

The ASEAN-EU air transport relationship

Some Thoughts on Regionalism in International Air Transport

Prof. Dr. Vincent CORREIA

Professeur de Droit public
IDP, Université de Poitiers



- The possible conclusion of an aviation agreement between the European Union and the Association of Southeast Asian Nations (ASEAN), raises a lot of expectations regarding both market access and aviation regionalism
- The mandate to the European Commission will hopefully be adopted this year, before the end of June
- From the European Union side, this proposed agreement reveals some key features of the EU external aviation policy
- The EU wishes to be “Tapping into growth markets, by **improving services, market access** and **investment opportunities** with third countries, whilst **guaranteeing a level playing field**” (COM/2015/0598 final)
- The EU and ASEAN will negotiate a **liberal agreement**



- The EU does not follow a ‘one size fits all’ approach: each aviation agreement is ‘tailor made’ in order to address specific aspects
- This is closely linked to the philosophy of the European Commission when conducting international negotiations: **the basic idea is to use at the international level the methods which were internally successful**
- Besides seeking to open the markets, the EU emphasizes on **regulatory cooperation** or convergence, depending on the case
- The first Joint Declaration on EU-ASEAN aviation cooperation insists at the same time on *“Intra and inter-regional integration and market liberalisation”* and *“Aviation safety policies and the potential for regulatory co-operation within and between the two regions”*.
- It would be the first bloc-to-bloc comprehensive aviation agreement
- **One can fear a too high level of complexity in the case of an agreement between two regional blocs, with different rules, different institutional architectures and different priorities**

- Regarding the level of achievement of the EU Single Aviation Market and ASEAN Single Aviation Market, **the differences are striking:**
 - Market access:
 - The ASEAN Single Aviation Market is still under construction
 - In Europe, more than 10 years separated the liberalisation measures and the development of external aviation relations
 - Ownership and control
 - In the ASEAN: relaxation of ownership and control rules still subject to the acceptance of the other party,
 - In Europe, Regulation 1008/2008 and horizontal agreements
 - At the institutional level:
 - No equivalent to the EASA, the European Commission or the Court of Justice
 - The European single market is not a liberalized one, it is **integrated** in such a way that safety, security, ATM related issues and so on, are regulated and controlled at the regional level when necessary



- Regarding these challenges, at short term, there will be **the issue of negotiation**
 - “Mixed Agreement” negotiated by the European Commission but signed and ratified by the EU and the 28 Member States
 - On the ASEAN side, the lack of supranational authority, like the European Commission, will make it even more difficult to negotiate, since every ASEAN Country will defend its national interest
 - Implementation?
 - However, this institutional aspect is maybe the very reason why the EU is interested in entering this agreement, since the liberalization effect would be limited
 - **The EU is not only opening the markets, it is exporting its law, and more generally speaking, its model**



- The European Commission would like to conclude an agreement with the ASEAN, since it would help the EU to spread the regional aviation model in the world
- In a memo from February 2014, it underlined that “The development of a single aviation area in ASEAN countries is based on common rules and market opening. This is just what the EU did in the past two decades, creating what is today the largest and most successful example of regional aviation market in the world.” (MEMO 14/95)
- The EU-ASEAN air transport agreement might be more important politically and institutionally than it is in terms of traffic rights
 - If the ASEAN Single Aviation Market was successful, it would provide strong support to the EU policy of promoting regional aviation integration
 - It would put an end to the “European exceptionalism” in international aviation law and strengthen its arguments in favour of a real recognition of regional organisations within the ICAO

- ASEAN would benefit from all the European Commission's efforts to make international aviation law compatible with the specific features of regional blocs
- When the European Commission refers to regulatory cooperation: it tries to export its rules in various domains, such as air passenger rights, environmental protection, safety and security, etc.
- The European Union is a “Normative Power”
- For the EU, the more it can spread its rules, the more it can influence international aviation law, since it cannot do it through the traditional ICAO channel
- Fair competition and level playing field
- Industrial considerations



Conclusion

- The EU-ASEAN agreement can pave the way for further integration within the ASEAN region
- At the inter-regional level, the ASEAN can benefit from EU's experience (internally) and EU's precedent (towards Third Countries)
- The success of both EU-ASEAN Agreement and the ASEAN Single Aviation Market would help the European Union in spreading its model of regional integration for aviation at the international level
- The emphasis on regulatory cooperation would ensure that the ASEAN, future world leader in air traffic, adopts same rules as the EU
- Thus, the EU-ASEAN aviation agreement would be a landmark agreement to strengthen the links between Europe and South East Asia
- Together, they would be able to significantly influence the future of aviation law and aeropolitics



**Thank you for your
attention**

vincent.correia@univ-poitiers.fr
vincent.correia@u-psud.fr

