

INTERNATIONAL AIR LAW

PART II

Dr. IVA SAVIĆ

Maritime and Transport Law

9 March 2020

BACKGROUND – INTERNATIONAL AIR TRANSPORT

▶ CABOTAGE

- ▶ Art. 7 Chicago Convention
- ▶ 8th freedom – consecutive cabotage = right to carry traffic between two points in a foreign state (starting in home state)
- ▶ 9th freedom – „stand alone” cabotage = right to operate in a foreign state

DEVELOPMENTS INSIDE THE EU

- ▶ EU Treaties
 - ▶ basic principles (TEU)
 - ▶ special treatment of air transport (art. 102 TFEU)
- ▶ Role of EU institutions (European Commission) and their relations with Member States
 - Common policy vs Preserving national aviation/air transport industry
 - Memorandum, 1979

DEVELOPMENTS.. CONT'D

- **French Seamen (167/73)**

- Do the Treaty provisions on freedom of movement of workers apply to sea transport? /Do the general Treaty provisions apply to sea transport?
- provisions under Title IV (now Title V) could be applicable also to sea and air transport, but it was on the Council to make such a decision
- sea and air transport "...remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty" and "the application of Articles 48 to 51 to the sphere of sea transport is not optional but obligatory for member states

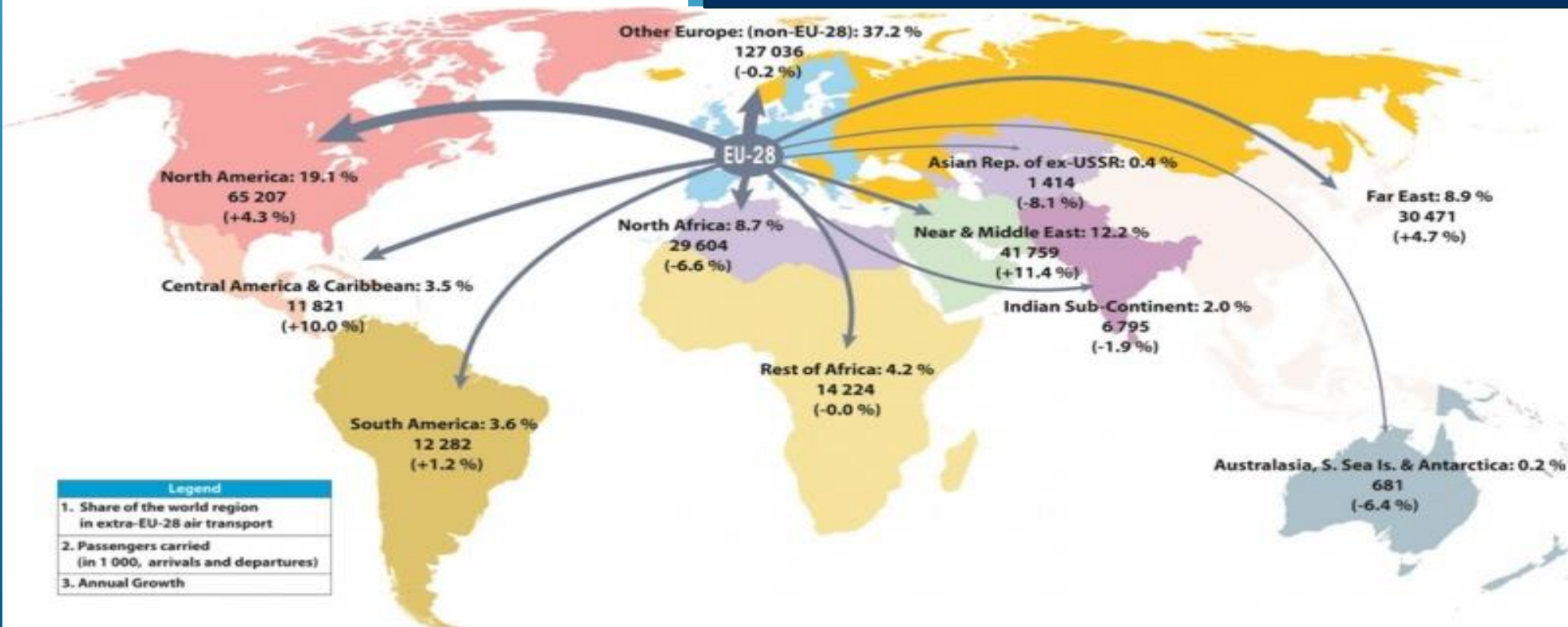
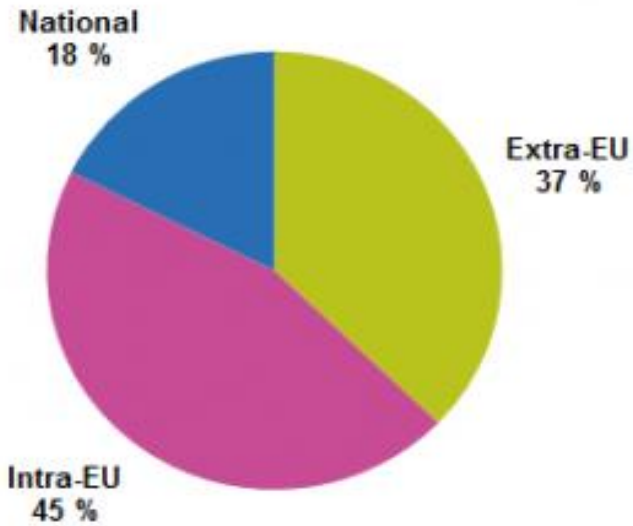
- **Nouvelles Frontieres (joined cases 209-213/84)**

- Treaty competition rules are applicable to the transport sector whether or not a common transport policy has been established
- "air transport remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty", now "including the competition rules

MAIN AIRPORTS in the EU:

PASSENGERS: LONDON-HEATHROW
FREIGHT & MAIL: PARIS CDG

CAPACITY OF AIRPORTS & TRAFFIC
MANAGEMENT:
33.000 FLIGHTS DAILY
Soon to be exceeded!



Legend	
1.	Share of the world region in extra-EU-28 air transport
2.	Passengers carried (in 1 000, arrivals and departures)
3.	Annual Growth

REGULATION

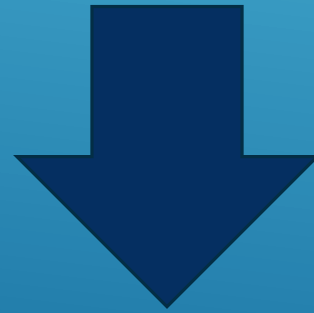
- Procompetitive policy:
 - Market access
 - Licensing of air carriers
 - Capacity and Frequency of air travel
 - Tariff regulation
 - Competition and State Aid rules



opening (liberalizing) air transport market

REGULATION (CONT.'D)

- Harmonization of rules in other fields:
 - ▶ Aviation safety and security
 - ▶ Air traffic control
 - ▶ Environment
 - ▶ Passengers rights



creating common air transport market

A large, light blue arrow pointing to the right, containing three dark blue rounded rectangular boxes. The boxes are arranged horizontally and contain text about air transport packages. The arrow's tail is on the left and its tip is on the right.

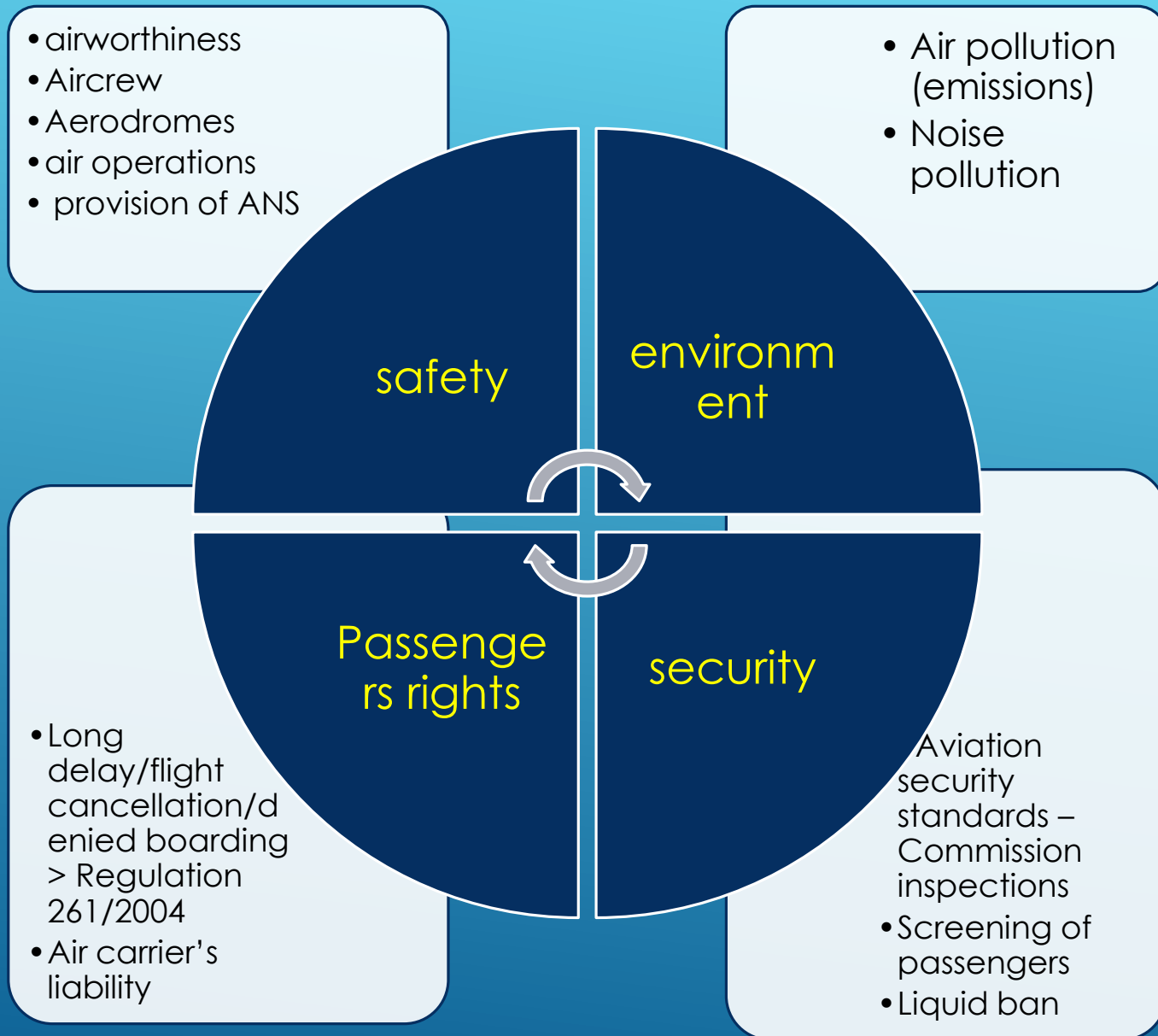
1st
package
1987

2nd
package
1990

3rd
package
1992

Three white diagonal lines of varying lengths, starting from the right edge of the slide and pointing towards the bottom right corner.

From 1 April 1997:
Single air transport market



COMMON AIR TRANSPORT AREAS

+ Single European Sky

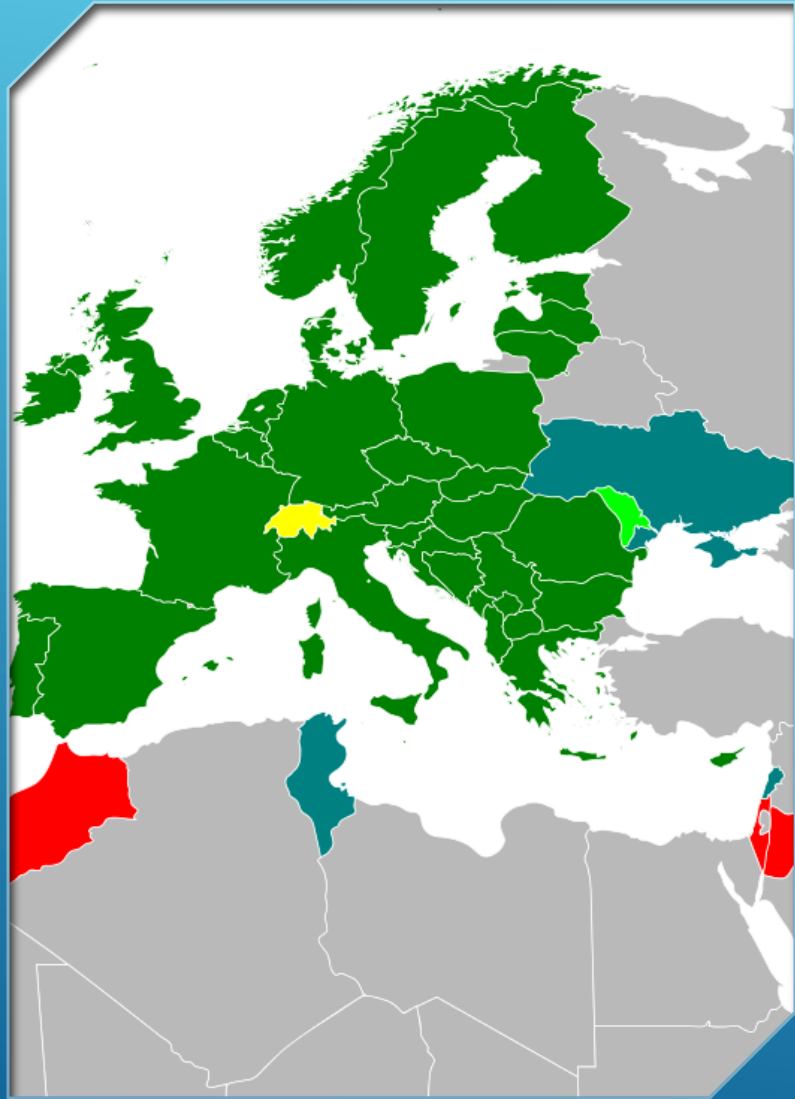
+ SESAR (ATM)

+ European unmanned aircraft systems

...

SOURCES OF AVIATION LAW IN EU

1. International agreements
 - ▶ Bilateral agreements and multilateral conventions
2. *Acquis communautaire*
 - ▶ EU competence: harmonization of legal framework for Single Market of air transport services
3. National legislation: EU Member States
 - ▶ Originally in the MS' competence
4. General terms & conditions of carriers



EU'S EXTERNAL AIR TRANSPORT RELATIONS



„DOMESTIC“ EU AIR TRANSPORT

- ▶ Domestic – EU air transport - referred to as *cabotage traffic* > International air law considerations
- ▶ **common air transport policy** - applicable both to:
 - ▶ national air transport (inside a MS) and
 - ▶ EU international (intra-EU) air transport

OPEN SKIES CASES

▶ Case facts

- EC bringing claim against 8 MS that concluded open skies agreement with the U.S.
- **Art. 4 TEU - principle of sincere cooperation** (*„...ensuring fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union...The Member states shall...refrain from any measure which could jeopardise the attainment of the Union's objectives”*)
- **Art. 49 TFEU – freedom of establishment - nationality clause**
vs community carrier

OPEN SKIES CASES (CONT.'D)

▶ Outcome

- ECJ did not say anything on validity of agreements on MS' obligations
- EC has exclusive competence in concluding intl. agreements in certain areas*

▶ Consequences

- In 2003 EC received mandate for external relations in air transport
- follow up: starting negotiations with countries worldwide

What happened to “old” bilateral agreements?

EC EXTERNAL COMPETENCIES

1. EU designation clause in existing bilateral agreements between a MS and third country
 - ▶ Regulation 847/2004: negotiation of one agreement by MS
2. Horizontal agreement with third country (replacing 28 existing ones)
 - ▶ Replaces 28 bilateral agreements with only ONE (horizontal) agreement
 - ▶ Commission granted competence for negotiations („horizontal mandate”)
3. Agreements creating common aviation areas
4. Global Agreements
 - ▶ EC granted „vertical mandate”
 - ▶ E.g. EU – US Air Transport Agreement 2007 (+ Protocol 2010)
 - ▶ „Open Skies Agreement”: creation of a transatlantic Open Aviation Area, a single air transport market between the EU and the US with free flows of investment and no restrictions on air services, including access to the domestic markets of both parties

ECAA, 2006

- ▶ *European Common Aviation Area Agreement*
- ▶ Commission's idea since late 1990's
- ▶ Candidate countries – harmonizing with EU *acquis*
- ▶ ECAA purpose: creating single (common) aviation area > **mutual recognition of right to enter air transport market between all state parties under the same conditions**
- ▶ Legal framework: existing (and future!) EU aviation *acquis*

ECAA AGREEMENT

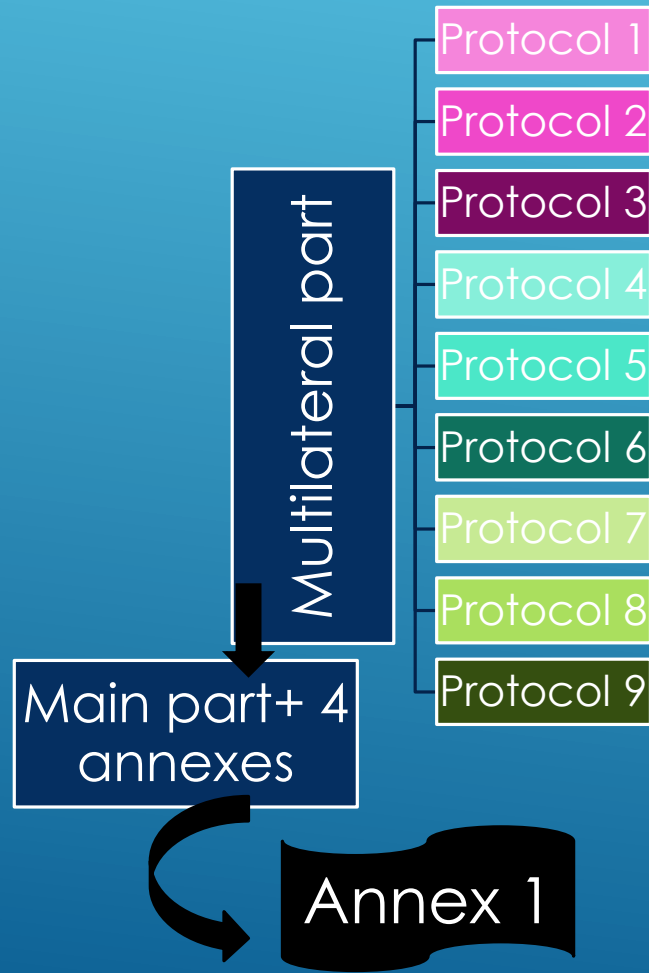
EU + MS + Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Fyrom, Iceland, Montenegro, Norway, Romania, Serbia and Kosovo (out of 11 „neighbourhood” third countries only 4 candidates to join EU)

Scope: market access, atm, aviation safety and security, environmental protection, social aspects, consumer protection et al.

2-phase implementation

creation of the homogenous common area of civil aviation > All state parties mutually recognize right to enter the market and offer services under the same conditions and rules for everyone

„COMPREHENSIVE” AGREEMENT



- ▶ Multilateral part - „common” dio: main principles and goals; entrance into force; dispute settlement etc.
- ▶ Protocols - individualized approach
- ▶ Annex 1 – list of **all relevant regulation governing EU air transport market**

EU COMPREHENSIVE ATAs

- ▶ three market areas:

- ▶ 1. European Common Aviation Area (strict sense)
- ▶ 2. Euromediterranean common air transport market, and
- ▶ 3. Eastern Partnership common air transport market



**future
“common
aviation
area”
market**

EU-MODEL COMPREHENSIVE ATA

- ▶ exporting *acquis communautaire* to third countries > „Europeanisation”
- ▶ countries that concluded it:
 - ▶ 2006 Morocco > 2010 Jordan > 2012 Georgia > 2012 Moldova > 2013 Israel > 2017 Armenia > 2019 Azerbaijan, Qatar
 - + many other in negotiations (Oman, Ukraine)
- ▶ In plan: China, ASEAN, Turkey, Saudi Arabia, Bahrain, UAE, Kuwait, Mexico

(FUTURE) COMMON AVIATION AREA

- ▶ Long term plan
- ▶ 58 countries (incl.EU) – air transport functioning under EU air law (White paper 2011)
- ▶ **Euro-Mediterranean Common Aviation Area:** Morocco, Jordan, Israel, Tunisia, Lebanon...
- ▶ **Eastern Partnership countries:** Georgia, Moldova, Armenia, Ukraine...