

European Common Aviation Area as a Way to Aviation Liberalisation: Ukraine's Case

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ABSTRACT

The signing of the Common Aviation Area (CAA) Agreement between the European Union (EU) and Ukraine is one of the priorities tasks on the agenda in Ukraine. The purpose of the CAA Agreement is the gradual formation of a Common Aviation Area between the European Union and its Member States and Ukraine. The negotiation process on signing the agreement has been going on for several years due to the external and internal issues, namely, the “Gibraltar issue” and the necessity to implement main European and international aviation standards into existing Ukraine’s legislation. This paper highlights main pillars of negotiation process, current challenges and future perspectives of the CAA Agreement between the EU and Ukraine for the extending of the European Common Aviation Area and further liberalization of aviation sector.

Keywords: *European Common Aviation Area, aviation liberalization, “Gibraltar issue”, legislation implementation, groundhandling standards.*

1. INTRODUCTION

On June 28, 2021, the Council of the European Union agreed to sign a Common Aviation Area Agreement with Ukraine, as well as three other countries: Armenia, Tunisia and Qatar. At present, the Agreement for Ukraine can be applied on a temporary basis, pending the completion of all necessary procedures for its entry into force.

The purpose of the CAA Agreement is the gradual formation of a Common aviation area between the European Union and its Member States and Ukraine, which is based, inter alia, on identical rules in the field of flight safety, aviation safety, air traffic management, environmental protection, consumer protection and systems. computer reservation, as well as with regard to social norms in the aviation industry.

2. LITERATURE REVIEW AND PROBLEM STATEMENT

This analytical research is based on main legislation acts, agreements and standards of EU and Ukraine, which established the CAA and cooperation in the sphere of international aviation.

The process of creating a common EU aviation area was started in 1999. On December, 12, 2006, the Council of the EU authorized the Commission to open negotiations with Ukraine. In October 2013, the text of the CAA Agreement was agreed by the parties, but due to foreign policy conditions, the signing was postponed indefinitely.

Negotiations on the CAA Agreement with Ukraine were completed in 2013, however the signing of the Agreement was blocked due to a conflict between the United Kingdom (UK) and Spain concerning the status of Gibraltar airport.

3. THE AIM OF RESEARCH

The aim of the study is to contribute to practical and scientific researches of case studies worldwide on formation of air transportation policy and process of approximation of national legislation.

4. SINGLE EUROPEAN SKY WITH UKRAINE: CURRENT CHALLENGES

The main reason for postponing the signing of the CAA Agreement in 2014-2016 is the lack of consensus between Spain and the United Kingdom on the wording of paragraph 31 “Territory” of Article 2 “Definition” of

the Agreement regarding the territorial status of Gibraltar. Alternatives to solving the above problem are (a) increasing political pressure from Ukraine to sign the CAA Agreement, (b) changing the approach to negotiations on signing the CAA Agreement, (c) negotiating the benefits of the CAA Agreement without directly signing the Agreement, (d) focusing on the implementation of the first stage provided by the initialled version of the CAA Agreement - namely, the incorporation of EU norms and directives into Ukrainian legislation, and waiting for the right moment to resume active negotiations on the second stage - liberalization of the aviation market between Ukraine and the EU.

4.1. Historical background of the “Gibraltar issue”

Gibraltar is a semi-enclave belonging to Great Britain in the south of the Iberian Peninsula in Spain with an extremely favorable geopolitical position, with an area of only 6.5 km² and a population of 27.6 thousand people - came into the possession of the English crown in 1713 according to the Treaty of Utrecht together with the Balearic Islands. later returned to the jurisdiction of Spain. According to the treaty, only the Rock of Gibraltar itself was transferred to England “as a military base, and not as a colony, city, castle, port, defensive structures and a fortress in a state in 1704 without jurisdiction over the territory and without the right of any communication by land with a neighboring country, with which all trade is also prohibited.” The isthmus connecting the rock with the mainland remained with Spain. However, gradually the British began to settle and use it, in 1935 an airport was built there. All this did not provoke immediate action from Spain, and the isthmus actually became English.

Great Britain had no right to transfer or sell Gibraltar to a third state. If Great Britain refuses this territory, it is automatically returned to Spain, that is, according to a treaty 300 years ago, Gibraltar can be either Spanish or English. But lately, the question of the possibility of gaining independence has been increasingly discussed in the government circles of Gibraltar, which, according to the Spanish side, is impossible. In 1956, the UN Decolonization Committee recognized that the question of Gibraltar was not a question of self-determination of the territory, but of the restoration of the integrity of Spain, which should take place with respect for the rights and interests of the colony's population and through bilateral negotiations.

In 1967, a referendum was held in Gibraltar, in which the population voted to maintain the existing status. However, in 1969, Gibraltar received a constitution providing for the office of governor, prime minister, a single house of assembly with 15 elected members, as well as a speaker, attorney general, finance minister and minister for development. The preamble to the

constitution states that the UK will not negotiate the transfer of Gibraltar without the consent of its population.

Currently, the position of Gibraltar in the world economy and politics is predetermined by the fact that at the end of the 60s. XX century legislation was passed on a special preferential tax regime for foreign companies. Since then, Gibraltar has become a convenient offshore zone, truly a tax haven: most of the British taxes - on value added, on sales, on real estate, etc., are not applied here.

In 1985, an agreement was reached on the rules for crossing the Spanish border with Gibraltar, after which the UK lifted its veto on Spain's admission to the EU. In 1987, a Spanish-English agreement was signed on the joint use of the airport. However, the government of Gibraltar opposed this: the inhabitants of Gibraltar could get to Europe only through London by plane or by sea, there were no flights to Spain and through Spanish airspace. In 2000, a new treaty was signed defining the administrative status of the disputed territory. From now on, the EU laws that are beneficial to it (in particular, on the liberalization of interregional air traffic) may operate on the territory of Gibraltar, the relationship of Gibraltar with the EU or any of its members should take place under the jurisdiction of the UK. The new treaty also contains an important provision on the “competent authorities” of Gibraltar (they are not recognized by Spain). Now the interests of this territory should be represented by Great Britain itself, and not by the authorities of Gibraltar. At the same time, Spain agreed to recognize Gibraltar ID cards, which will now be valid throughout the EU, provided that they bear the mark not only “Gibraltar” but also “Great Britain” [1].

In 2002, 99 percent of Gibraltar's inhabitants rejected a proposal to divide territorial sovereignty between London and Madrid in a referendum. At the same time, in the 2016 Brexit referendum, 95.9 percent of Gibraltarians voted to stay in the EU.

4.2. Current problem solving

Dispute between London and Madrid escalated over Brexit. The inhabitants of Gibraltar (there are about 30 thousand people) are extremely closely connected with mainland Spain by economic and cultural ties (not to mention the fact that thousands of Spaniards work in Gibraltar). Therefore, in 2016, the majority of the inhabitants of the peninsula (95%) voted to remain in the EU. Moreover, before Brexit, the Gibraltars always advocated that the territory remained under British control: during the referendum in 2002, 99% voted against London's compromise plan to introduce joint Anglo-Spanish control.

When London launched the process of leaving the EU, the Spanish Foreign Ministry said that after Brexit, Gibraltar could remain part of the European Union only with the help of Madrid. The residents [2]. of Gibraltar

have been warned that they will face new inconveniences after the UK's exit from the EU, as they will no longer have the freedom of movement or the freedom to economic activity (in the EU) that they enjoy.

As a way out of the situation, Madrid offered Gibraltar "joint sovereignty between the United Kingdom and Spain for a while, after which the sovereignty of Spain would be restored." Great Britain categorically did not agree to such a plan - in London they made it clear that they intend to maintain the status quo regardless of the outcome of the Brexit negotiations.

The rates were raised on March 31, 2017, when Brussels presented a draft version of the EU's core principles in the Brexit negotiations. According to the documents, no agreement between the EU and the UK will apply to Gibraltar without an agreement between Madrid and London. The EU leadership not only rejected the idea of a special status for Gibraltar after the UK left the EU, but also gave Spain a veto on any decision affecting future relations between Brussels and the overseas territory.

At the end of December 2020, Madrid reached a preliminary agreement with London on the status of Gibraltar after Brexit. This arrangement will form the basis of a future agreement between the European Union and the United Kingdom on Gibraltar [3].

It is assumed that according to the agreement, the British Overseas Territory, located on the southern edge of the Iberian Peninsula, will be able to take advantage of the Schengen zone. Thus, it will be possible to avoid the appearance of a rigid external border in the new year.

The agreements reached will be sent to the European Commission in order to start negotiations on a formal agreement.

The agreement was reached a few hours before the UK finally severed relations with the EU.

The transition phase due to Brexit ends on January 1, which means that the UK and its overseas territories will no longer be part of the EU and Customs Union single market.

5. ACCESSION INTO THE EUROPEAN CAA OF UKRAINE

Ukraine (as other post-Soviet countries) is intending to make the transformation towards a consolidated democratic system, functioning market economy and efficient democratic state with extensive [4-6] welfare policies. It is not necessary for Ukraine to 'reinvent the wheel' in this matter. Whatever action is performed by a great man, common men follow in his footsteps. And whatever standards he sets by exemplary acts, all the world pursues [7].

The CAA concerns civil aviation and provides for the reciprocal opening of air transport markets between the EU and neighboring countries. It is not only about passenger, but also freight and mail transportation. The countries of the Western Balkans, Georgia, Moldova, Israel, Jordan and Morocco are already participants in this space. On April 8, the European Commission approved draft CAA agreements not only with Ukraine but also with Armenia, Qatar and Tunisia.

The signing of the agreement will remove existing restrictions on access to markets between the EU and Ukraine. There will also be more choice for travel, new opportunities for the aviation industry, better connections with new routes and destinations that will benefit consumers.

5.1. Legal Basis of CAA Agreement between the EU and Ukraine

In accordance with the clauses of Annex XXII of the Association Agreement (AA) between Ukraine and the EU Members Ukraine undertakes to "progressively approximate its legislation to the EU legislation in the sphere of aviation industry according to the requirements, stipulated in the CAA Agreement, which was initialed on November 28, 2013 in Vilnius and has not yet come into force. However, in accordance with sub-item (ii) "Aviation" of item 7.4 "Transport" of Section 7 "Other Sectoral Issues" Part III "Operational Part" of the EU-Ukraine Association Agenda, the Parties shall cooperate to prepare Ukraine for the implementation of the EU acquis provided for in the relevant annexes to the AA.

In accordance with Article 5 "Basic principles of regulatory Cooperation" of the CAA Agreement Ukraine "must take the necessary measures to incorporate into the Ukrainian legal system and to implement the requirements and standards of acts of EU legislation listed in Annex 1 to the CAA Agreement, in accordance with the transitional arrangements set out in Article 33 of the Transitional Arrangement" [8].

For example, such regulatory acts in accordance with Annex 1 concerning air navigation service providers are: Regulation (EU) No 2018/1139 of the EP and of the Council of 4 July 2018 on common rules in the field of aviation and forming of a European Aviation Safety Agency, supplementing Regulation (EU) No 2111/2005, (EU) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014, and the repeal of Regulation (EU) No 552/2004, (EU) No 2016/2008 of the European Parliament and of the Council and of Council Regulation (ESC) No 3922/91; Commission Regulation (EU) No 2017/373 of 01 March 2017 laying down common requirements for air traffic management and air navigation service providers and other functions of the network manager and their supervisory system, and repealing Regulation (EU) No 482/2008, (EU) No

1034/2011, (EU) No 1035/2011 and the supplement to Regulation (EU) No 677/2011.

5.2. Current situation on European standards' adoption in Ukraine

Ukraine has already implemented most of the EU norms and standards into its legislation in the sphere of aviation, that is, it has started to implement the clauses of the CAA Agreement even before it is signed, unilaterally by voluntary basis.

The CAA requirements for passenger rights, the division of aviation into state, civil and general aviation ("small aviation"), aviation security, environmental protection etc. were included during the adoption of the Ukraine's Air Code.

The issue of opening up the groundhandling services market has not yet been resolved. Meanwhile, the groundhandling market at airports remains monopolized by individual companies. For example, in November 2018, the Antimonopoly Committee of Ukraine found violations of antitrust laws by Kyiv (Zhulhany) airport and Master-Avia LLC, which concluded a general ground service agreement and ousted other companies from this market. In 2017, Boryspil Airport was fined for UAH 13 million for abusing of its monopoly position in the market of specialized airport services in the area of airport ground services. Thus, work on harmonization of Ukrainian and European legislation in the sphere of air transportation is underway. However, it is difficult to assess the degree of harmonization since such monitoring is not carried out [9].

Even the Government's Priority Action Plan for 2019 aligns Ukrainian legislation with European aviation standards within one year after the entry into force of the CAA Agreement.

According to the CAA Ukraine has to incorporate the EU legislation and requirements in the sphere of civil aviation relating to market access, air traffic organization, flight safety, environment and other issues into its legislation. It is planned to provide such incorporation in two stages, and thus two transitional periods are distinguished.

Once the CAA Agreement is signed, the first transition period will begin. The process of the harmonization and implementation of the Ukraine's legislation will go on. Successful completion of this tasks will allow the start of the second transition period.

During the second transitional period, the EU recognizes crew certificates issued by Ukraine; groundhandling service providers will be able to operate in the territory of the other Party.

After Ukraine organizes its airspace in accordance with the EU requirements, the CAA will be fully operational. EU airlines will be able to fly between

Ukrainian cities; Ukrainian airlines may fly between EU cities provided that the flight is part of the service serving the point in Ukraine (thus, the Agreement is asymmetrical) [10].

6. PROSPECTS FOR LIBERALIZATION OF THE AVIATION SECTOR IN UKRAINE

The annex to the agreement contains dozens of EU pieces of legislation that will need to be implemented in Ukraine. The European Commission and the European Aviation Safety Agency (EASA) will monitor the success of the implementation of these standards. Only then will the agreement finally enter into force in full.

Moreover, due to the pandemic, air travel is now reduced to a minimum and no one expects the industry to develop significantly until all travel restrictions are lifted. Moreover, experts warn that passenger air traffic will reach pre-crisis levels in just a few years.

The main question that may arise for many travelers: how it will affect ticket prices. The agreement has no direct effect on this. But it creates the conditions for competition, and more competition usually lowers the price of services [11].

The main practical benefit of CAA is the expansion of opportunities to fly to the European Union. Currently, the routes are allocated, as a rule, on the basis of bilateral agreements between Ukraine and each EU country. However, after the signing of the CAA agreement, these restrictions for airlines will be lifted, the market will work, and cheaper carriers will enter Ukraine, and it will be easier for Ukrainian carriers to carry out their commercial activities. In other words, the administrative burden on Ukrainian airlines will be reduced within the CAA, and flights to the EU, routes, frequency of flights and slots will be agreed according to the same procedure as any carrier from the European Union.

Although Ukrainian and European companies will receive equal rights in most issues, there is a certain asymmetry in the agreement. Carriers registered in Ukraine will be able to fly in the EU indefinitely only if the starting or ending point of transportation is located in Ukraine. That is, they will not be able to operate domestic flights in the European Union. However, CAA will give European companies the right to domestic flights within Ukraine.

7. CONCLUSIONS

The scale of the future European international air transport market will also be largely scaled by the practical shape of European competition policy.

The shape of the future European internal air transport market will also be largely determined by the practical planning of European competition policy. The direct impact on the market structure and the reintroduction of price controls always carries the risk of

preventing air transport markets from optimally adapting to the main production conditions and thus creating new inefficient effects. Experience with partially regulated markets has shown that single interventions can too easily lead to a spiral of intervention. The starting points for the active role of competition policy are primarily where airlines may in some cases avoid direct competitive pressure through new marketing methods, such as frequent flying programs or the improper use of computer reservation systems. In principle, air transport policy for the next few years should rather be limited to eliminating administrative distortions of competition that lead to unequal supply conditions for potential air transport service providers and thus removing barriers to competitive pressure.

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