal-legal and administrative arrangements of the government and the public sector. An institutionalized focus on “cumulative theory from today's perspective” is lacking (Shepsle, 1989: 132; Easton, 1971: 77; Eckstein, 1979: 6). The focus was on

interpretation, not on clarification or theory building. Studies frequently relied on an evaluation framework that aimed to evaluate institutions' compliance with democratic principles or a government's leader (Rhodes, 1995: 11). The older approach is still relevant. Most academic disciplines, such as political science, public administration, and constitutional studies, continue to rely on institutional structures. Structured laws and processes in the traditional setting more or less shape the political behavior. In this approach, the old and modern institutionalism can be differentiated (Hirsch, 1997: 12).

In line with that, in the current institutionalist analysis, this chapter discusses certain theoretical orientations. This theory emphasizes the role of institutions in evaluating political behavior as critical factors. Institutionalism, which is a reaction to the 'behavioralist revolution' of the 1950s and 1960s, calls into question the behaviorist denial of autonomous presence to political institutions, particularly the assumption that political actors are purely motivated by individual self-interest. Researchers increasingly apply this view to evaluate Member State behavior and to discover ways in with their membership in the EU's institutional setting, states have modified their behavior (White, 2004: 47). The new institutionalism advances beyond the previous version of institutionalism by evaluating not only the impact of organizations on individuals, but also the relationship between the two. As a result of human behavior, institutions appear to restrain the latter (Peters, 2000: 45). New institutionalism looks at the definition of 'institutions' as well as their broader social settings. A part of political life is constituted by norms, understanding, and values. As Thelen and Steinmo argued "institutional concerns will impact both political players as well as the allocation of power within a given democracy" (Thelen and Steinmo, 1992: 6). Furthermore, new institutionalism is very interested in understanding institutions in their distinct socio-historical settings (March and Olsen, 1989: pp.40-46; also see Hall, Rosemary and Taylor 1996; Peters 2000; Harmsen 2000; Lowndes 1996; Blyth 2002; Goldmann 2005; Hay and Wincott 1998 for further information on the new institutionalism).

1.2.1. Variations of New Institutionalism

New institutionalism is a broad term that covers a wide range of ideas. There are numerous approaches in the realm of normative, analytical, international, network, and rhetorical institutionalism as Peters (2019: 34) described. Modern institutionalism has developed via three versions: historical institutionalism (HI), rational choice institutionalism (RCI), and sociological institutionalism (SI), each trying to understand how institutions affect political policies and the results of these policies. To a certain extent, all institutions are conceptualized as structures regulating behavior.

1.2.1.1. Historical Institutionalism

Are there easier ways to explain the ‘situated subject choices?’. The most important argument of all forms of institutionalism is that institutions function when understanding political behaviour. An important question emerges, though, and questions how much are they essential? An argument was made in this thesis that the rational choice theory has contributed too much to a form of institutionalism known as ‘overdetermination’. The question at this point is: Can historical institutionalism avoid this issue?

Instead of being deductive like the rational choice method, the historical institutionalist approach is inductive (Thelen and Steinmo, 1992: 10; Hay and Wincott, 1998: 955). When it comes to historical institutionalists, rational decision-making is more important than adherence to rigid norms or strict institutional restraints. Instead of asking, “How can I maximize my utility in this situation?”, as in the rational choice method, the essential issue from a historical institutionalist viewpoint is, “What should I do about my position and responsibilities in this situation?” (Koeble, 1995: 233). It is referred to as the ‘logic of appropriateness’ in the existence of institutions by March and Olsen (1989: 89). The process of choosing acceptable action is more unrestricted than the well-defined, pre-packaged collection of reasons and objectives found in rational choice deduction. From a historical institutionalist perspective, the critical issue is that actors are also objects of perception and preference when they labor under constraint.

Historical institutionalism (HI) defines institutions as “formal systems and informal norms or processes, procedures, norms and traditions that implement frameworks” (Thelen and Steinmo, 1992: pp.1-33). Formal structures, processes, and informal regulations are all included under the umbrella word ‘institution,’ according to HI. To put it another way, organizations not only confine human actions, but they also define the interests and objectives of those who participate in them. Generally, HI implies that people adhere to socially determined rules that may be in conflict with their self-interest (ibid: 8).

The HI is generally combined with path dependency approach (PDA) (Ibid:2). The fundamental premises and arguments of the path dependence approach must first be understood in order to have a better grasp of the historical institutionalist view. According to this concept, “what happened in the past will influence the probable outcomes of a chain of events that occur in the future” (Hall and Taylor, 1996: 938). That argument emphasizes the importance of ‘history matters’ and the necessity of including it in institutional studies. However, this phrase has been used in a variety of ways in the literature. While there is an agreement that history matters, there is still disagreement on how and why history matters (Greener, 2005: pp.62-72).

The idea is that historical institutionalism helps to explain situated subjects' preferences in institutions. The inductive approach of historical institutionalism allows it to develop working models of rationality and actor choices from real data rather than abstract assumptions. A true micro fundamental description of politics and institutional activity must take player preferences and reasoning into account seriously. As Kato (1996: 557) argues, there is no need to employ logic to discriminate between different strains of institutionalism. The fundamental issue is how to cope with and use logic. According to Katznelson (1998: 197), the best approach is to look for: “situated understandings of rationality...which emphasise that rationality and preferences can only be inferred over time; that particular versions make sense only in specific normative and institutional settings which are culturally and structurally thick, not just strategically lean”.

As a result, historical institutionalists concur with rational choice academics in their belief that agents act in a strategically motivated way (Zysman, 1994: 244; Thelen, 1999: 375). The content of such strategic behavior must be specified, and we

must understand, via historical and empirical study, why some purposes or ends are prioritized over others.

Even while HI is better adapted to explain the stability and continuity of patterns, it remains limited in describing variations in these patterns, such as institutional change or evolution. This is one argument against HI (Hay and Wincott, 1998: 955). HI's primary concern is the long-term viability of these patterns. When it comes to the analysis of deviations from the pathways, HI is fairly powerful, but it still falls short in describing the causes and processes of these changes.

When it came to describing institutional change, path-dependence explanations were unable to do so since their focus was on external causes. Some organizations appeared to be able to undergo major transformations over time by implementing small, gradual changes. Thelen (2004: 13), for instance, investigated the German and other nations' vocational training systems and observed amazing changes occurring over extended periods of time, in which a system built for one set of purposes and an external system became fully adapted to another and yet another set of use cases. It's critical to note that these changes didn't happen all at once; rather, they were gradual and fragmented. After an early uncertainty phase, it was predicted that pathways would stabilize. However, this was at variance with this assumption.

As a result, course deviation becomes nearly unpredictable, which severely restricts the PDA's usefulness. Separating the mechanics of reproduction from the processes of production is an important feature of PDA. Predictability of reproduction is possible, but the mechanics of production remain a mystery that cannot be described or anticipated. PDA, and consequently HI, fail to explain why institutional change occurs at the time it does.

1.2.1.2. Sociological Institutionalism

Sociological Institutionalism uses a normative logic of appropriateness to claim that people act in accordance with what is socially acceptable. The way actors describe their aims and what they consider sensible action are heavily influenced by such shared understanding frameworks. Actors aim to match societal expectations rather than maximize their own interests in any particular setting. If we look at it from this

viewpoint, Europeanization means that member states are subject to and must adopt a new set of standards, norms, practices, and systems of meaning as they arise. A mismatch necessitates action that give rise to domestic change (Börzel and Soyaltın, 2012: 8).

An organizing myth lies at the heart of sociological institutionalism. Because people's real conduct is often distinct from the myths that justify our actions, this method is able to discern between institutions and actual behavior. It's also worth noting that, because of its roots in Weber and Durkheim, sociological institutionalism has had the most trouble adapting to institutional change. Because they are more concerned with explaining continuity than change, sociological institutionalists tend to view change as something that occurs via transmission rather than transformation via isomorphism.

SI believes that institutions have both a regulative and a constitutive influence on actors, in the sense that institutions help develop the identities of those who participate in them. In light of the fact that identities are believed to be the foundation of interests (Wendt, 1999: 12), SI regards interest as being internal rather than external to political processes. One manner through which institutions have a constitutive influence on actors is through the provision of a logic of appropriateness by the institutions themselves. March and Olsen (1984: pp.734-749), established a logic of consequentiality in opposition to utilitarian and instrumental logic, which they designated as the logic of consequentiality (LoC). It is their contention that "action is a choice that is made in terms of expectations about its effects, meanings are arranged to influence choices, and symbols are curtains that disguise the true politics, or products of an endeavor to make decisions" (Ibid: 741). Consequently, the anticipation of outcomes in terms of material interests are of key importance to the LoC. According to March and Olsen (ibid: 745), on the other hand, LoC overlooks the importance of identities, regulations, and institutions in influencing human behavior. Institutions, in the form of collections of norms, values, meanings, and processes, offer a logic of appropriateness that shapes actors' goals and limits their action by limiting their options.

In terms of institutional change, SI, like HI, focuses on understanding institutional persistence rather than structural change (Lowndes, 1996: 19). March and

Olsen (1998: 959) claim that “institutions protect themselves by adopting their own standards of appropriateness and success, resource allocation, and constitutional rules.” Routines are preserved through regular structure, socialization, and attention to organization. Thus, SI anticipates institutional permanence and stability rather than change. SI seeks to explain values' permanence rather than their emergence or change into new forms.

In conclusion, SI has a static view of institutions and is more effective at conceptualizing norm compliance than norm selection or normative change.

1.2.1.3. Rational Choice Institutionalism

The rational choice approach, which draws extensively on economics, employs a ‘deductive’ technique and borrows substantially from economic theory. The term ‘deduce’ refers to the process by which explanations and working hypotheses are derived from abstracted first principle hypotheses about the motivation and behavior of actors. The rational choice strategy, as its name implies, is predicated on the assumption that agents make reasonable decisions (Shepsle, 1989: 1340). Actors are also supposed to be self-centered persons who want to maximize their own usefulness. As a result, it is presumed that their major motivations are self-interested.

Institutions are both a cause and a consequence of behavior, and this approach emphasizes logical calculation as an equally essential factor. Individual actors establish institutions for rational goals, according to rational choice theorists, and individual actors actively alter and shape institutional contexts to meet their objectives. For their part, historical institutionalists emphasize the ‘embeddedness’ of institutions and challenge the rationalist's presumption that meaningful perceptions of rationality can be developed a predetermined, or without first examining particular manifestations of rationality and behavior in specific institutional settings. According to Koeble (1995: 235), “Individuals are considered as entrenched in so many social, economic and political linkages beyond their control and even awareness that it is nearly ludicrous to speak of utility-maximizing and rational behavior in a merely economic sense.” To understand reason, one must understand the context in which it was developed. Consequently, historical institutionalists emphasize the historical and

evolutionary aspects of institutional change, whereas rational choice authors prefer to emphasize institutions as the consequence of individual behavior rather than the product of institutional change itself.

For the construction of models of interdependent decision-making in research on European integration, analysts have mostly used the non-cooperative aspect of game theory. Using this logical technique, we may determine equilibrium states by looking at how well the various agents involved respond to one another's best efforts at achieving equilibrium. In a situation where no one has a reason to walk away, the optimum actions of each player are constrained by the tactics of the other players. To put it another way, Nash equilibria are those outcomes that combine the optimal replies from all the participants (NE). One of the most important contributions to game theory was made by mathematician and Nobel Prize winner John Forbes Nash Jr. (Nash, 1950). Simple strategic models include several equilibrium predictions, therefore game theorists have refined Nash Equilibrium ideas like subgame perfect (SPE) or perfect Bayesian equilibrium to account for this fact (PBE). Controversial are some of these theoretical changes, which imply that the modeled agents must meet additional rationality standards (Binmore, 2008: 43). Therefore, in comparison with HI and SI, rational-choice definition of institution puts less emphasis on cultural elements.

For RCI, institutional reform is just as deliberate as institutional construction. The term 'objects of choice' is used by RCI when referring to institutions. Then, the strategic actions of people create institutional transformation (Nielsen, 2001: 506). As a result, RCI offers a pragmatic perspective on institutional reform (Lecours, 2005: 12). When institutional settings yield defective or inadequate outcomes, actors look for alternatives to maximize their own benefits.

RCI models of EU integration based on the three decision-making modalities of bargaining, voting, and delegation. Contributions to the literature take into account at least one of these modalities and attempt to explain how EU actors develop or alter rules, or how they function in the shadow of a specific regulation. Constitutional conventions or (in the case of the European Union) intergovernmental conferences are two instances of decision making regarding regulations that are commonly seen. The process of making such choices often involves delegation (diplomats who draft the agenda), negotiating, and an implicit or explicit vote on the outcome of the

negotiations. Decision-making within regulations takes place between and inside the main intergovernmental and supranational organizations of the EU; it also incorporates a variety of decision-making processes on a regular basis, which is equally important. The European Council, which brings together the heads of state and government of the member states, and the Council of Ministers, which brings together ministers who share the same agenda and meets primarily to influence legislative decisions, are the two most important intergovernmental institutions in the European Union. The European Parliament, the European Commission, and the European Court of Justice are the three primary actors that are frequently credited with advancing supranational tendencies in Europe.



CHAPTER TWO

AIR TRANSPORT POLICY OF THE EU: EUROPEANIZATION

The European Union (EU) has given rise to a tremendous development in air transport. European aviation has been characterized by protectionism and fragmentation prior to the establishment of the single market in the aviation sector. (Button, Haynes and Stough 1998; Sinha 2019; Doganis 1985; Kassim 1995; Sochor 1991). The industry has been divided into regional markets which are regulated under absolute state sovereignty through state regulations. As Kassim (1995: 21) points out, governments tend to implement their hegemony to boost the needs of state-owned 'air national champions'. Countries settled in-house regulatory barricades and implemented the rules of bilateral air services agreements, the global commercial aviation mechanism to defend their carriers on domestic and international directions. Hence, there was competition in quite a few countries which is precisely limited. It was rare for independent carriers to be allowed chances.

The effect of the European Union has revolutionized the sector's structure and legislation. Not only has the EU designed a regional structure, but it has also displaced a state-centered regime. It has created a multilateral regulatory framework dominated by a supranational regulator. Airlines which had previously been subsidized by governments no longer supported and protected by countries. The national flag carriers that are now called legacy or full-service carriers (FSC) are no longer owned by governments. The main characteristic of the EU aviation industry is the rivalry in the Single Market generated by the EU between flag carriers and low-cost carriers. (see Calder 2002 and Lawton 2002). Any European airlines able to operate on any route between or within member states of the European Union. Unlike previous situations, they could act independently and decide on the services they will be providing about frequencies and tariffs. The industry players no longer confronted stringent anti-competitive restrictions imposed by governments which had traditionally been the main characteristic of national aviation policy.

The effect of the EU on the creation of a new aviation industry framework has been critical, resulting in far-reaching domestic and international outcomes. In addition to the flexible regulatory structure in which low-cost and other independent

air carriers are able to enjoy their unprecedented rights, the EU has forced state-owned flag carriers to restructure their businesses and comply with competition rules that restrict government subsidies and protection. Since the early 1990s, Union policy and especially State aid legislation also led to privatization. In fact, the creation of a single market in the air transport industry culminated not only in the commercialization of flag carriers, but also in the consolidation and application of the competition rules imposed by the European Commission, which profoundly changed the business. Indeed, the impact of the US has undoubtedly played an important role in liberalization, but without those developments EU liberalization would not be conceivable.

Developments of air transport have been wide-ranging and have, meanwhile, been influenced within a short period of time. Although the Union confronted its role in the transition with different types of barriers, actions taken by the EU were notable. The EU faced unseen hindrances. Firstly the regulations and conditions has been developed for the aviation market (Hancher and Loran, 1989: 12). Aviation has been dominated by an international regime regulated through several treaties such as the Chicago Convention, bilateral air service agreements and national regulations. The aviation problems mainly produced between the 1940s and 1960s were guided by international and regional institutions. Second, EU member states supported by national flag carriers were opposed to interference with the Union. From the Messina Conference on, which was a key turning point for the negotiation of the Treaty of Rome, the governments of the EU member states had explicitly refrained from participation in air transport management through Brussels. They acted in support of the Chicago system because they were pleased with the vast control it offered them, and they were dismayed by any reform which may undermine their capability for dominate and preserve their aviation industry. Moreover, they considered the EC to be a rather cumbersome bureaucratic structure and not an expert in aviation issues, and could not predict how useful the involvement of the Community would be. Thirdly, the terms of the EEC Treaty according to which Article 84 (now Article 80) seemed to give to the Council of Ministers every judgment on possible Community interference decided by all. Therefore, blocking action required opposition from only one single government. Article 84(2) of the Treaty also contributed to the debate that

air and sea travel, in particular the competition regulations, had been left out of its general conditions.

Although the situation was heavily regulated, the Community became a key regulator and decision-making part of the aviation industry emerging as a local and global actor despite government resistance to its existence and the uncertain position of the aviation sector in the Treaty. As a result of the approval of the first liberalization package in 1987, followed by the second in 1990, and the third in 1992, EU air transport has been changed in parallel with those EU initiatives. Among other things, it has placed significant restrictions on member nations' sovereignty and inserted a new component into the international aviation system.

The common air transport policy of the Union evolved on the basis of the concept of state sovereignty within the already existing international regime. Key functions at the international and local levels are implemented by international institutions. Within the traditional regime structure, the states had core positions determining the rules for airlines flying points within their area and setting their domestic market. As Balfour stated (1994: 1026), governments have recognized aviation as a particular element due to the political, social, and economic functions it plays in creating linkages inside the state and between the state and the rest of the world. However, as Lissitzyn claimed, no other comparable global economic practice was more tightly controlled, less exempt from official restriction and instruction (Lissitzyn, 1968: 85).

This chapter analyzes the structure and organization of that aviation and air law system under the international regime. In addition to providing a benchmark for assessing the changes affected by EU practices, it advocates that external factors have a crucial impact on the development of EU policy. This thesis shows, in the example of air transport policy, how the international framework deeply fulfilled the expectations for Community involvement and action in the field. Until the beginning of 1980s, protectionism enabled countries around the world to use their powers under the regime of the Chicago Convention to backing their aviation businesses and flag carriers via rigid and comprehensive regulation. EU member nations, like other governments around the world, took advantage of far-reaching flexibility to achieve political, sectoral and economic goals, in addition to expanding communication via air

transport without the need to engage the Union. Additionally, in the late 1970s, domestic deregulation in the United States resulted in a significant transformation of the old regime. The adoption of a new government policy, which is a liberal option to old policies of inflexible state hegemony and interference, altered the Community's opportunity structure. It originally created a gap in the old system and bolstered the liberal foundation upon which the Commission would stand. Additionally, being a local player endowed with international powers, the EU possessed the opportunity to progress a liberal order that neither member nations nor other international institutions, such as the ECAC, possessed. Eventually it leads to the establishment of US mega-airlines and the need for European flag carriers to look for ways of competing.

The argument component of the thesis is divided into two parts. To begin, this section discusses the beginnings of international air transport regulation, focusing on the pre- and post-Chicago eras. It delves into the distinctions between scheduled international, non-scheduled international, and domestic air travel. Second, it is concerned with the development and regulation of aviation in the United States. It examines domestic aviation deregulation and its ramifications, as well as the new US foreign aviation strategy and its ramifications.

2.1. INTRODUCTION TO INTERNATIONAL AIR LAW

Prior to the negotiation of the Rome Treaties, an international regulating framework for aviation was already underway, encompassing both technical and economic components. The 1944 Chicago Convention was founded on the notion of state sovereignty. In accordance with this agreement, the Paris Convention, the first international aviation pact signed in 1919, was re-approved. The Chicago system is quite intricate in its structure. The International Civil Aviation Organization (ICAO), an intergovernmental agency established under the Convention, controls the industry's technical components. On the other hand, three distinct sets of laws and regulations control the economic dimensions, which comprise scheduled international, non-scheduled international, and domestic air services. Governments retain ultimate authority in each domain. The most significant and complex category of governance arrangement is relatively international scheduled one.

2.1.1. The Chicago Convention and its Impacts

The post-war mechanism that regulated international scheduled air services consisted of three key factors, a variety of international agreements agreed under the Chicago Convention; the bilateral aviation agreement system; and the establishment of a trade association named the International Air Transport Organization (IATA) organized by international airlines which is called 'flag carriers' to determine the number of international air carriers.

Sovereignty, which provided governments control over industry after the post-war framework for peaceful transportation growth was formed, was expected to regulate air travel. But even so, the US pushed on international air traffic rights exchanges instead of bilateral accords, which gave airlines total independence from their governments. US and European aviation designs have notable differences. Most state-owned European carriers focus on prestige operations without profit or efficiency, and some of them also have mercantilist goals. The US's promotion of multilateralism in the Havana Conference in 1928 was linked to Pan American's rise in South America, therefore it did not become an advocate for free-market competition in international air transport upon becoming the world's largest aviation power in 1944. (Sochor, 1991: pp.7-8). Despite the absence of connectivity, the United States along with South American countries worked to make air freedom worldwide (Gidwitz, 1980: pp. 49-50).

Despite the destruction of Europe's planes, nations decided on a more restricted strategy. Concerned that the clear blue sky of competition would result in quick and complete American hegemony over civil aviation outside the communist bloc, the Soviet Union resisted the introduction of competition (Lyth and Dienel, 1998: 3). The United Kingdom created a national regulatory organization responsible for licensing airline businesses, allocating routes, determining flight frequencies and pricing, and correlating the number of passengers with an airline's capacity (Sampson, 1984: pp.67-68; Sochor, 1991: pp.8-9). Australia and New Zealand, following the UK's lead, advocated for all international services to be owned and operated worldwide. On the other side, other states desired to retain their sovereignty. Security concerns and the necessity of supporting their airlines against US dominance meant that sovereignty

ruled in the aftermath of the War. To bolster that, the International Civil Aviation Convention's opening clause states: "Contracting States recognize that each State has complete and exclusive sovereignty over the airspace above its territory."

While it was at the time a failure due to participants' reluctance to accept a multilateral aspect (Naveau, 1989: 27), six significant legislative instruments were established by the Chicago Conference, five of which still control air transport operations today (Sochor, 1991: 12). Among its many accomplishments, ICAO continues to serve as the aviation industry's standard-setting and regulating body. In terms of economic regulation, the Chicago Conference established key concepts and established a context that supported the creation and expansion of international aviation.

2.1.2. ICAO and the International Regime

The foundations of ICAO can be traced back to the dispute over the concept of a multilateral framework regulating civil aviation activity between nations. The two utopic extremes, the dream of unfettered competition in the skies and the temptation toward ultimate regulation, were both resisted by the emergence of a multilateral body endowed with regulatory authority over safety, security, and technical issues, as well as advisory authority over the newborn regime in Chicago's peaceful operation. Whereas the former incorporated a strong element of regulation through the monitoring of airlines' and airports' operating authorizations, the latter, lacking any enforcement mechanism, relied on relatively insecure normative foundations. Intersubjectivity and normative patterns acquire analytical significance in the autonomous advisory body that has a limited impact on the course of the international aviation system's economic structure. This is why these precarious foundations deserve to be thoroughly examined. (Milde, 2008: pp.15-16).

The forefather articles upon which ICAO is founded deserve to be the initial focus. Signatory governments to the Convention on International Civil Aviation agreed to establish a provisional forerunner of ICAO, PICAQ, to carry out the objectives outlined in Article 44:

"The aims and objectives of the Organization are to develop the principles and

techniques of international air navigation and to foster the planning and development [emphasis added] of international air transport so as to : (a) Insure the safe and orderly growth [emphasis added] of international civil aviation throughout the world; (b) Encourage the arts of aircraft design and operation for peaceful purposes; (c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) Meet the needs of the peoples of the world for safe, regular, efficient and economical [emphasis added] air transport; (e) Prevent economic waste caused by unreasonable competition; [emphasis added] (f) Insure that the right of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; (g) Avoid discrimination between contracting States; (h) Promote safety of flight in international air navigation; (i) Promote generally the development of all aspects of international civil aeronautics. (Convention on International Civil Aviation, 1944).”

2.1.3. The Regulation of International Aviation: Bilateral Agreements

Following the expansion of liberalization after the war, the Chicago Convention described air freedoms as the number of commercial aviation rights enabling an airline of a nation to have the privilege of accessing and landing in the airspace of another country. Air rights that might be agreed upon between states had been proposed by the United States, but other nations were worried that U.S. airlines would control the whole aviation industry if there were no rigorous regulations. When it comes to managing the regional civil aviation route network, freedoms of air are a critical building block (Lee, 2013: 5).

The International Air Transport Agreement, which was signed in Chicago, establishes the air's five freedoms. These are the following definitions:

First freedom: the right or privilege in respect of scheduled international air services, granted by one State to another State or States to fly across the territory without landing which means that an airline from one country can overfly another country's airspace.

Second freedom: the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-

traffic purposes which means that commercial aircraft can land to refuel in another country.

Third freedom: the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to put down in another state passengers, mainland cargo from the aircraft's home state;

Fourth freedom: the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to take on board in another state passengers, mail and cargo destined for the aircraft's home state;

Fifth freedom: the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of first State, traffic coming from or destined to a third State which means that an airline can embark passengers from its home country, deposit them at the destination, and then pick up and carry passengers on to other international destinations.

The International Civil Aviation Organization (ICAO) refers to all freedoms beyond the Fifth as 'so-called' since only the first five freedoms have been recognized as such by international convention.

Sixth freedom: the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States which means that an airline can carry passengers or cargo between two foreign countries, in that the aircraft lands in the airline's home country.

Seventh freedom: the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e the service need not connect to or be an extension of any service to/from the home State of the carrier which means that an airline can carry on flights that originate in a foreign country, bypass its home country, and deposit the passengers at another international destination.

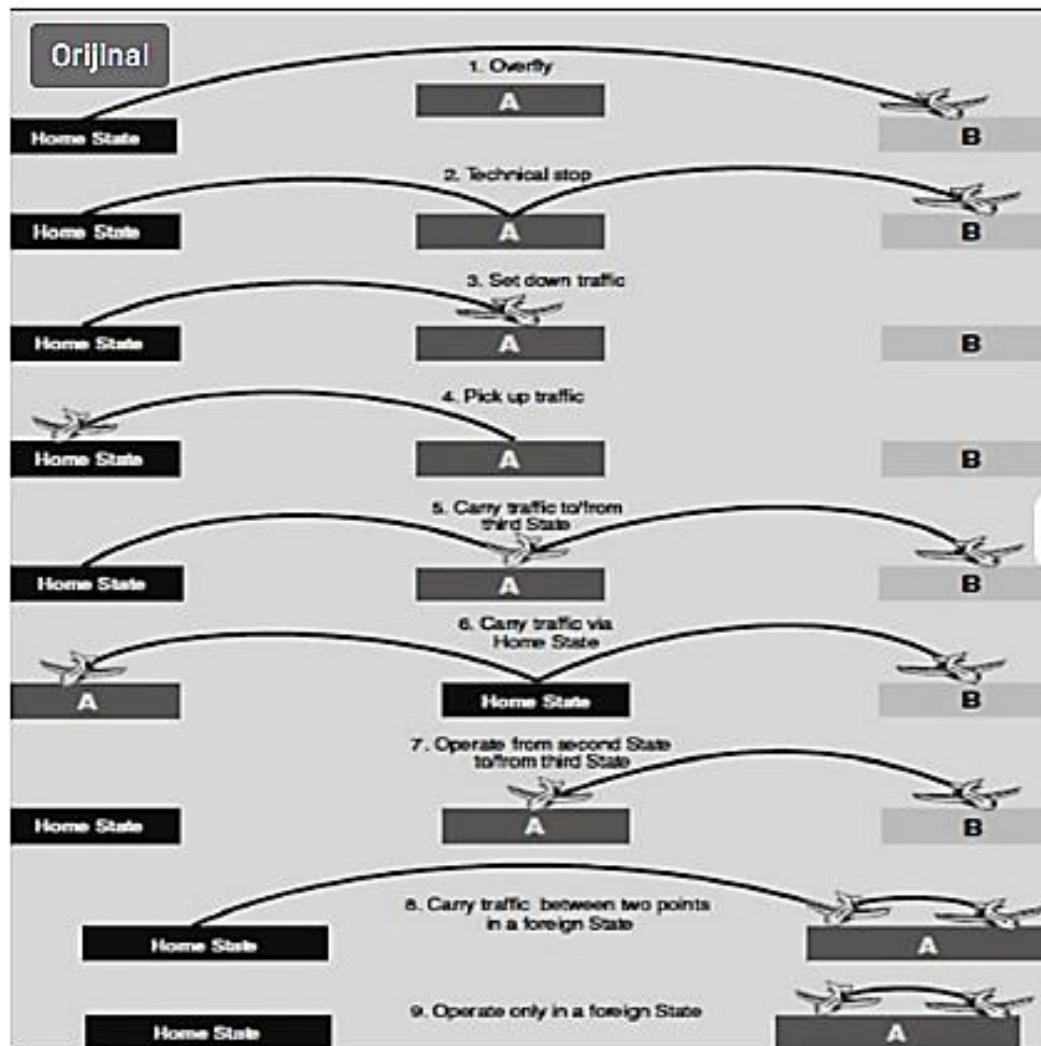
Eighth freedom: the right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air)

outside the territory of the granting State (also known as a Eighth Freedom Right or 'consecutive cabotage'). This means that an airline can carry passengers from one point in a country on a flight that originates in the airline's home country. Indeed, this freedom is not widely used outside of Europe.

Ninth freedom: the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State which means that an airline from a particular country can originate a flight in a foreign country and carry passengers from one point to another within the foreign country. This is also known as the stand alone cabotage and does not directly relate to one's own country.



Figure 2: Freedom of Air



Source : Created by Author

Bilateral air services agreements (ASAs) enforced in the absence of a multilateral deal to swap traffic rights. This resolution engages in an international treaty. Articles 1 and 6 of the Chicago Convention define the legal status of those agreements. The first demonstrates the state sovereignty concept; the second necessitates specific authorization for the operation of scheduled international operations. Such service agreements put the state at the heart of the industry. Known as a regulatory tool, it allows countries to have precise control over their territory's air services. Therefore, for their aviation activities airlines were wholly part of their governments.

2.2. AIR TRANSPORT DEREGULATION IN US

In 1938 the U.S. the air transport routes were governed by the Federal Civil Aeronautics Board (CAB), as well as the schedules and fares. Throughout this period, a point-to-point inefficient transport system emerged from the CAB. Commercial airlines were only able to fly domestic routes which the CAB did not actually regulate (Morrison 1989, p.21). The CAB typically the ticket prices in financial terms, especially on short haul routes. Likewise, heightened long haul flying prices were more lucrative for airlines. Meanwhile the CAB also made it compulsory for airlines to have a decent return rate with constant airfares (Baik, Kwak and Lee, 2011: 594).

The aviation industry experienced significant technological developments during the 1960s. For instance, when airline services were being brought forward by jet engines, aircraft were able to fly faster than before. As a consequence, flight and passenger numbers grew exponentially (Global Airline Industry System, 2006: 16). The U.S. aviation sector has, however, developed quite slowly under highly regulated conditions. The CAB also opposed allowing new or already-designated airlines to enter the market and compete with each other's routes. Heavy regulation has transformed the sector into geographical monopolies, accompanied by low economic growth, high prices and reduced efficiency. At the beginning of the 1970s, due to the higher operating costs and lower revenues, most carriers could not sustain their commercial activities (Thierer, 1998: 12). As Bailey noted, "the pre-1975 decade had been characterized by double-digit inflation and high unemployment. Wage and price controls were proven and failed. The stage for economic regulatory reform has therefore been set." (Bailey, 2008: 3).

In the late 1970s, the U.S. government arose aeronautical legislation to expand the size of transportation infrastructure and save the airlines. Upon demonstrating its efficacy, President Jimmy Carter signed the Airline Deregulation Act on 28 October 1978 (Goetz and Vowles, 2009: 32). The Act envisaged the implementation of a phase-out in the CAB rules by 1981. (Bailey, 2008: 6). Since the government reduced its involvement in the aviation sector and removed strict regulations, domestic air travel increased dramatically and average prices decreased by 40 percent (Goetz and Vowles, 2009: pp.35-39). Between 1977 and 2006, the number of U.S. airline passengers grew

significantly. Parallel to the achievement of U.S. deregulation, the liberalization of air transport has spread worldwide, initially in Europe and later on Asia and South America (Shaw et al., 2009: 56). It appeared in accordance with the air transport deregulations, hub and spoke system, open skies and free market entry and exit.

Another dimension of the US policy of deregulation targeted to extend international opportunities for US airlines. The US government tends to renegotiate the bilateral aviation agreements on more favorable terms just after it introduced the reform act in August 1978. Strategic objectives of U.S. aviation policy included liberal charter implementation, multiple designations, more routes for U.S. airlines, and better freedom of airline to determine prices and frequencies. Firstly, they signed new deals with Israel and the Netherlands. The agreement signed with Israel was similarly bilateral 'free skies' enabling airlines to fix prices until disapproved by both governments. As for the Netherlands, agreement established country-of-origin rules for charter fares which is in turn an indication of the sixth freedom of traffic rights mentioned earlier. The US placed leverage on other European countries once it had granted free access to the Dutch aviation industry. Including Belgium and Germany, the United States had signed 23 open skies agreements by 1982. When it comes to commercial potential for American airlines, bilateral open skies and the US-ECAC agreements have a major influence on this expansion. They affected discussions on the future design of aviation policy in Europe, and introduced developments that the European Commission had implemented and incorporated into its proposals.

US deregulation and liberal experience have had common impacts. By launching a different tactic to the stringent regulation that conquered the aviation sector, a global discussion began on how to regulate the air transport sector. Mostly inspired by the actions of the US, Australia, Canada, China, Japan, New Zealand and the UK has taken action so as to deregulate their domestic air transport industry. In Europe aftermath of US legalization, a strong debate on the current system and likely future liberalization started. Administrations in the UK and the Netherlands, as well as the Commission and private carriers have spoken out in favor of better provisions for industry. Nevertheless, the status quo was protected by a large portion of states, particularly France, and the key European flag carriers. This condition arose in part from worries over European carriers' ability to compete against US firms (Boyer,

1985:21).

Furthermore, the US experiment on liberalization showed the benefits and disadvantages of deregulation. Lower prices, operational quality and more passenger service choices emerged as a consequence of globalization. On the other hand, aviation market volatility, negligible income, relatively high costs at short-haul flights, low salaries for airline employees, and major airlines' oligopol design can be viewed as deregulation disadvantages.

Ultimately, as can be seen from the above-mentioned debates, states have put themselves at the heart of the international aviation system. Governments directed how they would operate to, from and within their territories under the provisions of the bilateral agreement framework on the terms of the air transport services. Till 1970s, countries took aviation for as a public service and used their authorities through strict regulations to support and protect their national aviation sectors. However, a new policy paradigm has emerged, the game-changing decision of US deregulation of its aviation sector, and to export its deregulation and liberalization to other countries around the world. In the wake of deregulation, a small number of countries adopted the US case, but the majority of them preferred to maintain the status quo and oppose liberalization, which they supposed would endanger their aviation market's stability.

Within the European Community, the experience of the US influenced the majority of policymakers, nevertheless, firmly believed that the aviation industry was something unique and required strict regulation. In fact, the terms of the EEC Agreement seemed to offer Member Governments the power to reject all move for reform and liberalization.

2.3. GENERAL AVIATION POLICY IN EUROPE

Throughout Europe the air transport sector and market operated inversely compare to the US. Nevertheless as Davies argued (1964: 292), on both sides governments involved in the industry by state supports to private carriers, in Europe it slowly became more far-reaching, culminating in the development of the flag carrier system. Publicly owned airlines protected at the center of national aviation industries and they had an advantaged position. While US airlines has privatized and had

struggles to compete in the industry due to strict regulation, thanks to government investment and funding, European airlines has remained largely at ease. They concentrated not on making money but on the production and services. Their companies are controlled under the supervision of the governments in accordance with the economic, military and sector policy aims of the states.

This chapter of thesis examines at the evolution of national aviation policies and decision-making mechanisms in Europe prior to the existence of the EU in the 1980s. It defends the three major features were designed for European aviation. Firstly, it based on the strategy of the flag carrier. Although there were different interests in the negotiation between states and airline companies (Staniland, 2003: 6), the fundamental relationship was in exchange for the state's security and subsidies and on the airline side it was the enforcement of commitments to operate particular routes. In addition, the European aviation market was governed by the state's engagement in the notion of sovereignty, which influenced both economic and technical organization. Aviation markets in Europe were smaller than in the United States, and airlines had to cope with a variety of state institutions. Third one has been lack of market competition. The European aviation market has been based on close relationships between states, governments and airlines and between airlines. The situation gave rise to cooperative rather than commercial air transport sector.

Although in other industries such as communication and electricity, liberalization and legalization slowly emerged during the 1980s (see Wright 1994), most countries and airlines found it too extreme for the aviation sector (see OECD 1991). In line with that, this chapter explores whether governments and flag carriers have been strong advocates of the traditional regime that remains. In the meantime, it is attempting to point out why they reject not only deregulation and liberalization but also Community interference.

The aircraft considered to be used merely for sport or military aims until the end of the 1st World War. The war changed the development of aeronautics greatly. Aeroplanes and manpower became essential in the aftermath of the war. Commercial air transport companies launched their business selling passenger seats. Civil aviation, however, became highly dependent on government subsidization due to high operating costs and limited passenger numbers. It was considered at the beginning that this stage

would be transitory, and commercial airlines would soon be able to complement themselves, but in reality only government involvement in the sector increased. As Staniland notes (2008: pp.17-35), the first subsidization of several private airlines occurred, accompanied by privatization, and eventually statization development built the model of aviation, where states regarded a significant presence in commercial airline ownership and management (Lissitzyn, 1942: 98).

2.3.1. Subsidization

States have had plenty of reasons for air transport growth. As Thompson (1990: 54) observed, in emptier and vaster continents European behaviors were very different from governments. Their goal was to bring colonies and settlements overseas back to their homelands. Flag carriers signified sovereignty and control, and it assumed means of spreading cultural influence (Lissitzyn, 1942: 60). Despite their passion for the newly developed sector, policymakers became ‘aeronautics club members but never developers’ (Staniland, 2003: 17). Throughout time, states kept their subsidies limited to airlines. In the Netherlands, for instance, subsidization was only given to one carrier called KLM, while several carriers throughout England, France and Germany were recipients of government financial aid. Consequently, these carriers were operating on the same routes, and since this was not lucrative and effective for long-term strategy, states started to move to merge.

In France, on the opposite, the initiative was hampered by a split parliament and poor management. However, just after 1933, the French government created Air France as a mixed company composed of five private airlines. While, the government decided to provide financial support to private carriers requiring Air France to continue flying on existing lines avoiding concessions on those routes for another 20 years.

2.3.2. Consolidation and Statization

Consolidation greatly enhanced the strategy, but some problems arose with the new form of the flag carrier's as private companies. While governments used subsidies to put pressure on economic and operating actions (Lissitzyn, 1968: 187-99), they

recognized that only state ownership and the government's active involvement in administration could provide the best regulation so as to equally share the risk between state and airlines. Governments extended their presence by statization in all states taken assessment. To do so, they strengthened their shareholdings and expanded their influence over their national airlines' management bodies.

The policy was first put into practice in Germany. In the mid-1920s, statization had been introduced as consolidation. The Dutch statization for its flag carrier KLM, on the opposite, was achieved in 1930. Although the government became the airline's majority shareholder, and government approval was needed for operating actions, the airline officially remained a private firm.

As for France, statization was relatively modest. The government strengthened its influence over Air France by nominating two board members who were allowed to veto any management decision that they found the board's decisions to be detrimental to the public interest (Lissitsyn, 1942: 116). The plans of the airlines had agreed by the government, and it was necessary to buy airplane that manufactured in France. The UK has meanwhile been the last country to adopt statization. The advice of the 1938 Cadman Report, that offered fragmented global services between Imperial Airways and British Airways, was preferred not to be taken into account. Alternatively, a single state-owned airlines is established by the state and given a monopoly over international routes by the state. By 1939, despite various approaches taken by governments, air transport had established itself in Europe (Davies 1964: 20-38).

When Chicago Conference reapproved state control on the aviation industry, European governments began transforming their aviation industries. Governments had to restructure their aviation sector as a main concern, safety and security, since it was essential for economic development and reconstruction. European states, especially Western ones, restore their flag carriers (Davies, 1964: pp.281-84). State subsidies continued for various airlines in Greece and Portugal until a national flag carrier airline had established in the 1950s.

National flag carrier airlines were brought into the center of state policy in the reestablished aviation market. Indeed, their economic importance grew after 1945, when technological developments rendered the first operationally effective and commercially viable aeroplane usable during wartime. Operating costs have

plummeted, rendering the air transport market attractive to passengers beyond a small elite community, and lucrative. Traffic transported by major European airlines rose nineteen per cent between 1946 and 1961 (Staniland, 2003: 69). Although the rise in traffic flow and the number of passengers allowed several state airlines to make income in the 1960s, excluding them from state subsidies to offset operating costs, they also required state financial support, especially in the procurement of fleets. The development of long-range planes which had lower operating costs, changed aviation significantly.

National airlines have relied on government for economic and protective incentives. Internationally, they were only able to operate destinations through which their states had agreed and accessed. Aeropolitics had become more relevant as recent developments were opening up the air travel industry in the North Atlantic. On the other side, as African and Asian countries had their independence which resulted in the removal from their aviation sector of several European flag carriers, global service providers appeared and airline route networks grew. The flag carrier airlines often seek protection from non-scheduled (charter) carriers from the governments. High-cost national flag carriers could not cope with low-cost charter airlines, and thus put pressure on governments to tightly control non-scheduled flights. In addition, some flag carriers were setting up their charter subsidiaries to cope with the increasing competition. In summary, flag carriers have been the beneficiaries of strictly controlled market access, privileges, promotions and distributions, such as the exclusion from national competition laws.

To conclude, European air transport has developed quite differently from that of the US aviation industry. Although both have been governed through strict legislation, European states have adopted a more protectionist strategy over aviation sector. While United States carriers were already private-owned companies, European governments opted to create flag carriers that were publicly owned. Having control granted thanks to the Chicago government, they established methods to protect their national flag carrier. To sum up, the aviation sector in EC was characterized by unique legislative structures, cartel-like conduct through international level on the part of airlines, and the predominance of a large, mostly publicly owned companies in the countries. Putting these considerations together, it has made it difficult to demarcate

between regulatory interventions, inter-company collaboration and industry lobbying (Holmes and Gowan, 2004: 140).

Furthermore, the gap was not only between Europe and the US but there were also important differences among European countries. As indicated in this chapter, the ultimate goal of the national policies was generally different. There were differences in implementation, policy-making approaches, and specifically in governance structures related to national flag carriers, mostly through government traditions and capitalism design. However, governments have shown themselves deeply committed to comprehensive involvement in all cases.

Consequently, after a time of deregulation it is crucial to understand the gap between the European and US air transport markets. The US airlines emerging in the 1980s were big, strong, and mostly domestic. European carriers on the opposite became international airlines. These were generally small relative to U.S. competitors, and had poorer performance standards. The reason was the difference flight time, yet a significant detail was also the higher employment costs.

2.4. EXPANSION OF THE EUROPEAN UNION'S AVIATION POLICY

Present EU studies aim to diminish or exclude the international framework of the EU policy development. Nevertheless, this thesis suggests that external factors can impact the prospects of EU involvement and therefore may have a significant influence on Union policy. In the context of air transportation, the Chicago policy presented the Community with a potential framework which was unfavorable to Community involvement. Member countries were satisfied with the independence finding that the mechanisms connected with the traditional system sufficiently fulfilled their need for collaboration or collective action. The condition further improved in the wake of the US's implementation of its current aviation policy.

This section explores the era from the beginning of the 1940s to the beginning of the 1980s reflecting on Europe's domestic order. It examines how European states cooperated in the 1960s and 1970s and displays why member countries favored aviation issues in that organizations. It addresses the manner in which the EC member countries have already sought to impede Community participation in the sector in

preliminary consultations and discussions leading to Treaty of Rome. This illustrates how until the end of the 1970s, Member countries were able to refute Community capability in air transport field and avoid debate inside EC system in the light of the supranational forces of the EC and expansionist liberalization tendencies implied by the Treaty.

This chapter claims that the 1974 decision of the Court in the case of the French Seamen triggered the first breach of opposition in the member state, contributing to the first consideration of aviation issues within the Community system in 1977. Although this did not result in a drastic shift, this decision was the first in number of relatively small changes which made it obvious that member states wouldn't behave autonomously and they were limited by their Community law. The decision also offered a major impetus for the Commission, which in its aftermath hired its first aviation specialists and started developing expertise in the area in readiness for the Council's discussions. When the transition in US aviation policies gave rise to international controversy in 1979, the Commission issued to put forward a comprehensive Community recommendations.

This part of the thesis was split into three parts. The first address in the European aviation field after the war. It discusses the two major regional institutions of EASA, ECAC and EUROCONTROL and examines the reasons for their formation, their roles as well as their mechanisms and structure. It also presents information about the Air Union program. Despite the fact that the project was eventually terminated, the topic demonstrated the determination of the European Community Member States (particularly France) to cooperate firmly outside the Community in matters of air transport. The second part deals with the Treaty of the EEC. It discusses its general characteristics-the purpose behind the Treaty, the key concepts and goals and the mechanisms established to meet its aims-as well as the clauses specifically relating to air transport. This defines the aviation status discussion found in the Treaty.

The third section addresses the efforts of the Commission and the Parliament to develop Community knowledge and stimulate European Community involvement in aviation between 1958 and 1983. It indicates that in the 1960s and 1970s the Council was able to reject or disregard the recommendations of the Commission, but the situation shifted in 1980s. It also considers the Court's 1974 decision in the French

Seamen case and its consequences, as well as the Council's first lengthy discussion of aviation concerns and the beginning actions to be done. It also reviews other choices that have gradually weakened Member State sovereignty and tracks the evolution and expansion of the Commission's competence and trust.

Given the continued interest in aviation on the part of the Council of Europe, it never managed to become a major player. Accordingly, after 1945 two expert aviation organizations were founded in Europe. Most specifically, the EASA and ECAC became the primary forum for discussion of safety, technical, regulatory and aeropolitical concerns. The European Organization for the Safety of Air Navigation (EUROCONTROL) is an institutional agency engaged in the regulation of air navigation services. In addition, in 1950s the Air Union project was also launched.

2.4.1. EASA

EASA was officially created in 2002 and is located in Cologne, Germany. The principal objective of the agency is to ‘establish and maintain a high uniform level of civil aviation safety in Europe’ (COM 2008, No 216/2008).

From 1991 on, when the EU proclaimed that aviation safety regulations had to be harmonized, the EU's strategy for civil aviation safety was based on the execution of Joint Aviation Requirements (JARs) (EC 1991, No 3922/91). These requirements were established upon in the Joint Aviation Authorities (JAA), an informal network of national aviation authorities (NAAs), to ensure the harmonization of standards, and in particular the consistent implementation of these throughout the EU.

However, the JAA was unable, or was seen to be incapable, to ensure the uniform implementation of standards across all member nations. In 1998, EU transport ministers resolved to shift certain national-level responsibilities to a “single expert body at the European level that issues certificates and conducts investigations and inspections” (Pierre and Peters, 2009: 340). The European Aviation Safety Agency (EASA) plays a crucial role in the application of aviation law. Its primary functions are rulemaking, certification, and standards. This does not imply that rulemaking and certification cannot contribute to the application of EU law. The agency's rule-making division prepares aviation safety regulations and offers the European Commission and

member states with technical guidance. Importantly, when technical problems arise, the Commission must consult the agency.

Differently from and as opposed to the JAA, EASA can take ‘binding’ decisions. While individual member states still carry out operational tasks such as certification of individual aircraft and licensing of pilots, the agency now grants type-certificates for aircraft, engines and parts, which means a simplification of procedures and a reduction of bureaucracy.

In addition to conducting investigations, the agency assists the Commission in the monitoring of the implementation of aviation legislation by conducting ‘standardization inspections’. These inspections are carried out in order to monitor whether national aviation authorities apply the rules uniformly; the main aim is to identify how national authorities enforce aviation legislation. The first visits to NAAs took place ‘without any disruption to the JAA process which existed before’ (EASA, 2004:8).

The liberalization of the transportation industry has necessitated the consistent implementation of Community regulations in this sector. Using (semi-regulatory) European Union agencies is one of the means through which the EU attempts to attain both high and consistent safety standards and a level playing field. Officially, independent regulatory organizations like EASA were established because member states do not always comply with their commitments for the execution of EU law and the European Commission is unable to assure the effective and flexible implementation itself.

The main reason why the functional advantages resulting from the delegation of implementation tasks to EU agencies in practice are not always achieved follows from the second explanation we identified: the political motives of the key actors involved in implementation (Dehousse 2008; Kelemen 2002; 2005). The politics underlying agency creation in a multi-actor and multi-level setting such as the EU led to restrictions in the design of EASA limiting the possibility to fulfil its promise: it remain simply too dependent on other actors. Two sets of restrictions can in particular be distinguished: one relating to the agency's relationship with the member states and one relating to the agency's relationship with the Commission.

EU agencies potentially add more value when they stimulate mutual learning processes among national regulatory authorities. The organization of inspections, where a team of specialists from the agency and various member states inspects the national authority of one member state, makes it possible to do just that (see Bulmer et al. 2007; Checkel 2005; Thatcher and Stone Sweet 2002). In addition, agencies may serve as learning platforms for European and national stakeholders. By organizing workshops and trainings for national inspection professionals, agencies, as nodes in transnational networks, facilitate the diffusion of implementation practices across Europe, thereby contributing to the way rules are applied and enforced across the Union.

2.4.2. ECAC

Trace of the ECAC back to the 1950's to create an aviation institution comparable to the European Coal and Steel Community to coordinate aviation in Europe and to manage airspace as a supranational authority (Ross, 1998: 12). Since the Council of Europe's Committee of Ministers was serious about these targets, it asked ICAO to call for a conference with the European Conference to strengthen the communication and collaboration among airlines and states on technical and business issues. The Conference on Air Transport Communication in Europe (CATE) assembled in Strasbourg in 1954. The Conference intended to establish an international body that would continue to “examine advancements in intra-European air transport with the goal of encouraging coordination, improved utilization, and orderly growth of such air transport, as well as addressing any special difficulties that may arise” (ECAC, 2009: 4). ECAC established as a framework at its first conference in 1955, working closely with ICAO. It is still the parent body of ECAC and provides its standing personnel and utilizes the organization's sites in Paris.

The main role of the ECAC was initially technical and then also focused on economic matters. For instance, the European governments decided on specific tariff procedures under ECAC 1967 in bilateral agreements. Just after US legalization in the late 1970's, ECAC accepted as an organization by reformers and status quo defenders.

In general, the ECAC has been the primary forum for dialogue and research in working groups on the technical aspects of air transport. The Joint Aviation Authorities (JAA) became an affiliate agency of ECAC in 1989 and supervised the implementation of the specific safety requirements of Europe until the European Aviation Safety Agency (EASA) took over these matters by 2002. It was the accomplishment of ECAC which provided strategic vision for growth of the air traffic management in Europe. In addition, ECAC functioned as a collective negotiation entity with power to complete negotiations with third countries.

The ECAC has been strongly supported by European states in that it possesses its technical expertise, relations and links with ICAO and its capacity. In addition to its ability building the experience and technical expertise inside member countries, its relations with ICAO, more than 40 ECAC leaders are now operating as an intergovernmental organization founded by 19 nations. Parallel to the priority given to sovereignty in air transport, ECAC structured as an advisory institution, without forcing judgments on member states, and remains impartial in determining when and how to conform its advice to national laws (Attali, 1994: pp.131-50).

2.4.3. EUROCONTROL

Under the Chicago Convention, air traffic responsibilities remain solely under the jurisdiction of individual States. Civil air transport has sought a position in the upper areas of airspace since jet era emerged in European airspace. Throughout Europe, in the 1950s, the Benelux states and Germany began to explore the idea of joint air traffic control. Accompanied by France and the United Kingdom, in December 1960, they signed an International Convention which established the European Air Navigation Safety Organization (EUROCONTROL).

Afterwards, Ireland joined in 1965, and cooperation agreements between 1964 and 1967 were concluded between non-member European countries. The Convention provided Eurocontrol with its legal structure, provided it with significant regulatory responsibilities and gave it private authority to regulate air traffic control services above 20,000 feet in the upper airspace. Nevertheless, as Staniland (2008: 144) perceives, the early years of Eurocontrol are characterized by a dichotomy between

technological progress and political support loss.

Later on, France and the England has withdrawn from the body in 1965, citing considerations of military and sovereignty issues. The Netherlands eventually removed from participation. Consequently, the territory over which control was passed to the intergovernmental body was restricted to a fairly small region containing only Benelux countries and northern Germany. Ten years later, Germany and Ireland decided to combine their air traffic control centers in the upper area together under central jurisdiction in Karlsruhe and Shannon.

Under Eurocontrol two advisory bodies play an important role in policy making. The Permanent Air Navigation Safety Commission, which formulates a general policy and the Agency for Air Navigation Safety is the organization's operational component. Contrary to ECAC, Eurocontrol was an authority system in which European countries not only shared opinions but also collaborated in the regulation of air traffic management. Until the late 1990s Eurocontrol operated with the Commission without any dispute or competition.

If EUROCONTROL did not exist today, would it be established? is a question that may be posed in relation to this agency. Perhaps the issue could be rephrased as “would the capacity and safety accomplishments of the previous 20 years have been accomplished if EUROCONTROL had not existed?” As a result of the succession of choices made by the Provisional Council, it is likely evident today that EUROCONTROL was foresighted and had laid the groundwork for creating the performance-driven administration of European ATM, which became the hallmarks of the European Commission.

The related major issue for EUROCONTROL and its Agency during this period would be the failure of some States to ratify the revised Convention and the non-ratification by the European Union of its Protocol of Accession. This would mean that the Agency's traditional consultation methods and EUROCONTROL's consensual decision-making process would continue to be relied upon to ensure commitment among states. The effect would be mitigated by the existence of an agreed overall ECAC-wide strategy, the introduction of an effective regulatory process including a robust consultation mechanism which allowed an increasingly transparent monitoring of performance. However, there is now a new impetus, with wide support,

to consider again a new Convention for EUROCONTROL which will allow it to fully play its role (see later discussions).

2.5. THE EUROPEAN ECONOMIC COMMUNITY (EEC)

It is crucial to explain the inability of the Community to participate in the air transport sector for more than thirty years, although the Community began to impact the aviation sector and gradually contributed to the aviation system in the 1980s. Thus discussion in this part of the thesis is threefold. Firstly, as mentioned earlier, member countries chose to handle air transport within the existing design. Secondly, although the goals of the EEC's action were far-reaching and strong laws and structures were put into practice to accomplish them. The role of air and sea transportation was unclearly defined in the EEC Treaty. Thirdly, proponents of Community involvement were unable to develop a plan, to force member states to participate in the aviation field in favor of the existing order.

2.5.1. Aviation in the EEC Treaty

As indicated above, international air transport has always been a matter for governments to manage through bilateral air service agreements. With the establishment of the European Community and its extension to various policies, it has emerged that the question is whether the Community should be responsible for regulating international air transport. Regarding the European Community's regulatory implementation, it must be distinguished whether the EC adopts regulations that are binding on Member States and/or Community citizens or whether the Community reaches an international agreement with a non-EC country. The Community is granted competences for both types of activities in the EC Treaty. Competencies allowing the EC to adopt regulations binding on the Member States and/or citizens refer to internal competences or internal competences. Competencies enabling the Community to reach an international agreement are referred to as Treaty-making competences. (For all articles will be mention see Treaty Establishing the European Economic Community, EEC Treaty).

The air transport regulations in general which were included in the Treaty were aimed at compromising contradictory situations. Though, a Common Transport Policy has been established as one of the common objectives of the Treaty (Article 3(e) of the EEC Treaty), Article 51 of the EEC Treaty stipulates that the provisions of the Transport Title control the freedom to provide transport services. In Part Two of the Treaty, the title in question, Section IV, Articles 70-80, which called on Member States to follow the aims of the Treaty within the context of a common transport policy (Article 70), but required them to take into consideration of the unique aspects of transport (Article 71). Even with regard to these requirements, air transport is in a noteworthy condition. Article 80 draws a clear distinction among modes of transport. Saying this: “The provisions of the Title shall apply only to transport by rail, road and inland waterway. The Council may, acting unanimously, decide whether, to what extent, and by what procedures appropriate provisions may be laid down for sea and air transport.”

The expression and position of Article 80 has given rise to debate and controversy in the Treaty and in reference to Title IV. Two different remarks appeared. Particularists such as several Council members, argued that the meaning of Article 80 has the consequence of eliminating air and maritime transportation from the Treaty framework. On the contrary, universalists, including the Commission, were pleased that the impact of Article 80 was merely to exempt air travel from the Title's provisions on transportation, but not from the Treaty's specific requirements. (see Folliot, 1978, Yorakis, 1982 and Estienne-Henrotte, 1988). for particularist view, see Villeneuve, 1961 and Stabenow, 1967).

Over 40 years, critics to Community presence of air transport have been able to withstand pressure on EC participation. This was due to its defenders' failure to make a tough one. However, when there was no conflicting political, geopolitical or economic motive for the Community to establish an aviation policy, the willingness of the member countries to use the indefinite aviation status provided for in the Treaty was a key factor. While private carriers, customer associations and passenger groups came out gradually in the 1970s and 1980s to lead the intervention of the Community as a means of achieving air transport deregulation and liberalization in Europe, they could not get the official stance before the Court (Fonant, 2013: 21). The Court's

decision in the case of French Seamen compelled the status quo defenders to withdraw for the first time, followed by additional regulations that had an impact on sector-specific indirect implementation for air transport. It was, however, just after the beginning of US liberalization and deregulation on their aviation policies that member states started to discuss aviation concerns slowly within the Community structure and limited them to it.

2.5.2. The French Seamen's Case

Although member states tended to continue their opposition, a significant turning point has been the decision of the 'French Seamen' case of the European Court of Justice (ECJ) between the Commission and France. It provided the Commission the possibility to place aviation on the agenda of the Council, empowered Community involvement advocates and gave rise to uncertainty amongst status quo advocates about their capacity to obstruct Community action (see ECJ 1974, Case 167/73).

If Article 80(2) of the EC Treaty says that sea and air transportation are not covered by Title IV or even the whole Treaty, then what was that mean? It has been mentioned that a certain number of seamen who work on French commercial ships should be from France. The French government said that the rules of the Treaty on discrimination against European Union citizens did not apply to maritime transportation because, according to Article 80(2), maritime and air transportation had been taken out of the general rules of the Treaty set by the Council. The Commission said that certain clauses of the Treaty had been extended in all ways.

The Court supported the Commission's case. It stated that common market regulation covered practically all economic activities within the Community and that the broad principles outlined in Articles 2 and 3 of the Treaty were applied uniformly unless explicit exceptions were provided, such as in the case of agriculture. Article 80(2) of the EC Treaty had the effect of excluding air and sea transportation from the Treaty's general implementation, but only from Title IV's special arrangements, provided that the Council did not exercise its decision-making authority under the Article. The Court determined that compliance with Articles 39-42 was compulsory for maritime transportation.

Although the Court's decision refused to implement EC Treaty's Article 80(2), on which opposition of Community participation took place, it created a new ambiguity. The Court used the Treaty's notion of 'general rules' which was an unrecognized part of the document. That changed the situation between the involvement of EEC defenders and their opponents. The former stated that all the specific rules of the Treaty were covered by the general rules, while the latter argued that the notion applied to the general rules of Part I and Part II of the Treaty, but not Part III, which laid down the provision of competition.

Notwithstanding these ambiguities, the word in the aftermath of the French Seamen case has been regarded as a new beginning in aviation collaboration between the Commission and the Council. The Commission points out, after the Court's ruling, the feasibility of applying the Treaty's competition rules in air transport (COM 1977, para.47 and COM 1978, para.38).

2.5.3. The First Memorandum

The Commission tended to be quite inactive before 1979, and had accomplished nothing more than bring forward small proposals accepted by the Council. The sole significant effort was the development of a proposal for a guideline to enforce the competition regulations of the Treaty, which was undertaken by DG IV Competition rather than DG VII Transport. The European Communities' commitment to the development of air transport services was first addressed to the Council in July 1979, when the Commission sent its initial memorandum to the European Council (COM, 1979b). The paper focused on the significance of deregulation of US air transport, pointing out the need for America to pursue a new path which would not harm the existing system. In the document the Commission highlighted the objectives of the future common air transport policy. It called for deregulation and liberalization for free market access, encouraging tariff reductions to provide airlines with the ability to settle competitive fares and enforcing competition rules. The text highlighted the importance of coordination and cooperation among member states and international associations, and among third countries.

Compared with Parliament, ICAO and other airline associations, the member states presented less support for the Commission initiative. In 1979, the Council requested the Commission to develop an intervention plan over regional air transport that is comparatively less of an economic activity area but referred certain concerns to COREPER. In fact, the Council recommended that the Commission check the rates of scheduled Community air fares. The report indicated that when the costs were taken into account air fares were not high. Meanwhile the Commission has requested a regulation implementing the Treaty's competition rules for the air transport sector. This provided for the applicability of the laws to all air transportation to and from the EC and airline activities outside the Community. All the proposals debated within the European Parliament. Where a large number of governments opposed Community aviation regulation, the Council had no impact on the proposals.

It was the pragmatic and problem-solving approach of the Commission that recognized the intergovernmental decision-making limitations, where the rule of unanimity enabled the states to determine the policy. While technical and realistic elements of policy seemed to protect collaboration, only one member country objected to Community participation might obstruct provisions. Furthermore, the approach of the Commission changed considerably after the first memorandum. The Commission began to focus on state aid for air transport, agreed to enhance collaboration by signing a deal with Eurocontrol, embarked on an inquiry into the effect of structural problems over air transport sector and made a study on the freedom of air transport within the EC in partnership with IATA. One of the key regulations, given its relatively limited scope, was the European Air Services Directive (Council Directive 83/206/EEC), which was the initial intervention of the Community in economic regulation. In the aftermath of the Council's review of the first report, the Commission presented its resolution following 1980. Certain Commission recommendations such as tariff independence and the right of airlines to decide their own tariffs (COM, 1981a) and the extension of the EEC Treaty competition rules to the aviation industry (COM 1981b and COM 1982).

This chapter of thesis has argued why it was not until the 1980s that the Community tended to engage in aviation. It examined the development of regional aviation institutions and determined that Community member states tended to handle

aviation issues via that organizations and instead defended broader international or supranational structures that denied any responsibility transfer to EC. ECAC has gained loyalty and respect throughout this time period. In addition to its relations with ICAO as an intergovernmental organization, ECAC has shown its importance and efficiency in meeting the demands of its members concerning aviation's technical and financial respects. Together with ICAO at international level, the existence of these regional institutions significantly prevented the member governments from becoming involved with the EC in the aviation sector.

Moreover, although Member States have had their responsibilities under the Treaty, they have been able to reject provisions coming from Parliament and the EC to take part in air transportation. It has declared that the Treaty leaves the decisions taken to the Committee, and that any intervention in the aviation field should be taken. In addition, the Commission has failed to show the strategic capacity needed to force states to take concrete steps at EC. Only after the judgment of the French Seamen of the Court, resistance from the member state began to diminish. Moreover, a breakthrough came out only when, thanks to US deregulation, the Commission, which strongly supported the United Kingdom, put forward implementations that took advantage of the opportunity given by new air policy.

2.6. FURTHER LIBERALIZATION OF AIR TRANSPORT

In the late 1970s, air transportation was first considered in the context of EC framework, and a number of initial measures were subsequently adopted. However, the Community's significant involvement first began in the early 1980's. A large number of Member States oppose Community involvement in the aviation sector and liberalization, preferred to direct aviation issues within the ECAC framework and sustained to question both the lawful capability of the Community and the competence of the Commission. Following the second memorandum of the Commission (see discussion later), in December 1987 the Council adopted “the Rubicon for liberalization of air transport in Europe” (Wheatcroft and Lipman, 1986: 115), which was the basic document of the first liberalization package for air transport.

This part of study explores how this political development emerged. It underlines the significance of shifts in external factors and is meant to demonstrate that the implementation of the first liberalization package can not be justified purely by inner Union variables. It claims that the first package can not be described as a result of the Council's relationship expressing the strength of national priorities and the comparative influence of the member countries as stated by the 'power indices' method (Van den Bos, 1994: 21). However, Member States can not be seen as reacting to the requests of airlines, business groups and customers to substitute the Chicago regime's difficulties with more supranational laws, as demonstrated by new neo-functionalism (see O'Reilly and Stone Sweet 1998a, 1998b). Commenting on its implementation as part of the single market structure imposed by historical institutionalist approach is also misleading (Armstrong and Bulmer, 1998: 70). Instead, the section argues that the change was largely driven by the influence of the new US policy on international air transportation and by the advocacy of the trans-institutional liberal partnership and the abuse by the Commission of its powers to counter resistance within the Council by enforcing the competition laws.

As a result of the breakthrough in US policy, the international framework has become more conducive to the participation of the Community in the field. Despite the fact that the US approach is not directly affected the industry and has not instantly applied the law to the industry, it has greatly enhanced the potential for impact on the Community. The presence of proponents of a more liberal approach about air transport sector has been significantly enhanced the increasing sum of players in Europe, such as the UK and the Netherland administrations, have called for Community involvement in the restructuring of aviation legislation. For the Commission, this condition was much more conducive to discussing Community action. Thanks to the help of two major aviation countries, the Commission, aided by the ECJ's mediation, was able to utilize the Treaty's propensity for negative integration and use its compliance powers to persuade the Council's conservative majority to enact a legislative package.

2.7. A CROSS ATLANTIC IMPACT: NEW US POLICY

The developments that emerged in line with the new U.S. policy in international civil air transportation has not limited to the framework of the open skies treaties discussed between the U.S. and EC or the independent airlines that arose from national deregulation. The US influence has ignited a discussion on aviation legislation, expanding proponents of a more inclusive and deregulated approach leading an increasing number of Community involvement supporters.

The novel US approach was based on a quite dissimilar strategy to the practice of authorities given to governments, and faced with difficulties the restrictionist behaviors on which states around the world had based their policies on air transport. Although change proponents referred to advantages of liberalization for passengers and carriers, established order supporters maintained a reliable and stable aviation service system was created by the current traditional system. They assumed that these achievements would be threatened by competition, and that it would likely cause chaos and instability.

A parallel opinion appeared at ECAC. Although most supporters favored the existing traditional system, some conservative countries with arguments in favor of liberalization have begun to increase European aviation. In fact, the discussion has not confined to existing institutions like IATA and ECAC but extended to fields including the Community. A common approach was funded by the British and Dutch Governments. In parallel with these requirements and with the ECAC debate next to the EC, proponents to Community involvement were no longer available to move over the Commission to say that the Community had no role to play under air transport. Throughout this time, primarily, the Community and the Commission focused on economic regulation rather than on technical or operational domestic policy concerns leaving them other institutions such as ECAC, putting aside the EC's credibility debates.

For the first time, advocates of change began to accept the Community as an arena in which, following the new US policy, European air transport would be liberalized. The UK was the most prominent, though a number of diverse interest groups started campaigning for EC participation. In 1984 the Commission issued the

second aviation memorandum (Report 1984b). The UK strongly advocated the Community-made liberalization, but wished to go far beyond the guidelines found in the Commission paper. The UK has accepted the power to open up the aviation sector under Community competition rules. It also used the bilateral agreements to advertise its European partners on the benefits of liberalization. In line with that strategy, the first Dutch bilateral agreement introduced a benefit analysis to the ECAC policy document in 1985. Meanwhile a similar agreement was signed with Germany in 1984.

Nonetheless, the approach to liberalization of bilateral agreements has some significant drawbacks. A few countries had been prepared to renegotiate with the UK. For instance, Spain demonstrated resistance to UK demands for more flexible relationship by ending the current contract on the basis that its carriers did not get fair share from the fast-growing charter industry. The provision of Community involvement was therefore of greater importance for the United Kingdom to put pressure on the Council, to have bilateral relations with significant Member States, to pay particular attention to France and Germany in order to convince them about advantages of liberalization and to play an important role in formation the applications that would later be accepted in the first liberalization package.

Despite these developments, there was a minority among liberal advocates of Community involvement. Notwithstanding more pragmatic recommendations tabled by the Commission in 1984 (COM, 1984a), traditionalist member states remained resistant to Community involvement. In 1985, however, the Commission started to formulate a novel approach. To do that it has historically concentrated on its policy-setting influence, proposed measures and planned to convince Member States of the need to interfere. It has begun to adopt a more proactive strategy. In line with Schmidt's (2000: 16) description as a 'lesser sinful' approach, the Commission exposed to strike the current regulatory framework by taking measures against anti-competitive practices in aviation, either directly using its authority under Community competition rules or implicitly appealing to the ECJ, unless member countries wanted to embrace it.

2.8. THE SECOND MEMORANDUM

In 1979, the Commission released Memorandum 1, which described a range of problems with the existing system, including a propensity towards high tariffs caused by government intervention, restricted fare flexibility for holidays, and restricted incentives for innovation. The paper focused on the significance of deregulation of US air transport, pointing out the need for America to pursue a new path which would not harm the existing system. In the document the Commission highlighted the objectives of the future common air transport policy. It called for deregulation and liberalization for free market access, encouraging tariff reductions to provide airlines with the ability to settle competitive fares and enforcing competition rules. The text highlighted the importance of coordination and cooperation among member states and international organizations, and among third countries.

In 1984, the Commission adopted Memorandum 2 (COM, 1984a) entitled “Progress in the establishment of a Community air transport policy.” Memorandum 2 extended the proposals implemented in Memorandum 1. The objectives of Memorandum 2 is to evaluate changes after Memorandum 1, to introduce an overarching structure for Community air travel, to bring forward regulatory proposals for approval by the Council and to discuss potential work that the Commission expects to undertake. The objectives of Memorandum 2 have focused on air travel between Member States as a vital component of the development of a Common Aviation Market and the enhancement of the Single Market more broadly. Even outside of the European Union, the impact and importance of international aviation were not lost on the European Commission's staff. According to the memorandum, the repercussions of deregulation in the United States under the 1978 Airline Deregulation Act were noted, as well as the necessity for the Community to maintain a consistent approach towards international organizations and non-member nations.

Second memorandum provided several recommendations which were described as interdependent by the Commission. Governments would not be able to negotiate capacity or revenue-sharing arrangements with their airlines, or to restrict the ability provided by other Member State airlines. discrimination is banned against numerous airlines from other countries of the Union. The Commission began

implementing the competition rules in aviation in its 1981 proposal (COM, 1982). In accordance with Article 81(3), the Commission should be able to provide block exclusions from Article 81(1)'s antitrust prohibition, as well as specific kinds of agreements that would benefit from such exemption. In order to provide greater competition, the Commission also presented a policy paper on State aid. This acknowledged its intention to apply the terms of Commission Directive 80/723/EEC to aviation (COM, 1980), which would allow member states to inform their airlines of the granting of any State aid.

The second memorandum was a key milestone. Even officials from the most conservative aviation states were pleased by the quality of the paper and assumed that the United Kingdom was involved in its production. The suggested approach was evolutionary, and its objectives were more modest than in previous publications. Bilateral agreements, the “fundamental fabric of intergovernmental cooperation” (Travis 2001: 47), would not be disrupted, and competition regulations would not apply to domestic services and would be mitigated through the use of block exclusions. Moreover Travis (2001: 155) puts the point somewhat more directly: “Interest groups played no important part in the liberalization process. In addition, the suggested measures were aimed at the commercial operations of airlines, such as tariff-setting and capacity, and not at governmental prerogatives like licensing or market access.”

2.9. A TURNING POINT FOR THE EU AVIATION: THE NOUVELLES FRONTIERES CASE

The question of whether the EU Members have the authority to control the prices of air carrier tickets sold within their frontiers, as well as the promising implications of exclusions and sanctions from the Treaty of Rome's competitiveness provisions to air transport, were resolved in April 1986 at Nouvelles Frontieres. The Court addressed validated questions from a French court concerning the applicability to the price-fixing deals signed by French airlines of the competition laws of the Treaty of Rome (ECJ 1986, Cases 209-213/84).

A procedural and substantive question were answered by the case of Nouvelles Frontieres. As mentioned above, the Council Regulation No. 17 applied Articles 85

and 86 of the Treaty of Rome's competition rules and granted the Commission the power to investigate cases of violation; the Commission may grant an exception under Article 85 by virtue of Regulation 17 (but not Article 86). However, the implementation of Regulation No 17 expressly excluded air transport. (EEC 1962, No.17)

The Court first acknowledged that, in the absence of any specific language in the Treaty of Rome, air transport was subject to the Treaty's general rules, including competition laws. The Court then concluded that, if the Council didn't make specific air transport rules, it was up to the authorities in Member States to apply the Treaty of Rome's competition rules to agreements that affected the air transportation industry. Or, the Commission could make a 'reasoned decision' under Article 88.

Nouvelles Frontieres significantly widened the Commission's future influence toward anticompetitive airline activities in Europe. As a conceptual triumph for those calling for further liberalization, Nouvelles Frontieres was actually a partially failure. As a result of the Court's decision, Articles 85 and 86 of the Treaty of Rome apply only to air transportation, but the Member States failed to take action to enforce competition rules (under Articles 88 and 89), the Council approved regulations (under Article 87) or the Commission provided an explanation of its decision (under Articles 89). As a result, while a solution existed in theory, no such solution existed in practice.

2.10. AHMED SAEED CASE

The European Court of Justice issued the Ahmed Saeed case in April 1989. The Association for the Protection of Unfair Competition filed the case in German courts against two Frankfurt travel agencies that were offering airline tickets to German citizens for flights allegedly starting in Lisbon, Portugal, and terminating in Frankfurt. The passengers boarded in Frankfurt, in breach of German law, and discarded the Lisbon-Frankfurt ticket voucher in order to benefit of airfares that were 60% less than those permitted by the German government (ECJ 1989, Case 66/86).

Although no implementing rules were adopted by Member States or the Commission, the Court found that Article 85 extended explicitly to intercommunity tariff agreements, a decision that went beyond Nouvelles Frontieres. Even while tariff

discussions are still prohibited, any subsequent arrangements must precisely comply to the grounds for particular exemptions set down in the Commission's rules.

Additionally, the European Court of Justice concluded that Article 86 was explicitly relevant to air travel in the absence of suitable legislation, and that any individual who violated it may face legal consequences. Accordingly, the imposition of scheduled air tariffs on domestic airlines, intra-Community flights, or flights to and from the European Community would be illegal if it resulted in an infringement of dominant status and caused injury to intra-Community business. Thus, the Court upheld its earlier decision in the 'Wood Pulp' case (ECJ 1988, Joined cases 89, 104, 114, 116, 117 and 125 to 129/85) ruling that the Treaty of Rome's antitrust laws apply to arrangements reached outside the EC that are implemented inside the EC. The Court also addressed the position of Member States in the case of Ahmed Saeed, reminding them of their duty to refrain from approving or encouraging the conclusion of tariff agreements that violate Articles 85(1) or 86.

2.11. THE FIRST LIBERALIZATION PACKAGE

While recent ECJ rulings and the Commission's threat to take action against EC airlines for anti-competitive behavior pushed the Council to consider and implement the Second Memorandum's proposals, the Council was unable to reach the required consensus on the application of competition rules to the aviation sector due to conflicting interests and viewpoints. However, in 1986, the EC's objectives were dramatically altered with the introduction of the Single European Act (SEA), which accelerated the deadline for creating a borderless Single European Market. Not only did the SEA create a Single European Market for air travel, but it also modified the voting criteria for decisions establishing a single market for air transport from unanimous to qualified majority voting. Without the constraints of majority votes and also subject to criticism from the Commission and the ECJ, the scene was set for the Council to take steps toward achieving a single market in air travel (Butcher, 2010: 4).

The First Package entered into force on January 1, 1988, following the European Commission's advocacy for its ratification, which, in accordance with the ECJ's *Nouvelles Frontières* principles, was intended to prompt the implementation of the EEC Treaty's competition laws to the air transport market. The legislative

provisions included in this Package were significant because they resulted in the removal of certain stringent rules contained in Bilateral Air Service Agreements between Member States.

The First Package covers only flights between Member States; it does not cover domestic flights within a Member State or flights between a Member State and a non-EC state. This package includes the following:

1) application of the competition rules of the Treaty of Rome, articles 85 and 86, to the air transport sector, (EEC 1987a, No 3975/87)

(2) application of the article 85(3) exemption provision to the air transport sector and the block exemptions implemented, (EEC 1987b, No 3976/87)

(3) rules concerning scheduled air fares (EEC 1987c, No 37/601) and

(4) rules concerning capacity sharing and market access (EEC 1987d, No 87/602)

During the first attempts at liberalization, the Council was divided into four groups: those who favored liberalization but were willing to deal, such as the United Kingdom, the Netherlands, and Ireland; those who favored liberalization but were unwilling to agreement, such as France, Germany, and Luxembourg; and those who preferred strict regulation but were willing to deal with such as Belgium, Italy, and Portugal (No. 4427 of the Agence Europe Bulletin). With the exception of Denmark, the member states were split between those who favored liberalization and those who favored maintaining the status quo. When it came to air transport regulation, the first liberalization package started a process in which national governments handed power to the European Commission.

Table 3: The First Package Compared With Bilaterals and Memorandum 2

	Traditional bilaterals ¹	Memorandum No 2	First EU package (1987)
Licensing	Governed by national rules	Governed by national rules	Governed by national rules
Market access	A single airline on each side. Access limited to named destinations ('points'). Additional airlines agreed case by case Fifth freedom rarely granted	No proposals in COM(84)72 Proposals for relaxation of access to regional services to follow Limited grant of fifth freedom rights No cabotage	Access to all points Multiple designation on country pairs, and on city pairs above thresholds falling from 250,000 passengers per annum (1988) to 180,000 (1990) Community airlines entitled to carry 30% fifth freedom passenger on any intra-community route No cabotage
Capacity	No cabotage Frequency and capacity limits set by agreement between parties. 'Fair and equal opportunity' interpreted as equal shares with compensation for any imbalance through commercial (i.e. 'pooling') agreements.	No service to be refused unless national share of market has fallen below 25%	No service to be refused unless national market share has fallen below 45% until end September 1989, 40% thereafter
Tariffs	All fares subject to approval by both governments; airlines required to consult before filing	Relatively primitive zonal tariff system based on that developed in ECAC for the 1982 US/ECAC Memorandum of Understanding on transatlantic tariffs	Airline consultation permitted but not required. Fares approved automatically within a sophisticated zonal system of reference, discount and deep discount fares. Above the zones, fares approved unless both parties object (double disapproval); below the zones, fares require the approval of both parties (double approval)
Competition rules	Application of national rules at state discretion	Implementation of Community competition rules	Implementation of Community competition rules

Source : Created by Author.

2.12. THE SECOND LIBERALIZATION PACKAGE

Following the first liberalization proposal, as member countries and their aviation industry had become acquainted with the first liberalization package, they started to profit from the initiatives and become more willing to abandon the remaining restrictions. After the first liberalization package, the Council also recommended that the EC acquiesce new regulations before 1 October 1989 in order to enact additional rules no later than June 1990. The expectations for the possible disputes ahead were planned by both liberals and traditionalists during the interim period. In the wake of the new services introduced in Spain and Portugal, restrictions are lowered, making a justification for extending the first package's tariff, capacity and market access clauses (Stasinopoulos, 1992: pp.83-87).

The second package comprised of three Council Regulations, two of which essentially override Directive 87/601(see EEC 1990a, No 2342/90) and Decision 87/602 (see EEC 1990b, No 2343/90) from the First Package, while the third modifies the effective dates of Council Regulation 3976/87(see EEC 1990c, No 2344/90) and hence will not be debated. Later that year, in December 1990, the Commission enacted three Regulations that replaced and/or modified the First Package's block exemption

Regulations 2671/88, 2672/88, and 2673/88. Only the latest airline arrangements block exemption will be discussed, while the other two are just deadlines for the First Package block exemptions.

Even though the Council approved the liberal outlines of the second package in 1989, the Irish Presidency did a great deal of work. Ireland had historically been hesitant to liberalize, but later the liberal argument was supported. Like Denmark, Dublin believed that its position on the periphery of the Community could be harmful to its businesses in a liberalized aviation sector and thus negotiated the maximum level of liberalization in attempt to gain access to the major airports for their airlines. In the Council all countries finally accepted liberalization (Kassim, 1996b: 223).

Although Ireland put a high priority on air transport liberalization during its presidency, the Parliament continued to wary of liberalization. It proposed some anti-liberal adjustments to the Commission's second liberalization package guidelines in response to intense lobbying from airline lobby groups (see OJ C 96, 17 April 1990). Ultimately, the substance of the second package, which was adopted by the Council, was affected either by disagreements within the European Parliament's working group or airline lobbying (Kassim, 1996b: 266). The tariffs have been liberalized and streamlined, the capacity arrangements have been broadened, but until 1993 double rejection and cabotage have been held off.

In summary, the Second Liberalization Package significantly advanced the European Union's air transport sector toward the target of a more open market in the areas of air fare regulation, route and slot access, and capacity expansion. However, numerous barriers to free competition existed, especially for new entrants. The Member States' discretion and exceptions to the rules, the restricted Fifth Freedom privileges, the lack of cabotage rights, and the rigid slot allocation procedures appear to allow for competition distortion in the air transport industry. It should be borne in mind that the second package was meant to serve as a bridge to the slow phase of liberalization that was to be completed by the proposed Third Package by the end of 1992.

2.13. THE THIRD LIBERALIZATION PACKAGE

In June of 1992, the Council adopted the Third Package of air transport liberalization measures which became effective on January 1, 1993 in an attempt to meet the goal of a Single European Market by the end of 1992. This package consists of a Licensing Regulation, a new Route Access Regulation which replaces 2343/90 of the Second Package, and a new Air Fares and Rates Regulation which replaces 2342/90 of the Second Package as follows:

- Regulation (EC 92a, No 2407/92), the Licensing of Air Carriers Regulation provided for common specifications and criteria for the licensing of carriers and the provision of a Community air transport certificate with effect from 1 January 1993. Included in the Regulation was a statutory requirement for air carriers to hold insurance to cover liability in case of accidents in respect of passengers, luggage, cargo, mail and third parties. Governments are not allowed to discriminate between airlines seeking licences to establish themselves on their territory other than for technical or economic reasons such as solvency or financial viability. Any airline which meets common safety, nationality and fitness criteria is entitled to an operating licence anywhere in the Community. The restrictions on charter airlines and limits on the number of 'seat only' sales are abolished. Separate rules apply for airlines operating light aircraft;

- Regulation (EC 92b, No 2408/92), the Route Access Regulation set out the rules on access for Community air carriers to intra-Community air routes. From 1 January 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, the so-called seventh freedom of the air. Full, unrestricted access to all routes within the Community commenced on 1 April 1997 for both scheduled and charter services, the eighth freedom of the air (also called 'consecutive cabotage'). Article 6 provided safeguards for new inter regional services and Article 10 prevented capacity limitations except for environmental and/or air traffic reasons;

- Regulation (EC 92c, No 2409/92), the Fares Approval Regulation set down further rules on fares and rates for air services; that from 1 January 1993 airlines would be able to set their own fares on services both within and between Member States

subject to the safeguards against unfair pricing (including notification to the Commission);

- Regulation (EC 92d, No 2410/92), amended Regulation 3875/87/EEC regarding the procedure for the application of the rules on competition to undertakings in the air transport sector; and

- Regulation (EC 92e, No 2411/92), 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.

Additionally, the Commission Regulation (EC 1993, No 1617/93) adopted in June 1993 provides a block exception for airline arrangements including schedules, cooperative operations, tariffs, and slot distribution. Regulation 1617/93 repeals and removes the Second Package's block exemption regulation 84/91. Finally, and perhaps most significantly, the Council implemented Regulation 95/93 in January 1993, which establishes common guidelines for slot allocation, a long-standing source of contention in the European Union's air transport market (Kinnock, 1996: 20)

The third package was handled under a quite different circumstance compare to the second package. Throughout the discussions leading up to the second package, the Council was also involved in a variety of tariff-setting and access-related measures. Double disapproval, complete fifth independence, and cabotage were untenable in 1987 and were considered too radical as part of the third strategy as late as 1989 and 1990.

However, consensus on the liberalization of air transport suggested that the old regime's wrecking was no longer controversial. The Commission proposed a strong liberal system in its proposal (EEC 1990b, No 63/90) and, in theory, the Irish presidency preserved consensus at the Council meeting on 18 June 1990 which adopted the second package; although the European Parliament rejected measures like cabotage, the Commission and the Council introduced a proposal which was consistent with the second package and adopted it (see EEC 1991a, No 294/91).

The Council decided on tariffs, agreeing to reject double opposition enabling airlines to establish their prices independently without interference by the government. The Council introduced a more radical policy than suggested by the Commission. Nonetheless, on the move to cabotage status, member states stayed divided. For

instance, countries with large domestic markets such as France, Germany, Italy, and Spain favored six years of transition, while Denmark, Ireland, Holland, and the UK favored three years.

In spite of the fact that cabotage was delayed until 1997 and that some exceptions, including for operations to the Azores and Greek islands, remained in place until 2003, the third liberalization package removed barriers to aviation competition inside the EU. This means that airlines will be able to make their own business judgments about where to operate, how often and what capacity they will fly, as well as the tariffs and other limitations that they will be subject to. Whereas each country has the freedom to authorize its own carriers, the states would also remove the licenses across the Community carrier, ensuring that the airline is operated and regulated by members of the Community who follow proposed protection and financial requirements. Although the license does not give permission to operate services, this right was provided by market access Regulation 2408/92. So, the air transport Single Market was established (Butcher, 2010: 7)

CHAPTER THREE

EXPANSION OF AIR TRANSPORT POLICY

While the most notable achievement of the Common Air Transport Policy was liberalization, deregulation, and the creation of the Single Market that can be called 'Europeanization' in general, the EU's presence in non-market areas of economic regulation, as well as in the technical and organizational aspects of the sector were also significant in a variety of ways. Due to the fact that other international bodies had long dominated the regulatory arena, it was more difficult for the EC to establish a foothold in the more professional aspects of aviation. Aviation, as a global industry, needs universal legislation and requirements from the beginning. The guidelines were established internationally in the Chicago Convention's Annexes, constantly revised by ICAO's Air Navigation Council and regionally by ECAC and more focused organizations, such as the JAA (later renamed EASA) for common airworthiness standards and Eurocontrol for air traffic control (ATC) and management. The Community has established close relationships with these specialist organizations. This evolving partnerships have caused changes and adjustments to the Community's decision-making procedures, putting the EC at the forefront of a progressive structural framework (Keohane and Hoffman, 2008: pp.1-41).

Although the removal of regional borders presented a compelling argument for greater harmonization, substantial institutional obstacles had to be resolved before the Community's participation in aviation security, safety, or air traffic control services. The EC has been proactive endeavoring to cultivate Community expertise in these fields. However, as with liberalization, it was unable to use its legislative authority to convince or force national governments to alter the status quo.

Nevertheless, the aviation sector in Europe strongly supported unified, less fractured ruling framework and the Member States' control (Button, 2009: pp.59-71). Once the shortcomings of current intergovernmental approaches were apparent, the need for Community engagement became even more convincing. The establishment of the European Commission as a regulatory authority has been considered at the time not as a threat to the use of existing institutional mechanisms, but rather as a means of improving their effectiveness.

This chapter examines the application of three major pillars of the European Air Transport Policy beyond the Single Market. As the Single Market developed amid the presence of alternative intergovernmental mechanisms, member countries commenced to envision the likelihood of Community action, particularly with the use of Community legislation for safety security and air traffic control. They initially dealt with a reasonably simple partition of work between the JAA and the Community, but as issues with the plan has become apparent, the discussion giving rise to the formation of the EASA became more about the shape of the Community's contribution than about the need for increased commitment.

3.1. SAFETY AND SECURITY

The European Commission is aware of the fact that air travel is both a priority and a tool of terrorism. Following the events of September 11, 2001, the EU moved swiftly to strengthen aviation security through regulations and quality safety inspection regimes. To a lesser extent, the Union has played a significant role in aviation safety and security. Historically, all areas have been protected by states, according to their responsibilities as ICAO members, and intergovernmental collaboration has been strongly established. In the early 1990s, the Community established a partnership with the JAA, the national standard-setting agency, with the aim of incorporating JAA principles, named JARs, into Community law. When the Commission's proposal for an independent aviation safety body became unworkable, it replaced it with its own plan for the EASA (Coman-Kund, 2018: pp.2-40)

Over that time period, the Commission made recommendations on safety and security. Apart from the need to uphold Europe's highest values, there was concern that divergent safety legislation would create trade barriers which weakening the Single Market. It was at this time that the Commission suggested unifying safety criteria through the establishment of uniform airworthiness licensing, and asked all EU Member States to integrate the JAA by January 1992, since France was pursuing harmonization in combination with liberalization at that time. Although the national implementations would continue to exist and be mutually accepted during the transition, the Community's general norms would be included in JARs beginning on

January 1, 1993. An advisory council of national experts will provide the Commission the authority to change the Annexes in order to include references to the different JAR codes introduced into EU law (Manuhutu, 2000: pp.264-272).

Using its own Treaty, the Council of Europe resolved in principle in 1998 to outline the notion of a European Aviation Safety Authority that would be applicable to the Union and all European governments at that time. First half of 1998 was an important time for the UK Presidency, which contributed to the formation of a convention for creating such an organization and seeking Union membership, and the Commission's mandate to do so. This meant that balancing integration with the requirement that a non-EU entity take judgments that were directly relevant to law in the Member States proved problematic.

Meanwhile, the UK's Euroskeptic government (1992–1997)'s resistance to any expansion of the Union jurisdiction into fields governed by states and intergovernmental structures gave way to a more realistic strategy. As a result of its firm support for an intergovernmental aviation safety body, the United Kingdom did not object to the Commission developing an additional structure within a Community legal system. It resulted in an agreement in 2000 on the notion of EASA that could have some technical scope but would be legally protected within the EU's institutional mechanisms.

The Community's role in aviation security has also resulted in the legal recognition of laws established in intergovernmental forums that would not have been enforceable otherwise. Historically, the ICAO has been responsible for aviation security. The Chicago Convention's Annex XVII establishes globally recognized requirements for national civil aviation security standards. These arrangements were effective in eliminating hijackings and coping with those that could not be avoided.

Important progress has been made in improving aviation safety under EU regulation, including the establishment of a blacklist of dangerous airline companies. The Commission recommended legislation to create a blacklist of aircraft or airlines that are not permitted to operate in Community airspace. Member States were unwilling to hand over control of their national sovereignty to grant or deny landing permits to the Community, but agreed a less degree of Directive (EC 2005, No 2111/2005), which allows national aviation authorities to conduct investigations of

third-country airplane for safety-related purposes using an authorized package of inspections.

3.2. THE SINGLE EUROPEAN SKY

Following the establishment of the Single European Market, the EU attempted to combine the European common safety standard and European air traffic control, which had previously been developed at the national level. The EU initiated an ambitious plan as part of its aviation agenda to redesign Europe's decentralized airspace, which had been fragmented by regions and nations (Charokopos, 2015: pp.40-62). The EU agreed on a joint agreement to ensure the safety of air travel, but also providing for development and increased safety. As previously stated, the European Aviation Safety Agency (EASA) was established in 2002 as the centerpiece of a new regulatory framework for a single European air transport industry.

The EU's role in air traffic control services is possibly the most extreme example of extending Community policies to technical fields, since it encountered major impediments. For the majority of the 1980s and 1990s, national administrations sought to handle air traffic management problems through established intergovernmental organizations such as Eurocontrol and ECAC, focusing on alternatives rather than convergence through coordination and harmonization. Nonetheless, the EU not only developed a significant role for itself, but also played a critical role in transitioning air traffic regulation from an ad hoc patchwork to a unified European airspace.

In order to improve the reliability of the ATM scheme, the EU Member States founded Eurocontrol in 1960. Eurocontrol's quest to perform its work on an EU-wide scale has been lengthy, culminating in the Single European Sky (SES) initiative, which additionally experienced problems originally (Baumgartner and Finger, 2014: 293). Eurocontrol was initially entrusted with the Member States' territorial rights in the upper airspace. Members of the European Union, on the other hand, immediately withdrew these powers. Therefore, Eurocontrol was unable to achieve the fundamental goal for which it was founded, and national authorities continued to offer ATM services in a scattered manner. Eventually, in 1986, the Convention of Eurocontrol

was changed to reflect this shift in objective.

The Single European Sky initiative began in 1999. The Commission made a recommendation in 2001, after work by a High-Level Group, and the regulation was fully enacted in March 2004. The SES regulatory structure is composed of four fundamental regulations (see 549/2004a, 550/2004b, 551/2004c, and 552/2004d), which govern the administration of air navigation services (ANS), the organization and use of airspace, and the compatibility of the European Air Traffic Management Network (EATMN). Regulation (EC 2009, 1070/2009) revised and enlarged the four regulations issued in 2004 (SES I), with the objective of increasing the overall efficiency of the European air traffic control system (SES II). SES I brought ATM under the EU common transport policy (Alemanno, 2011: 7), and expressly stated that European airspace be re-shaped to reflect traffic flow concentrations rather than national borders. A second set of legislative measures (SES II) sought more tangible changes.

Regardless of the presumption of seriousness in achieving SES, inertia has overwhelmingly marked Member States' implementation efforts (Finger, Baumgartner and Zeki, 2017: 350). Numerous factors contribute to the crisis, including questions about autonomy, labour disputes, protection, system differences, and institutionalized processes. SES highlights the contradictions between the EU's *de jure* authority and the Member States' *de facto* authority, with the latter striving to regain control of air transport regulation (Lawless, 2014; Lawton, 1999). Despite the fact that disputes are expected to continue, the broader problem of power balance is likely to lean in favor of the interests of the airline sector, which benefits from more control regions. Ultimately, it is unquestionably in the interests of both airlines and passengers to continue improving the European airspace infrastructure in order to offset the predicted increase in congestion delays at key hub airports in forthcoming years.

Actually, SES exemplifies the EU's 'reregulation' of aviation policy, since it seeks to reorganize European air space according to air traffic trends, establishing a shared technical and air management structure that transcends national borders. This new airspace organization seeks to rationalize costs and pollution while also improving air safety.

Indeed, community engagement in these fields has had far-reaching effects on a global scale. The Union has superseded ECAC as Europe's key platform for resolving regional aviation problems, though the two organizations' relationship has evolved from competition in the 1980s to collaboration and alliance in the 1990s and beyond. Whereas the Community's positions on ecological protection and as a regulatory authority in aviation safety and security have established it as a significant and influential global player in the sense defined by Hill (1993, 1998) and Ginsberg (1999).

A major motivation for Member States to take action at the European level came from the potential of employing Community legislation to adopt and execute policies approved by governments in preparation for this change. As a result of their collective experience, member states have learned the importance of "convergence" over rivalry in this area, in addition to strengthening the legitimacy of intergovernmental agreements. Efforts to employ traditional intergovernmental techniques and processes have proven ineffective.

3.3. EXTERNAL AVIATION POLICY

Using market-based policies, regulatory changes in air travel centered first on liberalizing the EU single market and then on liberalizing air services by removing nationality provisions and establishing open skies territories with third countries. This move was appropriate to allow any EU-based national carrier to provide services to third countries from any other EU member state. Additionally, the move would promote integration of EU airlines in cross-border mergers and acquisitions (Gudmundsson, 2019: 17). The third field that exemplifies external aviation regulation is the ETS's application to non-EU flights.

The formation of an external aviation strategy was a game changer in the European Union's involvement in air transportation and transportation in general. Additionally, the EU broadened its aviation strategy to include a number of non-member nations, formed the Common European Aviation Area (ECAA), and launched a neighborhood policy that stretched from the Mediterranean to the Ural Mountains. Furthermore, despite having been a staunch opponent of the Chicago policies throughout the vast portion of its history, the EU has progressively grown into a strong

worldwide force, serving as a collaborator of ECAC members and a member of the International Civil Aviation Organization (ICAO). Most significantly, the EU's involvement in aviation discussions as the nucleus of state supremacy has emerged as the most significant development. Efforts to bring bilateral member states into line with EU rules have been stepped up, and the European Commission has been tasked with consulting with the world's leading aviation nations. The EU's historic agreement with the United States is its most significant achievement to yet. As a result, the Union emerged as a 'global aviation actor', rather than simply a participant on the international aviation stage (see Hill 1993, 1998; Allen and Smith 1990; Caporaso and Jupille 1998; Ginsberg 1999).

3.3.1. Open Skies Initiative

Without a doubt, the EU's external aviation strategy is predicated on the European Court of Justice's 2002 'open skies' ruling (ECJ, 2002). The verdict heralded a new era in the EU's air transport industry's integration and in the development of the EU's air transport policy. Until that time airlines is constrained by nationality provisions in terms of international gateways, restricting incumbents from competing on international routes. In 2005, the EU Transport Ministers adopted a three-pillared strategy for the Union's external air transportation policy, as a result of the 2002 decision (COM, 79/2005):

- i. "Restoring legal certainty (eliminate nationality clauses in ASAs);
- ii. The creation of a common aviation area with the neighboring countries (Common Aviation Area);
- iii. The negotiation of comprehensive agreements with key partners (Open Aviation Areas)."

Since the mid-1980s, a trend toward liberalization of bilateral agreements between several member states has been underway. The United Kingdom and the Netherlands signed a novel form of agreement in which administrative regulations governing air traffic control were simplified. Not all liberalizing policies have taken place entirely within the EU; since 1979, significant negotiations have included the US under the framework of the 'Open Skies' scheme. Thus, Open Skies arrangements

refer to US-initiated liberal air service agreements. In the 1990s, the US administration signed bilateral aviation agreements with six EU member states: Austria, Belgium, Denmark, Finland, Luxembourg, and Sweden. Although bilateral agreements between the US and individual European countries differed, their effect took the European market closer to the global air transportation market. In 2002, the ECJ issued landmark decisions, called the 'Open Skies' decisions.

When it comes to fields where the EU has competence, such as airport slots, flight prices, and computer reservation systems, it filed cases against eight Member States that had signed into bilateral open skies agreements with the United States. Because they allowed the US to deny traffic rights to airlines designated by a Member State if they did not have a significant portion of their owning and impactful power vested in that Member State, the ECJ found that these eight Member States violated not only the EU's external expertise but also the right of establishment granted by the EC Treaty (Dempsey, 2004: 88).

The mid-1990s debut of the United States' open skies project was critical, but it fell short of expectations. It was originally successful in splintering the Council and increasing opposition to the Commission, but it was later used by the Commission to build support for collective bargaining powers among governments and airlines in a court case taken against the Member States. Foreign policy of the United States is used as a cornerstone for European consensus by the Commission since each new deal is considered a lesson that legitimizes the rhetoric of the Commission's opposition (Charokopos, 2008: 10). For the promotion of EU international standing, the Commission could not count on the sustained support of key member states as with liberalization. As a result, it was more difficult to come to a consensus on the separation of duties between the EC and national levels than it was with single market air services. The Community has taken on a new and vital function, but member nations have also been assured of their continued engagement.

3.3.2. Analyses of 'Open-Skies' Judgement

The European Commission was pleased and interpreted the decision as proof of its position. In its initial reaction, the Commission requested that all MS criticize

their bilateral air service contracts with the United States of America and requested a mandate from the Council to enter into negotiations with the United States on the conclusion of a new and detailed air service agreement between the US and the EC (COM 2003a). In a corresponding communication the Commission provided its findings, which were drawn from the decision, as well as the aims it wanted to accomplish in the sector of air transport by allowing use of the newly acquired forces of the Treaty (COM 2002a). The Commission reiterated that it had already held the view for a long time that it would be more advantageous for the European aviation industry if a common approach were to be followed in this field under Community leadership (ibid.). As EC law regulated certain areas of aviation, it was not acceptable to transfer the forces of the treaty to the Member States (COM 2005). Furthermore, the Commission assumed that each Member State had reached the conclusion between 70 and 80 bilateral air service agreements with third countries which were essentially very similar. Consequently, not only the 'open skies' agreements dealt with by the ECJ violated EC law, but all the air service agreements comprising similar provisions (Ibid, p.10).

Consequently, after the issuance of the 'open skies' decision, the Commission introduced further prosecutions for violation of EC rule, although so far only against those Member States which have entered into an 'open skies' or equally expansive air service arrangement with the United States, namely the Netherlands, France, Italy and Portugal. Nonetheless, the ECJ has not yet brought any of these lawsuits (Sorensen, Weert and Cheng-Jui Lu, 2003: pp.3-8). Furthermore, according to the Open Skies judgment, the Commission concluded that neither the European Community nor the Member States had all the necessary contract-making powers to infer air service agreements alone (Commission, Consequences, supra note 128: 10). As noted above, air service agreements are not restricted to the distributing of air traffic rights, but also contain various other regulations, for example with regard to safety, security, competition or protection of the environment. Because, according to the Commission, the powers for these fields is split between the European Community and the Member States, and would allow the Member States and the Community to work closely together when potential air service arrangements are negotiated (Ibid: 7). The Commission was therefore of the opinion that those issues which fall within the

jurisdiction of the Community should also be dealt with by the Commission. Furthermore, Member States should be permitted to continue to negotiate on matters that remained under their responsibility. The Commission, however, expected that Member States would participate the Commission in its future negotiations so that all concerns could be negotiated within one procedure with the respective third country and therefore an extensive air service agreement could be concluded (Committee, Communication, *supra* note 127: 9). The Commission not only stated this appraisal further in a subsequent letter, but also claimed that air service arrangements should no longer be signed between Member States and third countries, but only between the EU and third countries (COM 2005). Yet, the Commission stated in another statement that “future amendments to bilateral air service agreements on air traffic rights will be negotiated by each Member State of the EC and not by the European Commission” (COM 2005). It therefore appears that the Commission is not completely aware of the extent of its powers to draw up the Treaty.

What is certainly certain about the Commission is the possibility that the Community's involvement in the talks and the completion of air service agreements will offer political and economic gains for Community airlines and customers. With one of the its largest single market and some of the biggest and strongest airlines, the European Union is one of the most significant players in international aviation. Taking into consideration just international traffic, Community air carriers have double the international operations of their American counterparts. Because of the existing system of bilateral agreements signed between Member States and third countries, the EC has so far been prevented from taking advantage of its particular importance to foster the welfare of Community air carriers and customers (Committee, Contact, *supra* note 127: 9).

The situation has changed due to the open-skies judgment and would allow the Community to achieve the objectives of the EC in international air transport. The European Community, representing an area encompassing 28 Member States, would have a strong political power which it could use to enforce its objectives. The main interest of the Commission would be to encourage a safe and efficient air transport sector which would have favored customers. Therefore, in order to achieve this goal the EC should:

- ✓ To be granted the mandate to change the Member State's current air service agreements and put them into line with EC legislation, optimizing the capacity of the common market,

- ✓ Introducing foreign changes that would favor the aviation industry and allow further cross-border investment,

- ✓ Promoting competitiveness,

- ✓ Take care to ensure consistency with the environmental and consumer protection standards (Commission, Consequences, supra notice 128: 12).

The Commission admitted being mindful of the difficulty, versatility and economic importance of the current system of bilateral air service agreements. Consequently, any changes necessary to ensure conformity with EC legislation within this framework should be as small as possible in order to preserve the equality of rights and obligations accepted by the Member States and their negotiating partners in the air service agreements (Commission, Contact, supra note 127: 7). This did not mean, though, this current air service arrangements could not be replaced by a new arrangement signed between the EC and the relevant third country. If, out of respect for the Commission, such a new air service agreement with a third country could become necessary but the third country rejects it, the Commission would then have to organize any further steps with the Member States. As an overall measure, all Member States could also be required to amend their air service agreements with the corresponding third country in order to reach a single, unified air service agreement. Nevertheless, the Commission concluded that most countries would not compromise their air transport ties with the EC and the Member States, as they were too relevant for them from an economic perspective (Ibid: 11).

The Commission's unconventional and inclusive policy has been met with scepticism. Even before the ECJ issued its decision, the Commission was already criticized for having just introduced the process and blamed for endangering the framework of bilateral air service agreements which have proved its efficacy in controlling international aviation for more than 50 years. The Commission was accused of planning to open up the US internal market for Community carriers thus widening the liberalized common market for air transport to the US jurisdiction (Trevett, 2001: pp.10-18). Wassenbergh (2003: 21) questioned the open-skies decision

accused the ECJ of violating the guiding values of modern international aviation law, existing international arrangements, member states' rights and third country concerns. According to him, civil aviation would remain in the exclusive sovereignty of the Member States, at least so long as the Community was still solely an economic union without its own jurisdiction over its airspace and was exercised sovereignly only by the Member States (ibid: 20). Nevertheless, even Wassenbergh (2003: 24) recognized that the treaty-making powers in the field of air transport no longer belonged exclusively to the Member States after the open-skies judgement.

Although the ECJ refused to grant the Community a substantive and exclusive treaty-making power to establish air service agreements, it still limited Member States' right to negotiate those agreements on their own and individually. While the EC was now responsible for rules on slots, tariffs on intra-Community flights and computerized reservation systems, Member States were still responsible for the remaining issues covered in air service agreements, including important issues such as capacity, air traffic control, air carrier designation and, to a limited extent, tariffs. Nevertheless, in contrast with the condition before the open-skies ruling, these residual forces of the Member States would be only of small importance (van Sorensen, Weert and Cheng-Jui Lu, 2003: pp.12-15).

In accordance with the Commission, the majority of scholars found that future international air transport legislation should entail either the establishment of two independent air service agreements between Member States and the EC with third countries or the implementation of combined arrangements in which the EC and the Member States should function together as one group (Wassenbergh, 2003: 23). As it can be claimed that third countries would be unwilling to conclude two divided agreements instead of a single and uniform one, that latter solution appears to be the most likely alternative when it comes to amending existing agreements to ensure that they are compatible with EC law, it was suggested that the EC should fulfill this task on behalf of all Member States. However, underlining that the European Court of Justice implicitly refused to grant the EC a comprehensive treaty-making power to conclude air service agreements, the Commission would continue to require a Member States' mandate, assembled in the Council, before it would conclude an air service agreement. Nevertheless, since the Member States would see their needs better served

with the current relationship, it was regarded as quite unlikely that such a requirement would be issued in the short future (Wassenbergh, ECJ opinion, *supra* notice 146: 24). Thus one may expect the current air service arrangement to remain in force and not be replaced by new Community Air Service Agreements (Bartlik, 2016: 7).

The first US response to the open-skies decision validated this evaluation. The US government also stated that the current bilateral air service agreements constitute the foundation for international air travel between the Member States and the United States. Many researchers, on the other side, predicted a new EC-US deal could be concluded until 2010 (Ibid: 12). In this respect, often reference is made to the development of a Transatlantic Common Aviation Area (TCAA), a common EC and US air transport market. Wassenbergh (2003: 11) is quite pessimistic about this idea, because it would entail the opening up of the US internal market to Community air carriers. According to him, this seems unlikely not only from an international but also from a legal perspective. The biggest challenge is created by a US act that excludes only US carriers from the domestic air industry (Wassenbergh, *supra* notice 150, p.142).

On the other hand, Sorensen, Van Weert and Cheng-Jui Lu (*supra* notice 133: 14), have a more positive view of the judgment on open skies and the future of international air transport. The Community's expanded treaty-making powers in various areas of air law and the EC common air transport market could have a positive impact on the negotiation of a new air service agreement between the United States on the one side, and the EC and the Member States on the other. Such an arrangement may serve as a model for potential EC, Member State and Third Country agreements. Through their view, the open-skies decision could be the start of a new era of international air travel.

The Council expressed its view in a response to the Commission's request for a Community plan on an international aviation strategy (see COM 2015, 598 Final). It first agreed that discussions on existing or revised air service agreements would yield mutually beneficial benefits for the parties involved. In addition, the Council agreed that gaps in the implementation phases of the bilateral air service agreements between Member States and third countries may contribute to unequal incentives for Community air carriers to operate. Nonetheless, for the time being, these bilateral

agreements will remain the main basis for international relations between MS and third states, maintaining continuity of customer facilities as well as a secure operating environment for the sector and thus helping the economy as a whole. The Council also reiterated the need for Member States and the Community to work together in a coordinated way and to improve their collaboration and communication in order to bring all air service arrangements into line with EC regulations. As regards treaty-making rights, the Council wishes to encourage Member States to proceed to negotiate and establish air service agreements with third countries in conjunction with negotiations at Community level. Nonetheless, this is restricted during a transitional period until an open airspace area has been formed or other arrangements have been reached. On the other side, before the Community is given a mandate to negotiate an air service arrangement between the EC and a third country, the Council requests that the added value of any Community-level agreement be shown, in particular with regard to the prospects of obtaining new incentives for EC business and consumers and of reaching greater regulatory convergence rates. (see COM 2012 and Council Conclusions on Developing the Agenda for the Community's External Aviation Policy).

3.3.3. The 2008 EU-US Agreement

Between October 2004 and March 2007, the European Commission and the United States representatives had two rounds of negotiations on the first mandate which is called 'vertical mandate' (COM, 2007/339/EC). It was on April 30, 2007, that the United States and the European Union signed a deal to replace the 27 EU Member States' bilateral air transportation agreements with the United States. On March 2008, the Agreement was put into operation on a trial basis. According to Article 21, paragraph 3 of the Agreement, all parties have the ability to suspend certain rights if no second stage agreement is reached by November, 2010. As required by Article 21, second-stage negotiations with the United States were launched by the European Commission in May 2008. In December 2009 and March 2010, the Council performed an evaluation of its activities.

Agreement on a proposed guidelines modifying the 2007 EU-US Agreement was reached in March 2010 after eight rounds of second-stage deliberations. One goal of the guidelines is the opening of the airline industry to more foreign investment, as well as the expansion of market access for EU carriers to US government-funded air transportation. Another goal of the protocol is the strengthening of regulatory collaboration in all areas of air transport policy, particularly in relation to aviation's impact on the environment. The 'second-stage' agreement to the 2007 US-EU Air Transport Agreement was signed by US and EU delegates in Luxembourg on June, 2010 (OJ L 223, 2010: pp. 1-2)

The 2007 EU-US Agreement's most significant clause is the permission of any EU air carrier to operate between any place in the US and any place in the EU. Cabotage, on the other hand, is excluded from the Agreement.

3.3.4. Regulation 847/2004: The Horizontal Mandate

As it is known second mandate and mostly referring 'horizontal mandate', in order to bring air services agreements between non-EU governments (other than the US) and EU Member States into compliance, the EU Council permitted the Commission to perform concurrent bilateral treaty revisions with non-EU states (other than the US). European Parliament and Council passed Regulation 847 in 2004 as a result (EC, 2004/847). By permitting EU Member States to employ their horizontal mandate, this law creates a new legal framework for negotiations about EU air services. According to Regulation 847/2004, "Member States have the authority to negotiate with other countries in order to establish new air service agreements or to amend existing air service agreements, their Annexes, or any other bilateral or multilateral arrangement that falls within the EU's partial competences."

Since 2004, the European Union has advocated initiating targeted discussions with selected partners worldwide to reach comprehensive air transport treaties, with the goal of developing and endorsing the EU sector and ensuring fair rivalry on the one hand, and reforming international civil aviation on the other (Gaspari, 2011: 23). As a result, the EU has amended existing agreements and established new ones in line with Europeanization and convergence.

3.3.5. External Aviation Policy - Global Partners

After all else, the EU's long-term aviation strategy hinges on the signing of trade agreements in key parts of the world to facilitate market access and ensure fair competition, all the while contributing to the development of civil aviation globally and advancing European rules. There are a number of important aviation stakeholders that the EU has an interest in working with through the EU's Member States. European Union-level negotiations aim to provide considerable additional value in bilateral agreements by creating a solid regulatory framework that allows the industry and its customers (passengers and freight forwarders) to take advantage of new economic opportunities that benefit both (Abate and Christidis, 2020: 4).

In 2007 and June of 2010, the two countries struck groundbreaking agreements with the United States known as first and second level agreements. In 2009, Canada and the United States signed a wide-ranging treaty. The EU and Canada now have a truly open airspace area, which opens up a slew of new economic prospects for both countries. Additionally, it serves as a venue for air transportation policy to be well-integrated. Agreement was signed in 2011 between Norway and Iceland. It is possible that a wide aviation agreement with Brazil, which was reached in March of that year, may be renegotiated. Other significant partners throughout the world are being talked To as well. https://ec.europa.eu/transport/modes/air/international_aviation/external_aviation_policyglobalpartners_en (14.05.2018).

It is not only about establishing so-called open skies frameworks that allow for pure market opening; the EU plan also seeks to establish a mechanism for liberalizing airline ownership as well as a process of regulatory integration in the areas of safety and security, competitiveness, the environment, and passenger protection. The European Commission is negotiating on trust for the benefit of the EU and its MS.

To conclude the chapter, the Union has emerged as a 'global actor' in the global economic regulatory business, exhibiting the characteristics outlined by Caporaso and Jupille (1998) and described by Ginsberg (1999: 447) as follows: "accreditation (external acknowledgement of EU competence); authority (legal capacity to act); autonomy (distinction and independent from other acts)." The same holds true for its connection to ECAC, however its attitude on ICAO is slightly unclear. Although the

EU's governing role is acknowledged, the Chicago regime did not compel the Union to join the main global aviation authority. It is unquestionably more than a global presence at ICAO, but not an entirely global player.

The EU's position with regards to ICAO has significant implications not only for the EU but for the global air transportation system as well. Intra-EU facilities have decreased, leaving Member States with less space to negotiate service agreements, while EU Commission representatives are now involved in global aviation forums and in the negotiation of service agreements. Its influence has been seen worldwide by the ECAA signatories and abroad through the aviation cooperation program with Union neighbors. Despite the fact that organizations such as the ECAC and the ICAO must adjust to a regional body with supranational rights and substantial regulatory authority, partners of EU members are obliged to update their Air Service Agreements (ASAs). The newly-introduced Union has been enhanced with additional functions. First and foremost, the first significant trade negotiations between the Union and the United States resulted in a new type of agreement, one that largely ignored the concept of exclusive traffic rights in favor of an open market and new procedures to deal with issues such as safety and security as well as environmental protection, among other things.

The Commission has been struggling for years to identify a Community effort exterior to the sector. Despite missteps and setbacks, it has made significant progress towards its aims by relying on the expertise of the Community. The opposition of member states desperate to keep the system as it was ultimately overcome. In this way, the Commission may claim victory in the division of authority between the Community and its member states, even if the Council and the Commission must work together to conduct negotiations with other countries or international organizations. As the European Commission could put it, the legacy of international air transport dating back to 1945 is incompatible with the European Union's Single Market for Aviation.

The Court has crucial role in liberalization. First, it came to a stop the Commission's efforts to broaden the areas in which it specializes. Lastly, on the basis of the legal rulings in the AETR case, it disputed the members' jurisdiction. In previous transport domains, the implied powers hypothesis served as the source for the

Commission's declaration of Community competency in the execution of air transportation. EC aviation laws prohibited third-country firms from concluding agreements with member states was rejected by the Court. A key external influence was the US enforcement of its open skies policy. US policies originally established the Council-Commission separation, which eventually provided an uniting influence. Without US participation, the execution of EU policies may not have occurred.

3.4. COMPETITION POLICY: AIR TRANSPORT PERSPECTIVE

The aforementioned liberalization initiatives not only established the freedom of an EU air carrier to fly any route inside the EU as specified by applicable EU law, but also eliminated capability limitations, the equipment that an EU air carrier is permitted to use on the aforementioned operations and the frequency of such operations, as well as the right to set prices in accordance with market requirements. Simultaneously, the distinction between scheduled and non-scheduled flights was essentially eliminated, allowing both categories of air carriers with EU operating licenses to operate services in accordance with demand throughout the EU internal market.

In the second part of the 1990s, newcomers EasyJet and Ryanair, as well as other (low-cost) airlines and former charter carriers, made extensive use of the new freedoms. Their route network is largely different from that of the current flag carriers. Three themes drive the aviation industry: hybridization of business models in response to the emergence of low-cost airlines; consolidation through the proliferation of alliances; and increased exposure to financial crises and government engagement. These patterns may be critical in analyzing the activities and arrangements of airlines in competition.

Hybridization: Low-cost carriers' (LCCs) post-liberalization entry was a game-changer for the air transport industry. The no-frill and point-to-point business model of low-cost carriers has brought significant benefits to consumers and stimulated competition. At the same period, most traditional or full-service carriers (FSCs) have simplified their operations by switching to a hub-and-spoke model that has separated FSCs from short-haul and point-to-point LCCs. Some examples from the industry

today, though, show an emerging pattern of business model hybridization, blurring the common difference between FSCs and LCCs. This phenomenon of hybridization suggests that pure models of LCC and FSC have their own limits. It also shows that it is possible for airlines to adjust. Competition regulators may need to take more and more consideration of hybridization in their evaluation of competition. (see OECD Report 2014).

Consolidation: The sector is also marked by the creation of alliances the most common way for airlines to integrate their activities around boundaries, as limitations on nationality found in ASAs make international fusions difficult or impossible. Following mergers, partnerships are often seen as the second best alternative to achieve length, size and scale economies. Alliances range in scope and depth, from simple cooperative arrangements to far-reaching joint ventures. Given the number, with the complexity and development of alliances, competition authorities (sometimes also other authorities) have had to determine their effect on business and customers as the major phenomenon (ibid: 5).

Distress: Significant withdrawals, failures, restructuring and entrants still mark the sector. Financial distress is not new: pre-liberalization has already shaped the market. If financial distress is due to internal causes (e.g. mismanagement) or exogenous reasons (e.g. oil prices), it always poses thorny problems for governments: would they let a carrier collapse, which could be a natural outcome of competition? And, given the importance of air transport and the possibility of spill-over impact on other sectors, should the collapsed carrier be rescued? The perceptions of the countries show opposing strategies. For instance, big restructuring or recovery initiatives have been implemented and obviously worked in Japan and the US, while Hungary has forced the legacy carrier to leave the market, which was eventually replaced by LLCs. Currently, the EU is the only legal authority that provides a state aid legislation regime, with a few exceptions in principle prohibiting state aid. In relation to financial distress cases, this expands the debate on whether policies are justified in favour of certain carriers, how it provides (dis)incentives for other airlines to succeed, and how it changes the playing field across jurisdictions. (see OECD Report 2014: 7).

3.4.1. The Internal Dimension

An EU air carrier has the above-mentioned freedoms solely granted to them for intra-EU services. EU air carriers are carriers that are majority EU-owned (more than 50% held by EU countries or their nationals) and managed by EU countries or their nationals (i.e. these entities will exert a definitive impact on EU air carrier management).

When an air carrier's primary place of business is located in an EU country that has issued the air carrier a valid operating license. The investments made by the Arab airline Etihad in Airberlin, Alitalia, and other European airlines, among other issues, demonstrate the current relevance of the aforementioned situations. As a result, the EU Commission must consider whether these air carriers can still be designated as European air carriers in order to defend EU internal market principles that are reserved solely for European air carriers. Because the external / international air travel industry has not been liberalized, but is still governed by bilateral air services agreements, which can be very conservative in terms of market accessibility and sector behavior while also being very liberal in nature, as exemplified by so-called "open skies" agreements, such as the EU-US air transport agreement, such assessments are all the more important.

3.4.2. The External Dimension

Following the 2002 Open Skies Decisions of the EU Court of Justice, EU carrier norms, commonly known as the Community Carrier Clause, became applicable in recognized bilateral air service agreements between EU members and third nations. These guidelines guarantee and support the industry's ability to develop itself. Actually, KLM should be able to fly between Amsterdam and Brazil, as well as between Madrid and/or Amsterdam. Over 1,000 out of over 3,000 these bilateral agreements were signed in the summer of 2014, and they all feature the EU air carrier provision.

EU air carrier clause benefits EU carriers, such as KLM, Swiss, or Austrian Airlines, whose status is impacted by a merger or takeover in the context of ownership

and management of the business, in order to secure traffic rights. Off-line operations such as those of Air France, such as flights from Berlin to İstanbul, are not profitable for EU air carriers, hence it did not contribute to the expansion of off-line air services by EU air carriers.

3.5. THE APPLICATION OF COMPETITION TO THE AIR TRANSPORT MARKET

Two critical concepts of competition have been considered in this thesis in order to comprehend the competition law perspective in the aviation sector: Consolidation and Fragmentation. Which is more beneficial for the EU's objectives: convergence or fragmentation? Three key areas of competition law require adaptation of one of these paradigms: practical competition law, merger control, and state aid. Prior to delving into these policy areas, a brief definition of 'relevant market' is provided, which is critical. Each competition case requires extensive forensic work, including the definition and valuation of the "relevant market" and the analysis of the actual or possible effect of activities or proposed acts by one or more players, in our instance, airlines and airports. As a result, an accurate and relevant market definition is critical to the effectiveness of legislative initiatives (Kociubinski, 2011: 20).

Market definition is changing in the air transport market. There is no agreement on the relevant markets nor on whether enforcers can provide advice on standards for market classification. While the standard origin-destination (O&D) framework has been maintained by different competition regulators, others have embraced narrower or wider interpretations that take into account developments in industry.

Globe-wide jurisdictions report developing and simplistic approaches to defining passenger air transport market boundaries. Numerous competition regulators maintain the traditional approach to origin-destination (O&D), identifying markets by city or airport pairs, largely focused on demand-side replaceability. There are variations between business and leisure travelers and between direct and indirect flights as to whether markets should be further segmented. Relevant markets have sometimes been expanded on short-haul flights to include other modes of transport (e.g. high speed trains). There is also an increasing understanding of the importance of

taking network factors into account, although in their business concept (e.g. Australia) only a few states have taken such factors into consideration. Others would prefer to consider network elements as part of the competitive effects analysis.

There is controversy as to whether further guidelines should be provided on identifying the market. On the one hand the business community is asking for more clarification and harmonization, so that possible competitive threats resulting from their actions can be measured. On the other hand analysts and most regulators would rather not limit themselves, and tend to identify markets on a situation-by-case basis. The lack of guidelines and a harmonized market definition strategy needs improved coordination with competition regulators investigating the same activities in the airline industry.

3.5.1. Antitrust law-Airline Alliances

Alliances are the most specific horizontal arrangement to be complied with by competition regulators, yet through different compliance instruments. Further consideration should be given to the role of network structure, organized consequences and multi-market interaction in the study of competition and resolution implementation. Most cases suggest that competition from the alliances replaces competition from the airlines.

Despite the easing of ownership and control constraints, airlines hoping to expand outside of the EU also face legal barriers due to bilateral air traffic agreements and cabotage rules, which prevent foreign airlines from flying on domestic routes outside (Rose and Bailey 2013, pp.390-391). Airlines counteracts these limits in order to access the foreign market (e.g. EU or US), and if purchase or direct investment is not an option, the 'second best' method is alliances (Weber and Dinwoodie, 2000: 52). Most passengers choose large network airlines offering better access to a wider range of destinations (Oum and Taylor, 1995: 6). When cooperating across alliances, the number of pauses needed goes down and the frequencies needed to meet a target improve (Doy, 1985:53). However, despite these benefits, alliances among airlines can be anti-competitive. Both are examples of concerted behaviors and decisions by groups of undertakings. This is even more relevant as long as the provision encompasses any

collaboration, however defined. it is enough to prove that the people involved agreed to pursue a particular behavior (COM 2006). So long as it has a significant negative impact on competition and trade, this kind of action is not allowed. It is not absolute, however. Under Art. 101(3) of the Treaty on the Functioning of the European Union (TFEU), a declaration under Art. 101(1) and 102 TFEU including a prohibition of misuse of a dominant position or a violation due to an arrangement or group of agreements between undertakings, may be made inapplicable by the Commission (see EC 2003). An arrangement or series of agreements between businesses may increase the supply or distribution of commodities, while also stimulating technological or economic growth to make the general ban inapplicable. So in the interim, such activities should neither impose unnecessary restrictions, nor should they contribute to the decline of competitiveness. Art. 101(3) TFEU results in an evaluation of whether the positive impacts of an agreement outweigh the negative consequences on competition (see Bilotkach and Hüschelrath 2012).

Since the mid-1990s, the European Commission has been in support of cross-border alliances. That strategic alliances would contribute in the sustainable restructuring of the European airline industry, leading to a better customer service quality and a more cost-effective organization (see 25th COM report on competition policy). Remembering that while most European flag carriers were public, they had inherited structural inefficiencies from their pre-deregulation position when operating in an uncompetitive environment. Simply put, European carriers faced an immediate need to change to tougher global competition, and this evolution was intended to be aided through alliances. The EU's approach to transatlantic alliances at first lacked a theoretical and regional scope. The Commission was able to use Regulation No. 3975/87 (see EC 1987) to apply EU law directly, in so far as aviation activities affected intra-EU routes.

Alliances, on the other hand, are subject to various antitrust enforcement tools and mechanisms across countries, including:

- (i) merger control in countries with a broad definition of merger (such as in Brazil, Canada and India);
- (ii) specific exemption, authorization or immunity regimes requiring an airline alliance application and a case-by-case review (such as in the US);

(iii) all of these enforcement mechanisms are targeted at putting partnerships under monopoly review. Nevertheless, they differ in terms of their method, timing solutions and effect, and sometimes also in terms of the authority. Two major risks derive from these inconsistencies: the risk of airlines shopping for enforcement tools, and the risk of losing efficiency in enforcing competition as well as the expected benefits of the alliance. This variety makes it even more important for coordination between competition and regulatory authorities, and for regulators to consider other options to the ownership constraints in ASAs (see DAF / COMPT 2014: 5).

3.5.2. Merger Control

Merger control regulation is a unique subject in international air transportation because it is inextricably linked to the nationality conditions under which international air transportation operates in accordance with bilateral air services agreements for the aim of functioning the negotiated international aviation. Additionally, for the EU, national regulations set restrictions on air carriers' registration based on their nationality.

When two or more formerly independent entities combine, this is referred to as a merger. In order for this union to be successful, it should be formed by the merger of separate businesses owned by any person or entity involved in commercial or economic activity (New Researcher, 2010: pp 36-39). There are two definitions of a merger, according to the Commission's Consolidated Jurisdictional Notice: “one in which two or more separate legal entities combine to produce a new legal entity, and the other in which a legal entity is absorbed by another, but the latter retains its own legal entity” (EC 2004a, No 139/2004).

Furthermore merger control have always been viewed as the primary tool in terms of competition and consolidation to preserve a market structure (Varona, 2005: 215). The fact is somewhat more complex, since the Merger Control Regulation (ECMR) includes all alliances and mergers under certain circumstances. As a general rule, the EU antitrust law, including Section 101 TFEU, is valid for the acquisition of uncontrolling shares. The alliance must meet the conditions for a full-functioning joint venture and exceed the Community level ECMR turnover threshold (EC 2004).

Additionally, the Commission has competence to regulate mergers only if they constitute a 'concentration' and if they are related to the Community (ibid.). Concentration could be defined as two or more ventures combining into a new organization, when one agency or department becomes supplanted by another, or when a 'acquisition of control' occurs, which affects all parties' strategic decisions. The preceding information should be taken into consideration for the sake of this discussion (Varona, 2005: 13).

The analysis of 'concentration/control' reflects the consideration of concerted practices discussed above, under effective competition regulation. It also entails a review of whether efficiency benefits obtained through a merger exceed anti-competitive consolidation and market share growth (Cheng Jui-Lu, 1968: 91). As well as a valuation of the interests of consumers in product and geographic marketplaces (Fichert, 2020: 130). These mergers also fuel public controversy because all European flag carriers are public, or the State owns the majority stake (Von den Steinen, 2006: 156). Additionally, the Commission is able to exercise ECMR jurisdiction over European carriers. There are very major cases involving US-based carriers and it is understood by the EU and the US that cooperation on transatlantic markets is very necessary. A considerable expansion of competition legislation to include transatlantic mergers is also in effect (Air Transport Agreement 2007, OJ L134/4).

More or less two-thirds of all decisions approving mergers were followed by remedies to mitigate the concentration's anti-competitive impacts (Fichert *supra* notice 64, p. 363). Slot divestitures are an essential prerequisite, as in monopoly situations, for improving competitiveness on a sector involving combining carriers. Remedies include the duty—depending on the case—to pass slots to both rivals and new entrants, but there is no reliable information is available about the requirements for deciding the slots should be lost and how many (Fichert, *supra* notice 564, p. 364). In the case of mergers, one might claim that slot divestiture is the only ineffective legislative mechanism in favor of market opening.

Nonetheless, many of the potential competitors who wanted to take over the vacated slots were too small to establish a profitable battle (Bonova, Koska and Specker, 2009: pp.53-57). the massive scale of the newly constituted combined corporations (especially Air France / KLM) discourages potential competitors. A solid

amount of evidence shows that any lost slots would most certainly be taken up by other competitors, increasing their overall volumes. Even yet, this is of benefit to both business and customers, maybe even more so than if new entrants had purchased the slots, as they would only be able to provide limited service in terms of location and frequency (Franke, 2004: 17). Also, there is the possibility of an outsider re-establishing his dominance (Fichert, 2002: pp.261-275). where laws impede entry Regulatory changes may include the abolition of capacity limitations, changes to corporate governance regulations, or opening up routes for third-country carriers (Sabena/Swissair; Lufthansa/SAS 1996, OJ L54/28). In fact, the Commission's strategy is in line with the 'concentration' sector pattern.

3.5.3. State Aid

State aid serves as the foundation for the EU's goals to support a wide range of industries, businesses, investors, and entrepreneurs. This is the main reason that the EU institutions worked hard to establish a solid basis based on the key elements controlling state aid in the EU legal system, and they were successful in integrating the business sector to the legal system. This is true in the case of civil aviation. The industry receives government aid inside the EU's boundaries, and the Union's fiscal framework assists participants in the civil aviation sector, including airline companies and airports, within the scope of the Union's legal procedure. However, the civil aviation industry has some unique features to discuss as it involves special state aid applications to meet the sector's unique needs (see COM, 2007).

Essentially, the Union's state aid in the civil aviation sector is structured in four distinct ways. To begin, the sector benefits from sectoral aid. This type of aid is determined by the sector's needs and is based on the 74rd and 77th articles of the Treaty of Rome, for transport procedures and investments such as those for community purposes that qualify for state aid in the EU. Especially, for the air transport industry, the EU authorities and European Commission assess the advantages of aid to a firm and the indirect effects on the sector during the state aids procedure. Airline firms are the primary beneficiaries of these types of aid, and the European Commission prohibits the use of state aid to indefinitely strengthen one airline company against competitors

(see COM 1994).

The question of State aid seems to be of great importance for the matter under consideration. In the field of rescue and restructuring aid (R&R aid), it is however particularly relevant. The financial situation of the air transport sector is largely dependent on the global economic situation, due to relatively small profit margins (Vasigh, Fleming and Tacker, 2013: 2). Every downturn in the economy translates directly into lower passenger returns. Adding to this are increasing fuel costs, higher operating costs in domestic markets as a consequence of overcapacity and increased security costs at airports. This is the source of the issue in the sector. Despite the 'Black Swan' effect, September 11 is the initiating event of the US' worst economic downturn, which in actuality just worsened an existing situation. Recovery in 2006-2007 also returned the industry to prosperity, at which point the global financial crisis hit. It then began a steady comeback about 2010. Many aviation carriers found themselves in extremely dire financial straits which necessitated public support (ibid.). In severe circumstances, rescue aid to enable a short-term survival with restructuring aid to achieve long-term financial viability is appropriate (COM 2004, OJ L244/2). The European Commission asserted that by helping unstable carriers merge, it was only transferring the associated risks to competitors. However, just one grant can be given every ten years under the 'one-time last-time' idea, which ensures that aid is only given when a company is financially viable.

Unlike air traffic control services, which are classified as State entities under EU law, airports are considered to be enterprises engaged in economic activity and hence subject to EU competition law. The EU Commission has never applied EU competition laws governing coordinated behavior to airport encounters, likely because they did not exist, despite the Commission's insistence that airport policy is an internal matter. Nonetheless, airports have been subject to EU legislation prohibiting the misuse of a dominant situation and State aid restrictions. In the 1990s, the EU Commission publicly condemned airports in Stockholm, Brussels, and Lisbon for receiving preferential treatment from their 'home carriers'.

Economic activity in the first decade of the twenty-first century is focused on the topic of airports offering state aid to 'home' or 'most favoured' airlines, which is now being considered by the EU Commission. Ryanair's favored treatment at

Belgium's Charleroi airport prompted a heightened attention in this topic after a landmark ruling. The EU Commission found in this instance that the financial support and assistance granted to the Irish airline Ryanair by regional authorities in southern Belgium and the Charleroi airport authority constituted State aid and were therefore illegal. It has requested that a portion of the carrier's funds be returned to the appropriate authorities. The ECJ invalidated the above-mentioned Commission's judgement on 17 December 2008, due to the Commission's incorrect use of the notion of 'market investor'. The court concluded, among other things, that the Commission erred in concluding that this concept could not be applied because the help was granted by a public entity (see Court Judgement, Case T 196/04).

As demonstrated by the introduction of EU State aid rules that include airport finance and start-up help to airlines departing from regional airports, as well as the ensuing case law, the discussion of state aid is pertinent in view of the close relationship between airports and airline companies. The assumption of European case law is that operating and improving airport facilities cannot be considered a role exempt from State aid restrictions. It is the goal of the 2014 recommendations to maintain sustainable links between regions and the mobility of European citizens while preventing trade disruptions in the internal air transportation sector (see COM 2014, 99/03).

CHAPTER FOUR

THE EU IMPACT: EVOLUTION OF EUROPEAN AVIATION

4.1. SINGLE MARKET REGULATION: THE EU IMPACT

The Community has implemented a single market for air services, in addition to changing the legislative framework which governs the industry. The regulatory landscape has shifted, just like it has with safety. The EU Commission's adoption of the first package not only made it a regulator of the industry's economic characteristics, but also a licensing, market access, and pricing regulator as well as a competition authority. When the next two packages, coupled with the additional measures, expanded the Single Market, the program's mandate grew. Regulation of competition issues entailed more than just limiting airlines' transactions and anti-competitive behavior; other political issues, such as mergers and state aid, also needed to be controlled. Competition regulations forced the Community to begin regulating new activities that the airlines responded to by taking over and creating alliances with local and international rivals as well as by obtaining different shareholdings.

The launch of a new regulatory framework under which again authorized supranational authority to regulate and impose international instructions were a critical component of EU-led aviation reform. A remarkable fact is that considering the objections raised by members of the EU to the Community's engagement in European aviation and the tendency of member states to uphold the conventional direction, the Commission developed and become effective in European aviation within a very short time period. As a result, the EU's regulation of the aviation industry has made a notable contribution to the reformation of the industry both within and outside of the EU. One of the impacts of this initiative has been the broad worldwide influence, especially with respect to the Community's extra-territorial enforcement of competition regulations.

While the founding of the Commission as a regulator of aviation surpasses the sector in issue, the impact on the overall industry cannot be overlooked. While the majority opinion in the literature holds that the Community's regulatory powers are obtained by sector-specific regulatory bodies, the Commission itself was actually

established as a sectoral regulator for aviation. While the member governments' capacity to gain respect for an intergovernmental agreement was important in shaping the Commission's actions, so too was the Commission's interest in presenting member governments with the option between progressive liberalization and sudden judicial decree liberalization.

The policies of the nation and the EU pertaining to the aviation industry are quite different from the rest of the economy. While in telecommunications and energy, transfers of an independent authority from public ownership to independent control were achieved by moving the body from public to private control as a result of EU-level deregulation and the introduction of the Commission as a regulatory authority (Coen and Thatcher, 2008: 6). Despite this, transportation initiatives arose first, with the exception of the UK, which ultimately led to a great deal of domestic reform. While it may partially explain why certain member governments had such strong objections to Community-led liberalization, it is important to recognize how powerful Community action has been on the domestic level.

The chapter explores the progression of these functions from economic regulators to competition authorities. This section describes how the Commission implemented a framework for regulation and examines the impacts of the Commission's regulations in the industry. By using legislation that is meant to open up the single market, the Commission carries out its economic regulation tasks.

4.1.1. The Commission as Regulator

The Commission has had overlapping tasks in the regulation of the economy and the promotion of competition, which are generally carried out at a national level by separate entities. Competition policy is implemented by the DG COMP (Competition) while market policies are implemented by the DG TREN (Transport and Energy). The state aid management exemption is not the result of DG COMP being the department in charge of managing state aid, it is instead handled by DG TREN. DG COMP and DG TREN have got a long-standing relationship of cooperation in the field of air transport, according to Spence (2006: 12). Regardless of whether or not their objectives differ, the first focuses on maintaining a competitive marketplace,

while the second is remarkable in supporting the welfare of the industry.

The Commission had a significant impact on the management of benefits in air transport field since 1987. In international diplomacy, states perform a statutory responsibility according to the state-centered paradigm (Hooghe et al., 1996: 32). The Community also enabled the rise of a number of regional federations, which created a multitude of additional structures for existing organizations, as well as independent Brussels sections for the biggest airlines. Not only were there as many lobbyists for the community as for the national government, but it was also Brussels that was on the most people's minds, rather than the nation's capital. It is possible to argue that the Commission has taken the place of the major interlocutor in the airline industry for aviation rights.

In practical terms, the transport division of the Commission carries out the liberalization measures mandated by the European Air Transport Policy. The first two packages assigned responsibility for tariff arrangement and market access regulation to the Commission. The third liberalization package, however, increased the Commission's regulatory function by including provisions for Community authorizing. The Commission's form and power expanded dramatically since the early 1990s in each of the following areas: Despite this, member states may still impose limits on the results of market liberalization.

4.1.2. Market Access

Market access provisions have been one of the most important liberalization aims of the Council and Commission for a long time. Nations would individually negotiate conditions of market access for each other's airlines. However, as each Member State governs its own internal matters, bilateral agreements run against one of the major aims of the EU, namely to have consistent laws and regulations throughout the member states for the sake of trade, including transportation. This makes it possible for the Council and Commission to establish EU legislation regarding market access, and has helped them make headway in getting rid of bilateral deals with third parties. Of the efforts taken on by the EC/EU to improve market access, three areas were of particular importance: standardizing air carrier licensing,

abolishing capacity constraints on routes, and making full cabotage available.

Article 4 of Council Regulation 2408/92 restricts national governments from blocking or limiting the traffic rights of other EU carrier when their service to small communities operating under PSOs is threatened. In the delivery of traffic among airport network, though, national governments can implement non-discriminatory rules that are applied equally to all operators (Article 8(1)).

The limitations on the flow of traffic were an obstacle to the liberal goals of Regulation 2408/92. (see EC 1992a). This regulations has enforced current regulations to keep network at congested airports. In fact, these guidelines have often been applied in ways that benefit the incumbent airlines rather than their rivals. In actuality, the longstanding need for all new airlines to fly a London airport different from Heathrow is non-discriminatory, however vigorously enforced. Because of this, numerous national governments worked to implement regulations to limit competition they did not want. Three cases from the year 1993 to 1996 regarding Paris airports show how the Commission works to guarantee that the legislation is enforced, and a resourceful Member State uses the Commission's accomplishments to realize its national goals (CAA 1995, pp. 43-7).

Additional key market access issues include ensuring slots at overcrowded airports are available. Competition for air routes, or a difficult market response, might raise the question of whether changing a route's portfolio of slots is a limitation of market access. New rules for slot allocation and airport scheduling were adopted by the Commission in 1990. As long as slot allocation and airport scheduling are available to all airlines, norms of priority that are non-discriminatory, new entrants receive not less than 50% of newly generated or unfilled slots, and participants in the discussions have complete information are the exemptions that exist.

4.1.3. Tariffs and Pricing

Air transport policy places strict limits on the imposition of country-based tariffs. With fewer European state-owned/controlled airlines going private, the 'tariff-as-weapon' paradigm has lost effective support. Thus, alongside the less stringent regulatory regime, there are fewer states that may use tariff discussions as a tool for

economic or political leverage. Of course, since that discovery also leads to the question of which came first: the movement toward privatization or the regulatory atmosphere that has permitted it? In reality, it was both. However, even if the air transport sector is moving towards an alliance structure, as the Third Package matures, international tariff talks are no longer significant.

As a result of the new pricing, capacity, and market access restrictions passed by the Council in 1990, in response to the Commission's proposals, new laws controlling scheduled intra-Community air transportation were implemented. Extending liberalized pricing strategies to 'conditional Fifth Freedom rights' within the flexibility zones was the main focus of the Second Package for pricing rules. Regulated charges were still have to be approved by the individual Member States. The EC paid attention to more than simply price matters, however. To the first time in history, the EC adopted the double-disapproval system (whereby two governments must both disapprove a tariff to render it invalid), which applied only to tariffs which were set above the stated rate by at least five percent. The double-disapproval system was extended to apply to all tariffs beginning on January 1, 1993 (see COM 1993).

Additionally, the third package eliminated many of the complexity associated with tariff rules. The final responsibility for accepting air tariffs is held by the member governments, but they are granted reserve rights to adjust the tariffs which they believe are either unreasonably high or unjustifiably modest, considering the total air carrier expenses that would be completely dispersed. The Commission is authorized to intervene when a Member State refuses to implement a fares set by another Member State, when a party on the side of the disputing parties or an entity interested in solving the problem, such as the carrier or aggrieved passengers, applies, and finally rule on the basis of its understanding of the interference criteria outlined in Article 6. The Commission shall refrain from acting on its own discretion, and its actions may be subject to review by the Council.

ECAC has also supported in the liberalization of pricing outside the EU. On a quasi-diplomatic level, ECAC involved in certain tariff policy discussions with the United States, despite internal oppositions. The US and ECAC signed a Memorandum of Understanding in October 1984 that liberalized control of North Atlantic fares. Through April 30, 1987, the treaty established 'zones of reasonableness' for North

Atlantic fares. In February 1987, a two-year pact with significantly more generous clauses was signed. The agreement established deep-discount fare zones at an average of 10% and gave for greater flexibility in offering such fares. Airlines were allowed to establish transatlantic fares without government involvement as long as they remained within an agreed-upon percentage above or below a reference price (see First ECAC-US Memorandum).

4.1.4. Licensing

The first two liberalization packages made no changes to the licensing processes for air carriers, likely because the Council was reticent to touch a subject so inextricably linked to treasured conceptions of national character. But as part of the Second Package, the Council ordered that a rule managing the licensing of air carriers inside the EU be adopted by 1992. In line with the Third Package, the Council passed a rule on Community air carrier licenses despite missing its own deadline by six months. However, given the extent of Regulation 2407/92, the Council can be justified for its slowness (see EC 1992).

The third package's safety regulations were critical in developing a properly integrated air services sector. While initially appearing to be a legislative measure, as Balfour (1994: 1028) notes, the principal significance was as a revolutionary mechanism, as an operating license should be granted to any airline that meets the stated standards. The objective was to eliminate any potential hostility between national governments and other State carriers.

Non-powered or ultra-light aircraft, as well as flights departing and landing at a single airport, are exempt from the regulation, which states that it does not apply. National laws will continue to apply to these types of aircraft. As a result, the EU now has control over all commercial aviation. An air carrier is obligated to an operating license provided it satisfies the following conditions, however licensing does not grant a specific route or market exclusivity to an air carrier. Members of the European Union may provide an operating license to an applicant who is based in that Member State and the primary purpose of the activity is to carry people and goods through air. Additionally, unless a Member State and a non-EU member have formed an agreement

establishing ownership criteria, the air carrier must be majority owned by Member States or their citizens. Several airlines have been excused from the general rule regarding the ownership requirement, but if their ownership is transferred to another non-EU state or national, they will be subject to the general regulation. Air carriers must be able to demonstrate compliance with the ownership requirements upon request from a Member State.

As a result, the basic laws of the liberalized air services market have significantly reduced most of the obstacles to free choice for airlines by allowing them to offer different routes, fly to different destinations, and charge different costs. The Commission emphasized on narrow definition of the terms of the regulations that formed the third package, but old practices were resistant to change. However, it would be interesting to see if the new, updated method will reduce fiscal incentives to act adverse to aviation's upcoming unification.

Many of the topics discussed in the chapter has relate to the development of the EU and its regulation of aviation Single Market rules and Community competition regulations. Although their existence as a regulator imposes a less obvious but vital overall impact, European airlines and many member states are indirectly affected by their actions. Although this has not produced a totally competitive market or eliminated all remnants of protectionism, the Commission contributed to the aviation industry's move to international standards. A good example of this is the large influx of state aid in the 1990s, when the reformed sector was battling in a more competitive environment, including having market investors, encouraging a change of company culture, and loosening state-owner ties.

Meanwhile, it appears that the big national airline firms have recreated new partnerships that defined the EU aviation in the 1980s and 1990s, within the context of multinational alliances that bolstered European aviation's worldwide market position. International consequences have also occurred because of the Commission's decisions. Since at least the mid-1990s, the Commission has worked with the industry to shape the process of multinational transformation, thereby helping to foster the emergence of a global industry.

4.2. THE EU: EVOLUTION OF EUROPEAN AVIATION

The chapters before this one explained how the EU became an autonomous aviation decision-making organization, traced its history, and analyzed why it grew and extended. Since the European Community first became involved in the aviation industry early 1990s, the sector has seen a substantial transformation. This chapter examines how the European Union's role in the sector has influenced national policy, governance, and the growth of industry in the past decade. All but a few post-World War II conventional methods have been abandoned by the majority of states. Protectionism and government regulation have been completely eliminated, and the government is no more focused on the protection of state-owned carrier as it formerly was. In recent years, certain governments have come to be regarded as owners and managers of the market possibilities on which airlines rely, rather than as producers of those chances. Airlines then use their own strategic judgments to decide which flights, flight operations, and prices they will offer. The huge advancements in both technical and operational aspects of aviation are also noteworthy. Since traditional intergovernmental organizations have replaced loose coordination with more focused and programmatic interaction with major supranational influences under new regional regimes, intergovernmental organizations can now act like supranational actors.

A further point is that government intervention is not limited to domestic issues anymore. The state flag-carrier cooperation has disintegrated. EU institutions and organizations have changed how resources are interrelated. The interests of governments, airlines, consumers, and other groups are prominent among them. European aviation industry has changed drastically. An international market was established instead of a patchwork of national markets that divided into duopolies of flag carrier and local networks monopolized by one airline. With legacy carriers ruling the skies, no legacy carrier is a monopoly but is confronted by many new competitors in the single market, including low-cost carriers. A substantial amount of domestic restructuring has occurred, though various types of alliances and agreements have been forged with carriers within the Union as well as beyond the Union.

This chapter examines to what extent developments in domestic policy, policy making, and market development are affected by the EU. Following bottom-up

approach, it claims that domestic policies at Union level were key factors in regulation of the industry in three of the four Member States included in the study; explicitly, France, Germany, and the Netherlands, and that their outcomes had the most extensive consequences in France. On the other hand, in UK, transition was mostly impacted by internal changes in particular places and with respect to particular dimensions. This data suggests a more complex set of correlations than most research on Europeanization claims. A major challenge to the belief that Union policy spurs reform in sectors of negative integration, where the EU eliminates national hurdles, whereas positive integration necessitates the introduction of new Union institutions and policies (Knill and Lehmkuhl, 1999: 11). An EU-led effort revolutionized how states execute safety policy, integrate air traffic control supervision, and hold ASAs with third nations. Process-centered effect, rather than product-centered, is difficult to measure in conventional Europeanization assessments.

4.2.1. Change in Domestic Policy

Since the 1980s, the above-mentioned protectionist policies have mostly ceased to exist. European governments are no longer pursuing air transportation via the support of a national flag-carriers. Formerly privatized flag carriers faced with rivalry on domestic and international routes, moreover existence of alternative air carriers grew ingrained. Although these changes occurred concurrently with the Union's adoption of a new regulatory framework, they cannot be conclusively attributed to EU policy. Only serious empirical investigation can establish if the EU was responsible for the development. Apart from determining precisely what has changed, it is vital to explain the reasons for domestic transition and to clarify the mechanisms during action.

The top-down approach, which is prevalent in the literature on Europeanization, aims to review EU policy over a specific period and then attempting to analyze the Union's effect at the national level through an analysis of changes that have occurred since EU membership. Nonetheless, as discussed in Chapter One, this method of evaluating reform indicates or supports impact by the EU over other potential sources, local or external, and is thus ineffective at determining the Union's

relative relevance as a measure for the degree to which the EU donated. Thus, when making comparison domestic policy between periods of t_1 and t_2 , the top-down methodology demonstrates that transformation occurred but can not pinpoint the precise point at which change occurred within the time in question. The bottom-up approach, as outlined in particular by Goetz (2002), Radaelli (2003, 2004), and Dyson (2002), addresses those difficulties and claims to provide a more accurate picture of when, how, and to what degree the Union influenced domestic policy developments.

When looking at the progress of domestic policy over a specific period, and identifying where improvement can be found, a bottom-up strategy should be taken into consideration particularly. Attention to time is a major part of the argument in favor of a more attentive at the bottom up approach. On the other hand, the top-down method regards domestic reform as a case. The model used to analyze these cases before and after EU involvement. Bottom-up method advocates that it is important to identify the instant at which the change occurred since, not only did the change occur between t_1 and t_2 , but it happened between those two stages. Changes are identified by looking for changes, which enables diagnosis and disentanglement of the elements in action and evaluation of the relative importance of those elements. This information has particular importance in cross-national analysis, because changes to domestic policies and strategies, and how fast or slow these changes occurred, can provide crucial clues about the impact of outside influences and how key variables contribute to the outcome. While it is possible that the Union's involvement in the domestic policy process has caused those modifications, unlike the top-down perspective, Brussels' way of furthering European integration does not imply causation. Undeniably, some advocates of the bottom-up approach advises using triple check. The argument that the EU brought about domestic transition only stands up when the timing criterion for change is fulfilled: domestic reform (the timing condition) would not have occurred unless the EU was involved, and the EU is held responsible for the change rather than additional aspects (the alternative hypothesis test).

The next section surveys developments in four Member States' economic regulation of air transport and assesses the effects of the EU using the bottom-up approach. Other policy changes will be detailed later. In terms of economic regulation,

domestic trends are considered after 1985, when the Commission released its Memorandum 2.

4.2.2. Economic Regulation

In order to evaluate the EU policies have impacted each Member State, we can examine the historical practices and preferences adopted by the four MS (interests, approaches, and tools), and compare them from the respect of EU involvement. The result will be clear: EU intervention has had the biggest influence on France, while the Netherlands and the United Kingdom have been least impacted; Germany, on the other hand, has been in the middle of the spectrum. Although, according to the results of this study, domestic policy has changed drastically since the mid-1980s, this is in line with what many people believed beforehand. At the same time, though, the bottom-up approach illustrates that even though the EU has played a critical role in recent change, other factors have been equally essential. Changes in economic regulation, particularly privatization, are evident even in the realm of regulation. Political issues such as the new government's political actions, and the authorities' national shifts toward liberalization were among the main reasons that change occurred in Germany, the Netherlands, and the United Kingdom. In contrast, all of France's reforms stemmed from policy and Union intervention. The significant role of the U.S. government in prompting the negotiation of bilateral open skies agreements is found to be key in France, Germany, and the Netherlands, on the other hand much more significant in the event of France and Germany. The United States has played a lesser role in the United Kingdom compared to what it has done in other European countries.

An investigation of the long-term dynamics of domestic development will demonstrate how the EU has affected national politics. Two of the ways the EU used to influence Member States were imposing sectoral legislation and implementing competition rules. According to Knill and Lehmkuhl (1999: 21), the last measure is the essential weapon for driving domestic change in policy areas. For the first one, the Union has implemented improvements in domestic policy by taking away two legislative mechanisms traditionally used by national governments to protect their airlines from competition by stripping legislative tools and offering new competitive

freedoms that are available to any air carrier which meets EU economic and technical requirements. Domestic policy was impacted as well. By enabling smaller carriers to break into new markets previously barred to them, it has also allowed greater competition in those markets, thereby opening previously-protected airlines to the challenge of competition. By opening previously-shielded airlines to market competition, the status quo of traditional carriers and state flag carriers has been challenged. When it was excluded from the competition regulations of the country before 1987, air transportation is now exposed to the Community's competitive directions. The member countries' use of traditional mechanisms like mergers and state aid is also subject to the European Commission's oversight and approval.

Analyzing via the bottom up approach can provide important insights about the complicated mechanisms of action and how multiple influences came together to bring about change. Privatization often leads to the claim that although if Article 295 (ex 222) of the Treaty forbids giving priority to one type of ownership over another, the EU's interventions have been essential in persuading Member States to quit the public sector. Concretely, for instance, when applying for state financing, governments may have made a commitment to the airline to minimize their own share of the profits. While one can also make the case that air services made available through the Single Market has contributed to the spread of privatization, it could also be said that the increased availability of air services created by the Single Market has contributed in the rise of privatization. In two countries covered in this study that France and Germany, however, the mechanism was more intricate than it implies through simple understanding of interconnection. The privatization in Holland and the UK had been propelled by internal considerations. Recent research findings reveal that the time, shape, and manner of privatization is heavily influenced by characteristics that include state-airline relations, airline governance structure, and senior management autonomy.

An instance of a different type illustrates the role of global and commercial factors. Air France and Lufthansa were forced to adopt strategies that included entree to the world's most lucrative routes because of the foundation of the Single Market for Air Services. The United States would grant antitrust immunity to state carriers only if they have an open skies agreement and/or code-sharing agreements with other states. It is crucially important that we can detect when a shift has occurred and trace its

reasons using a bottom-up method.

4.2.3. Understanding Domestic Policy Change: 4 Member States

According to the input from the four member states, the diversity is significant. Whereas all those four country had greatly impacted by the Union policies, domestic adjustments were important in Germany and France, with no impact on Spain or Italy. The Dutch and UK governments had much less impact of EU-led liberalization respectively, albeit the number and range of airlines in both nations rose due to EU-led liberalization. There had been other domestic variables in all four countries. Politicians used power to encourage social change in the UK. The termination of the RLD in the Netherlands was due in part to this. In France, the communist transport minister Jospin slowed down the reforms. Meanwhile, in Germany, during the 1980s, bureaucrats and ministers advocated a progressively more liberal perspective of aviation.

In three situations, the influence of global forces like pressure from the U.S. was readily apparent. Convincing France to request an open skies agreement has been a precondition for giving antitrust protection to the intercontinental alliance founded by Air France. The influence of the United States on Lufthansa's business strategy was immense, but the airline had already reached the decision that open skies were an essential part of the new business plan. According to the Netherlands' long-term policy plan, they welcomed the most recent U.S. attempt with enthusiasm. Additionally, Bermuda II and Heathrow freed the UK of any further pressure due to their new positions. It did not require the negotiation of an open skies agreement in order to gain endorsement of the code-sharing arrangement.

Two other facts are noteworthy. The Netherlands and the UK were prominent proponents of EU economic policy action, but Germany and France were staunch supporters for deeper collaboration in the technical areas. France has worked diligently to bring EU social and technical harmonization measures that could blunt the harsh winds of economic liberalism. This was all due to the lobbying efforts of the French government and Airbus which resulted in the foundation of JAA, EU safety laws, and the founding of EASA. Germany has always been supportive of EU safety and air

traffic control reforms. Regulatory improvement losers, France and Germany, have been effective in protecting their ambitions and transferring their interests with reference to air transport's strategic and organizational facets. Aside from the Community Treaty and its competition laws to seek free access to the European market for its carriers, the UK was far more unwilling to accept convergence to EU over technical and safety requirements that evolved as a result of the Single Aviation Market's implementation.

Bottom-up approach is further supported by the use of a diachronic analysis, which is used to identify and relate change sources as well as to discover the mechanisms at action. When all four situations are evaluated, it is shown that market rivalry does not play as large role as some researchers have assumed (see Thatcher, 2007). Because of internal factors (the United Kingdom, the Netherlands), or for EU factors (France), policies changed (Germany). The supremacy of US carriers had little effect on the French, German, or Dutch governments; whereas the strength of BA influenced these governments in the cases of France, Germany, and the Netherlands.

EU actions created legislation for competition which led to a significant increase in domestic change (Knill and Lehmkuhl 1999). European Union intervention has the greatest influence on airline routes, business models, and intra-Union domestic rivalry. New rights and freedoms were created for EU carriers as a result of EU legislation that stripped Member States of the legislative instruments that permitted them to protect their national airlines by restricting license issuance and market access.

4.2.4. Beyond the bounds: Economic Regulation

The Union's participation was widespread and impactful in controlling the economic characteristics of aviation. For air traffic control and safety member states sacrifice the freedom of action they usually enjoyed. EU involvement necessitated national-level handling of air safety and intergovernmental collaboration. ICAO and ECAC both established and implemented global and regional standards. Different states maintained the flexibility to decide whether or not to enforce any specific requirement in national laws. EU laws replaced the prior framework. With the development of a new European arena for standard formulation, like the EU, the area

of decision-making has shifted. New standards designed by EASA were already in place. EU member states thus took away the last authority they possessed with regards to requirements, as the application of these laws is now mandatory and under EU law.

The EU's participation has been widespread and impactful in controlling the economic implications of air transport, but this is not to be taken lightly in other areas. Member nations have sacrificed their usual freedom of action for safety and air traffic control. Intergovernmental collaboration was utilized while addressing aviation safety issues. International and regional standards were implemented by ICAO and by ECAC. National legislation retained the freedom for each country to enforce any specific standard, and sovereignty was not questioned. EU legislation has replaced the current framework. A new European platform for standard setting has been established, resulting in a shift in where decisions are made and the standards-setting process has been institutionalized. The earliest standards were created in the JAA, and later implemented in EASA in line with the Union's regulations. MS thus took away the last power they possessed with regards to requirements, as the application of these laws is now mandatory and under EU law.

Today's air traffic control developments do not compare to the stage of full functional convergence envisioned when Eurocontrol was created. However, as a result of EU legislation, the members of the European Union have ceased to recognize air traffic control as an exclusively regional matter. One of the main goals of the Single European Sky (SES) has been the improvement of overall collaboration, and for the first time, this has caused commitments to be imposed on governments. Brussels has developed into a place where politicians and decision-makers congregate.

Second, in spite of its institutional bias, the research on Europeanization has based on specific changes in domestic policy. For this aim, it does not include a mechanism to quantify the Union influence on MS on air traffic control and safety, where they exercise national power, agree on joint procedures and established specialized institutions where they interact intensely and at hand. Analysis methodologies that are subject to Europeanization must still be further developed.

4.2.5. Transformations in Domestic Policymaking

The EU Air Transport Policy have been significantly changed member state policy making. These domestic actors no longer make the policy goals and the range of approaches to accomplish them. The way in which national actors conduct themselves has altered, for more benefit.

Decision-making context and nature have evolved since the late 1980s. Typically, government aviation policymaking has been driven by a sovereignty issue (Griffith 1939; Heclo 1978; Jordan 1990). Air Ministry officials were always present, but the group's composition fluctuated from country to country. For instance, in Europe, it was founded on the DGAC and comprised Air France high level managers who are in charge of the company's horns. In the past, parliaments have rarely taken an active role in the realm, except in the UK. However, the UK once again returned as an invader, but these government policy groups (see John 2000; Atkinson and Coleman 1992; Rhodes 1990) concentrated on securing the carrier's interests and preserved a production-oriented outlook.

All those features have disappeared gradually. The capitals are no more focal point of national decision-making and state actors no longer decide based on their own interests. Brussels has gained prominence as a location for formulating policy for a larger array of aviation-related events. European governments no longer hold autonomous policy-making power, but rather share power and authority with the EU institutions, as well as with each other. Policy goals and the acquisition of policy tools have merged, which reduces the room for independent policy making. According to the UK DoT, who conducted a discussion on the future of UK air transport sector, the EU has been the most significant international entity influencing aviation policy in the UK since the mid 1980s. Community laws have a positive impact on UK aviation regulation in many ways.

To put it another way, national players have been brought together in an expanded and more decentralized decision-making framework at the EU level. The availability of actor connection has increased as a result of the expansion of decision-makers included the EU-29, the Commission, and the European Parliament, among others. Furthermore, the spectrum of frequently sought issues has been expanded. In

the case of aviation topics, governments would seldom solicit wide viewpoints, while the Commission often asks any interested party of any sort and at any level to comment on its recommendations or as part of legislative review exercises. Client preferences are now given greater importance, which is a big improvement over the previous system. Users had a voice in UK legislation, where the AUC and National Consumers' Council lobbied for passenger issues and the CAA was required by statute to take consumer interests into consideration when making licensing decisions, but this was not the situation in other countries. A concerted effort is being made by the Commission to engage groups that work for the rights of passengers and consumers.

4.2.6. The Sources of Change

Developments in member state policy making have arisen, although not solely, due to EU-level action. The common air transport policy has greatly impacted domestic policies, as well as how national administrations fulfill their tasks. As a result, the international relations were redrawn, power was shifted from national capitals to Brussels, and new policies were created. No Member States can act on their own with regard to aviation concerns. They must follow Community procedures and decision norms.

When Brussels rose in prominence, the national political structures dissolved, and so did their position as regulators. When governments and airlines lost their powers and laws from the EU took effect, the assets links that held the 'old village' policymaking intact evaporated. There were less business options available to the state. New alliances focusing on EU agencies have replaced industry's previous resource links. The implementation of Community rules concluded with the expansion of regional organizations, the expansion of new roles by present institutions and building of new offices for the major airlines in Brussels. Stakeholders are channeling their lobbying efforts to institutions at Community stage rather than to state authorities. Hence the Commission has got to be the key mediator for aviation-related problems.

The impact of EU reforms was dominant, but domestic developments were equally crucial. In light of an economic liberalism, ideology became critical. To give

another example, a conservative minister made the dismantling of the RLD in the Netherlands a priority, whereas the reform of NATS by the United Kingdom was implemented as part of the program to scale back the British state. As a result of domestic considerations, it was theoretically possible to link the acceptance of a policy with domestic policy decisions and interactions between the country and a national airline in the Netherlands and the United Kingdom, respectively.

4.2.7. Clarifying the Change

The European industry's transformation may be traced largely to the European Community's liberalization policies. Along with applying Community competition regulations to the industry, EU's liberalization packages gradually restricted governments' authority to regulate capacity, market access, and tariffs, whilst providing airline businesses additional freedoms. As a result, bilateral agreements were liberalized and domestic networks expanded to include both domestic and foreign rivals. International rules set up by European laws gave new market entrants special treatment and privileges moreover allowed airlines from one EU member state to operate in and out of any other EU member state.

The rules put in place by the Community did not lead to regulatory rivalry, the study on which claims market making and negative integration as active processes. No member countries have taken legislative measures to advance the interests of their aviation businesses and airlines. Community's method of direct restriction on the degree to which countries could financially support national flag carriers circumvents national legislatures and secures governmental backing for certain firms. Actually, each carrier gained new rights that were given to them as EU regulations required. By providing a favorable regulatory environment for non-competitive state-owned carriers, Community legislation pressured non-competitive state-owned carriers to improve their practices.

However, two limits bear on the effect of the Union. As previously noted, actions approved by the EU could not have created a single market in aviation services. They relied on new newcomers, like Easyjet, as well as the ability of former flag carrier management to make the shift to efficient operation. This typically involves

implementing wholly new tactics like revenue control (see Lehrer 1997). The scenarios discussed previously in the chapter highlight the important variables that intervene. Also, certain states helped shape the modern European industry. This alliance, for example, enhanced market entrance, boosted the number of facts, and established rivalry charging (Abbott and Thompson, 1991: 6). British domestic change has preempted the liberalization of the Union.

To sum up, most of the improvements and innovations in the European market preceded Community action. They were impossible to have occurred in the absence of EU action. Without dispute, no other entity could have implemented liberalization. As the UK showed, there were limitations to what could even be done arbitrarily by a powerful liberal-minded government. The ideas produced by ECAC in the 1990s were far less extreme than those implemented by the EC and only arose when reticent policymakers unsuccessfully tried to pre-empt more drastic Community action. More generally, the US was less concerned with supporting global liberalization than with securing free bilateral airspace that would benefit US airlines, while at the same time obtaining the unanimous vote expected at ICAO was, and remains, a far-off possibility.

4.2.8. Importance of International Dimension

Understanding of the dynamics of decision-making, the relative function and strength of EU institutions, and the relationship between the EU and its member states has been considerably enhanced by EU research. It has endeavored, especially in recent years, to elucidate processes and developments utilizing techniques and concepts from an ever-expanding array of political science subfields and the social sciences. However, there is a significant way in which it remains localized. With the exception of scholars who study the EU's foreign policy and the few policy professionals who investigate how the Union functions on the world arena, the literature on the EU remains peculiarly inward-looking. The majority of researchers in both the classic integration and Europeanization literatures are intently focused on processes occurring within the Union. However, the preceding chapters have demonstrated that this restricted worldview is dangerous. Not only may the international context play a significant role in EU policies, but Brussels' actions can

have far-reaching effects on the globe outside the Union's borders.

The perspective of air transport demonstrates the significance of external factors in comprehending EU developments. It demonstrates not only how quickly the EU can adopt a complete strategy, but also how a supranational EU regime must learn to adapt and cooperate with a larger international regime, to which the member states remain connected and within which the EU must find its place. In lieu of constructing an altogether new EU apparatus, the Community has created a number of techniques for handling the institutions of the Chicago system, frequently fitting itself to existing entities and their functions. Obviously, the significance of the international setting will vary among industries and throughout time, but it should not be disregarded as a potentially significant variable. At the very least, it should not be assumed that EU policy and policymaking are to be described solely in terms of interaction between EU institutions, much less as a result of interstate bargaining between states in the Council. The amount to which regulatory space in a specific sector has already been occupied is likely to present the Community with vastly distinct opportunity structures, resulting in vastly varied engagement opportunities for the EC.

The air transport issue also illustrates how Union action may have global consequences. Brussels' implementation of a regulatory framework has had a profound global effect. The evolution of EU regulations on licensing and Community ownership and control has reshaped interactions with third countries. Effectively, bilateral ties between EU member states and third nations have been regionalized, with ASAs being negotiated at the Union level as opposed to the national one. The Community has recast the conventional bilateral by requiring the systematic replacement of the old 'nationality clause' in agreements negotiated between EU member states and third countries with a Community ownership and control provision. The changing character of ties between EU member states and the United States is possibly the clearest manifestation of the significance of the Community's new position and authority. Previously, the United States was able to negotiate deals with individual EU states from a position of overwhelming strength. However, with the Union's emergence as a regulatory entity authorized to negotiate ASA collectively, the relationship has been rebalanced. The United States is no longer uncontested hegemon (Doganis, 2001:8).

While the Community's external aviation policy has revolutionized bilateral relations, the extraterritorial implementation of Community laws has also influenced third parties. Community's competition rules and regulations controlling aviation safety are crucial. Alliances and potential mergers involving airlines from non-European countries are subject to European Commission permission. In terms of safety, the Union maintains a list of airlines that are banned from accessing Union airspace and has inspection powers that allow the Commission to examine the safety standards, systems, and procedures of third-party nations.

The development of the Community as the focal point of a supranational, multilateral and multi-level regional order has posed a significant threat to the state-centric framework that has controlled the sector since the 1940s. Despite the fact that the Community cannot become a signatory to the Chicago Convention and therefore cannot join ICAO, the Montreal-centered organization, has recognized its powerful international influence in economic regulation, environmental protection, and safety through the expansion of contacts and cooperation in an increasing number of areas.

To conclude on chapter; the EU revolutionized European aviation dramatically. What is proven throughout the chapter is that Community-led liberal policies have had a significant impact on the sector. By imposing stringent restrictions on government action, as well as on government involvement to impose Community standards, and by granting all European carriers that meet technical and financial criteria the freedom to fly to any country in Europe, the Union has effectively forced the industry to abandon interventionist policies that were previously common in the sector. Conventional partnerships between governments and airlines have been replaced by fierce competition on the European market, where the carriers face a strong threat from low-cost carriers.

The impacts of union activity went far beyond regulating aviation and having an impact on national policies. As stated in this chapter, the EU's existence and actions had an impact on policy and policymaking in the realms of technical and operational areas. Regional institutions now incorporate more intricate decision-making processes, promoting cooperation and a supranational role in regulatory and policy formation replacing traditional state-centered systems and intergovernmental processes. It should be noted that the drafting of policies is something that is currently shared between EU

nations and the EU institutions. One of the most far-reaching outcomes was the restructuring of national governments' duties, commitments, and activities, as well as the reorientation of aviation lobbying groups.

One purpose of this chapter, and the thesis in general, was to explain the benefits of the method of the bottom up. Monitoring domestic policy change in the four member nations enabled disentangling and analyzing the causes of transformation without assuming that the EU was the initiator. It is unsurprising that the reforms in the Netherlands and the United Kingdom were motivated by internal concerns rather than Union policy, whereas Germany and France were more influenced by the establishment of the European Air Transport Policy. The bottom-up method helped in relativizing the Union's effect and establishing other variables. In late 1980s Germany, for example, signs of domestic change in the administration occurred covertly. In France, EU liberalization, and particularly the Commission's enforcement action, were the primary factors driving policy change, but external factors also played a role, most notably the tensions arising from Air France's need to be profitable and the US' persistence on an open skies deal as a condition for permitting the French airline to join a global alliance. Finally, the chapter demonstrated that, contrary to a standard concept of negative integration, administrative competitiveness was not the primary mechanism through which EU involvement induced reform at the Member State level. In the case study, a more intricate chain of mechanisms was demonstrated.

CONCLUSION

First and foremost, this thesis began with an empirical inquiry. Upon its establishment in 1974, a protective, bilateral civil aviation regulatory system that was essentially as extensive as the sector itself was praised by a large majority of Member State governments. Job creation and public services were supplied by national air transport management, which also contributed to state protection while also promoting commerce and industrial policy. The European Commission has had a heavy resistance from the governments to what have been actually cautious proposals and later, governments decided to Europeanize the field, to extend the supranational governance sphere and improve supranational organizations' political capacity. The question here was why?

In order to response to this question, this thesis started with activities of international actors and supranational organizations, but it does not end there. The cost of a rigid and inefficient regulatory system bored the main users of businesses which includes private customers, freight shippers, and ultimately governments, as cross-border trade grew. European-level interest groups forged alliances with the Commission and lobbied the reforms on the part of the national governments. Initially timidly and increasingly vigorously, the Commission has followed an ever more comprehensive European agenda for the complete reregulation of industry. Enabled by Council Regulation No. 17, the ECJ re-wrote the rules regulating national regulation in the sector and placed Member State governments on a shadow of legislation when faced with private airlines providing intra-EC flights. In 1986, when the Commission used the Court's decision to use the reticence of governments, this shadow deteriorated significantly. In short, governments responded by building supranational governance, encountered diminishing advantages and increasing costs of sustaining national governance systems.

The finding that a convergence of international powers and supranational initiatives has surpassed the national control obligation of administrations provides empirical evidence for Stone Sweet and Sandholtz's integration theory (1997). While the thesis acknowledges that intergovernmental decision-making has been a critical step towards the broader study process that aimed to clarify because it must take every

step to control European policy, this study however does not find support for intergovernmental European integration theories. There is often a need to distinguish at this stage carefully between the two major uses of the term ‘intergovernmental’: (1) the descriptive mark for what is to take place in the Council of Ministers and in the European Council; and (2) the body of causal propositions about the causes and effects of European integration. The tale of air transport is presumably different from that of governmentals, as Moravcsik (1995) argues. They may insist upon the assignment of dominance organizations to deal with private actors and stakeholders, to recommend reforms and to work on clarifying and implementing EC legislation. By doing so, the Commission and the Court may be arguing for reducing the costs of information and transactions facing governments, thereby promoting trade that enables governments to improve their own domestic politics. However, this isn't the main finding of this research. Accordingly, not only did the global players and supranational organizations on air transport sector, but any national government would have as much power to assess the results as it had before 1987.

Secondly, the thesis questioned existing accounts on the way to the Community initially intervened and established its policies in aviation. In addition, it has shown that there are very different processes throughout the industry and that tries to clarify the policy-making in aviation. One of the purposes of this thesis was to draw attention to the role of institutions that are broadly defined in the integration of European policy. The characteristics of institutional ‘pull’ and convergence ‘push’ resulted in the date of the unified air transport policy being implemented at the appropriate time. Both dynamics contributed to the success of a shared policy. This study discussed how the nature of the policy was influenced by many institutional features, including structural prejudice, nested institutions, and agency activity, among others. Although the EU's institutional framework framed the discussion in a way that tilted final solutions toward market liberalization, the dissemination of ideas and external change served to amplify this bias. Furthermore, institutions function on a variety of levels, each with its own history and contextual setting. Economic institutions from member states, in particular, played a critical role in bringing the aviation discussions to a successful conclusion. Finally, the Commission and the Court pushed the process along in

unexpected ways that were not anticipated. The effects of their actions have far-reaching consequences for market participants and member nations as well.

A third point of thesis addresses the literature on Europeanisation. In addition to examining the aspects of domestic change due to EU intervention that are frequently neglected or ignored in Europeanisation scholarships, the thesis questions the top-down approach that is prevalent in literature, and has favoured for the bottom-up approach to analyze and assess the EU effect of the domestic change factor. It argues that while the top-down approach which developed as dominant one, could only document the extent of changes from one point to another, the bottom-up analysis is a more responsive measure of where, how, and how much the EU has contributed to changes in national policy.

In line with that, the study investigated how the EU influenced national aviation policies and policy making as well as discussed, the benefits of a bottom-up approach of Europeanisation. Whereas arguments on the influence of the Union frequently depend on the results of legislation, this study pursued to explore over more than five decades and the implications of Union actions in a given policy area. Further research was conducted to establish a thorough understanding of national policies and policy-making processes in the four major aviation nations such as France, Germany, the Netherlands and the United Kingdom.

Whilst the top-down point of view is dominating the literature, it has been criticized by proponents of a bottom-up approach, which has not been formalized but which indicates a more sensitive way of assessing to what degree domestic policy changes have taken place. While the top-down approach starts by taking account of changes in the Union and then goes on to an evaluation of progress in domestic policy, an analysis of domestic policies over a specific period marks the beginning of the bottom-up approach. The top-down approach has two key issues. Firstly, it seems to be the presumption by examining EU activity in the first place that the Union has subsequently made some improvements in national policies. Secondly, while the degree of change can be reported between two points over the time, this approach cannot exactly determine when the alteration occurs.

On the other hand, the bottom up approach provides a more understandable view of the aspects that account for transition by monitoring the change in the trajectory of national policies. Where change occurs, its sources can be traced and dispersed in support of a specific cause without any assumption. In fact, Radaelli (2003) stresses that a stringent three-test should be carried out where it is assumed that the EU is liable for particular changes: first, that EU activity is predated domestic change (sequencing test); secondly, that the domestic change in question would not take place if the EU action had not been taken (counterfactual test) and last, any other factor could have caused the change (the alternative hypothesis test). In addition, the bottom-up perspective can also define, in comparison to the top-down view, where adjustments took place between two points on time. This time sensitivity brings the analytical benefit to the method. In any case, this helps one to assess not just how fast, how long it was followed, but also whether the transition was made in the form of an event or spread over a time. This is particularly good in comparative analysis for its ability to do so.

This assertion seems to be impossible to reach from the top-down viewpoint. The top-down perspective is believed to be the primary cause of changes in domestic policy caused by the EU. The top-down approach also allowed us to examine the processes that led to change and thereby emphasizes the importance of airline governance structures and the interface between the flag carrier and state relations. In France and Germany, these factors separated Air France and Lufthansa from British Airways (UK) or KLM (Netherlands) that have much more administrative independence enabling transformation from a product-centered flag carrier to a commercial business and privatization.

In addition to promoting the bottom-up approach, this thesis tried to make a broader contribution to Europeanization scholarship and to discuss its limitations. One of the shortcomings in the literature about Europeanization, as Goetz (2000) argued, was its identification in the Member States of how Brussels decisions achieve their impact. When the EU eliminates national obstacles with negative integration, it is always maintained that Union activity results in reform by competition, instead of the positive integration which involves the formation of new policies.

Using the EU's Air Transport Policy as a case study, this study demonstrated that the impact of the European integration process on European and domestic politics can be better understood in terms of Positive and Negative Integration approaches. As the name implies, positive integration is a process that involves market-correcting regulations. It encompasses measures aimed at mitigating the adverse consequences of market processes, such as environmental control, social policy, regional policy, and veterinary policy that complement the common agriculture policy. Negative Integration is concerned with the elimination of national barriers necessary for the development of a sufficiently robust national strategy. The Air Transport Policy was first classified as a kind of European negative integration due to the deregulation of the sector, but recent developments in the EU's air transport policy indicate a tendency toward positive integration by means of reregulation. The chapters of this thesis discussed the expanding role of the EU's regulatory and institutional building role in that sense.

Thus, in this study air transport case has shown the role of external factors in order to understand the European integration. The study not only illustrates how easily Union can build a detailed strategy, but it also demonstrates how a supranational EU structure must learn to adapt and comply with a broader international framework that Member States remained tied and that the EU should take a part. There were a range of techniques planned by the Community in order not necessarily to build a brand-new EU appliance but to discuss the structures of the Chicago regime, which also suited existing organizations and their functions. It should not be overlooked as a potentially significant variable, however, that the international context can offline differ from sectors and over time. EU policies and policy-making must not be expected to be explaining only in terms of relations between EU institutions, far less restricted to accounting for intergovernmental negotiations between states in Council. The degree to which regulatory spaces have already been filled in any specific sector is likely to face quite different opportunities for Community involvement, which can lead to very different opportunities for EC participation.

The case of aviation also shows how Union action would impact the world outside. There has been a dramatic global impact on the regulatory environment in Brussels. Relationships with third states was changed thanks to establishment of EU

licensing rules and Community ownership and control. In the agreements concluded between EU Member States and third countries by means of Community ownership and control arrangements, the Community revised the conventional bilateral system replacing the traditional 'nationality clause'. Whereas the Community external aviation policy transformed bilateral relations, the implementation of Community rules outside the territory also influenced third countries. Particular importance attaches to Community competition laws and the aviation safety regulations. With regard to the former, the European Commission needs the approval of alliances and proposed mergers between third countries' airlines. Moreover, concerning safety, the EU upholds a list of airlines called 'black list' in which they are not authorized to access the EU airspace and has inspection authorities that allow the Commission to investigate third countries' safety standards.

Another goal of the thesis was to examine the existing literature of the common air transport policy. It is not surprising that the common air transport policy has taken a great amount of consideration in the literature about EU studies. The three key accounts are given in terms of power indices, modified neofunctionalism and historical institutionalism. As the thesis addressed complex challenges and changes, the discussion here restricts itself to a set of general problems. Firstly, the existing studies pay limited attention to the consequences of international impact, as does European literature more generally. As seen in the previous discussions, external influences have profoundly affected the pacing, details and evolution of important fundamentals of the common air transport policy. After the adoption of the first liberalization package, common policy establishment was mostly related to the theory of neo-functionalism and historical institutionalism. However, there was at least until the introduction of the second package a conflict between liberals and traditionalists. The disagreement over the recommendations of the Commission was also evident in resolving other market-based problems.

The case studies in the thesis have shown shortcomings in the scholarship for Europeanisation as well. While the framework available is useful to examine improvements in the economic regulation of aviation, in technical or operational fields it is less useful. Action by the European Union, for instance, has contributed to a major shift in internal policies in the area of air traffic control and safety. States have had great

discretion in both fields previously. They could choose to follow the requirements set out in ICAO or EASA for safety purposes while taking their own decisions on equipment and procurement specifications, operating procedures and the level of collaboration with intergovernmental institutions through air traffic management. However, current analyses of Europeanisation do not readily capture the effect on domestic policy of this sort, which is process rather than product-centered.

Although generalizations based on a single case study should be made with caution, the experience of air transport offers at least three potential research paths, which might be taken into consideration for further research. The first is to explore the effects of external issues on the dynamics of EU decision making in more detail. What international forces have an impact? How precisely do global regimes impact EU policymaking prospects? If so, how does their arrangement make a difference? What happens when EU requirements and international responsibilities of a member state conflict? The second step is to evaluate the external impact of EU action. How does EU policy evolution impact foreign regulatory structures? How do international organizations react to the European Union as a regulatory and political actor? What is the nature of the connection between the EU and other organizations: Collaboration or competition? Domination or peaceful coexistence? The third relates to the literature on Europeanization. What might a bottom-up approach disclose about the EU's influence on other sectors? Has it been overemphasized? How can the domestic consequences of the EU, which are ignored by present research, be accounted for?

To sum up, the study analyzed the impact of the Union on European aviation as part of its analysis. The Union's influence on sector is another dimension of transition, which is seldomly discussed in the literature on Europeanisation. The impact of Union action was drastic in the case of air transport. The EU has transformed the regulatory system of air transportation, with a fundamentally different structure both in domestic and global manner. It has resulted in substantial reorganization and transformation, facilitated new business models, procedures, and approaches prompted the dismantling of the conventional flag carrier structure in spite of the fact that limits of convergence and Europeanization not only among member states but also the EU institutions.

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