

The founding States of the Convention on International Civil Aviation ('Chicago Convention') decided in 1944 to close their sovereign airspace *de jure* to foreign aircraft engaged in scheduled international air services with the possibility, at a State's discretion, expressly to authorise air services by way of an air services agreement (ASA). One of two multilateral ASAs from 1944 that persists to today is the International Air Transit Agreement, which permits the aircraft of State parties that have ratified it to overfly the territories of the other parties and to land for non-traffic purposes (e.g., emergencies). Traditionally, ASAs were negotiated between two States to exchange air traffic rights between their territories: notably from the Dutch perspective, third freedom (e.g., a KLM flight from Amsterdam to Singapore) and fourth freedom (e.g., a KLM flight from Singapore to Amsterdam). In the absence of an agreement between the Kingdom of the Netherlands and Singapore, Dutch and Singaporean airlines would have no right to market or operate said flights let alone behind or beyond points. In the European Union (EU) context, any EU airline has the right under EU law to establish itself and operate from any EU airport. The example of the Netherlands-Singapore ASA cannot limit rights to Dutch airlines; Lufthansa or LOT Polish Airlines must enjoy the same traffic rights. This position was clarified via the European Court of Justice 'Open Skies Judgments' in 2002, in which the bilateral ASAs between eight EU Member States and the United States were found not to be in conformity with EU law.<sup>1</sup>

The EU's External Aviation Policy was thus kickstarted in 2002. Today, there are two types of EU level air services agreements: horizontal agreements and comprehensive air transport agreements (CATAs). While the horizontal agreements bring existing bilateral agreements between EU Member States and third countries in line also with EU law,<sup>ii</sup> a CATA establishes an altogether new 'mixed' agreement between the EU and its Member States on the one hand, and a third country or group of third countries on the other.

The EU negotiating process is laid down in Art. 218 Treaty on the Functioning of the European Union. It begins with the European Commission (EC), which conducts market studies and consultations, before requesting authorisation to negotiate (a mandate) from the Council. Once the negotiations are concluded, the EC initials the agreement, the Council authorises the signature, and it is passed to Member States to ratify in the manner set out by the relevant national law. Once all 27 Member States have ratified a CATA, it is sent to the European Parliament for its consent before becoming EU law.

The Association of Southeast Asian Nations (ASEAN), the EU, and their Member States began working on the ASEAN-EU CATA (henceforth 'the CATA') in 2016.<sup>iii</sup> It was concluded in 2021, signed in October 2022, and represents the first 'bloc-to-bloc' agreement of its kind.<sup>iv</sup> If it becomes law, the CATA would replace the existing bilateral agreements between the EU individual Member States and ASEAN individual Member States.

The CATA concerns air transport between the EU and ASEAN regions while explicitly excluding flights between ASEAN Member States.<sup>v</sup> The exclusion acknowledges the existing regulatory framework established by the ASEAN Single Aviation Market agreements, which already govern intra-ASEAN air services. In the CATA, the parties grant each other's carriers unlimited first through fourth freedom traffic rights.<sup>vi</sup> They also grant limited fifth freedom rights (behind or beyond to a third country)<sup>vii</sup> subject to Arts 3(4-5). For example, for an ASEAN Member State, the freedom cannot be used to serve routes between an EU Member State and a third country which are already being served by an EU carrier (Singapore-Amsterdam-New York JFK). The same restriction applies *vice versa* to the EU carriers (Amsterdam-Singapore-Sydney). Additionally, Art.3(9) explicitly prohibits cabotage operations.

Each party allows airlines freely to determine flight frequency and capacity based on commercial considerations, with no restrictions except for customs, technical, operational, air traffic management safety, environmental or health protection reasons, in a non-discriminatory manner.<sup>viii</sup> Air carriers must secure operating authorisation and technical permission regulated under Arts 4 and 5 before operating in another party's territory. These requirements ensure operational oversight while maintaining the agreement's open market access.

Complementing this operational arrangement, the CATA contains provisions on 'fair competition' and fostering a 'level playing field'. For instance, the parties agree to adopt or maintain competition law, establish or maintain an operationally independent competition authority, eliminate all forms of discrimination or unfair practices, and not to grant or maintain subsidies if these subsidies would adversely affect the fair and equal opportunity of the air carriers of another party to compete,<sup>ix</sup> with some exceptions as set out in Art. 8(3). If a party believes its airlines face unfair practices or discrimination,<sup>x</sup> prohibited subsidies<sup>xi</sup> or lack of transparency,<sup>xii</sup> it can request consultations, measures and dispute settlement as set out in Arts 8 (8-11). The CATA also includes agreements on air traffic management,<sup>xiii</sup> environmental protection,<sup>xiv</sup> air carrier liability,<sup>xv</sup> consumer protection,<sup>xvi</sup> computer reservation systems,<sup>xvii</sup> and social aspects (labour, employment and working conditions).<sup>xviii</sup>

Some academics argue that the agreement has the potential to liberalise aviation relations between the ASEAN and the EU,<sup>xxix</sup> notably with unlimited third and fourth freedom rights and a limited fifth freedom right. With that said, unlike the EU, ASEAN lacks a true single aviation market, so only EU carriers will be truly able to connect any EU point with any ASEAN point.<sup>xx</sup> Also, at present only EU carriers enjoy the opportunity to merge owing to the freedom of establishment.

Through its External Aviation Policy, the EU has been promoting its core values while expanding the scope of aviation relations from the traditional economic provisions of traffic rights to include investment and fair competition, alongside forms regulatory cooperation to compliment traditional safety, security and air traffic management (e.g., on environment, consumer protection and social aspects including labour) and institutional provisions (such as establishment of the Joint Committee between ASEAN and EU).<sup>xxi</sup>

Studies suggest that the agreement will not likely change the competitive dynamics between ASEAN and EU carriers in the short to medium term.<sup>xxii</sup> There are a few routes or markets where they compete directly against each other in significant ways but the competition remains limited, except for potential challenges involving the two mentioned largest airlines.<sup>xxiii</sup> While ASEAN and EU carriers could in principle collaborate more in future against the ‘sixth freedom carriers’ serving ASEAN-EU through their hub (i.e., the Gulf carriers), infrastructure constraints and the absence of progress in relaxing high ‘ownership and control’ thresholds or adopting common licensing within ASEAN would for now limit such cooperation.<sup>xxiv</sup>

The fifth freedom right granted under the CATA would likely work to the advantage of the largest ASEAN carriers.<sup>xxv</sup> This is because the more lucrative trans-Atlantic opportunities open to the carriers. Nonetheless, such potential expansion is subject to the Art. 3(4) limitation on routes operated by EU carriers or their partners (i.e., via codeshare agreements), thus such potential is likely to remain unrealised for some time.

Just as the market access provisions have limitations, the implementation of environmental protection provisions under the agreement demonstrates similar constraints. There appears to be a lack of strong and enforceable environmental provisions that align with the EU’s more ambitious climate targets under EU law; the CATA regulates the environmental aspect only in a general manner. Art. 18 is the only article regulating the environmental aspect of aviation, obliging ASEAN Member States and the EU to work together to identify issues related to the impact of international aviation on the environment, similar to that found in the EU-US CATA. Nonetheless, the ASEAN Member States and the EU should recognise the importance of working together with the global community to consider and minimise the effects of aviation on the environment.<sup>xxvi</sup> The parties also agree to exchange information and have regular dialogue among experts to enhance cooperation to address the environmental impact of international aviation, including in areas such as research and development, sustainable aviation fuels, noise-related matters, and other measures aimed at addressing emissions, taking into account their multilateral environmental rights and obligations.<sup>xxvii</sup>

As for labour, the agreement acknowledges social aspects, which include labour standards and working conditions, but is not explicit about specific requirements, such as wages, flight rest times or compensation, or how to enforce these. The parties generally recognise the importance of considering the effects of the CATA on labour, employment and working conditions, and agree to cooperate on labour matters, including in relation to impacts on employment, fundamental rights at work, working conditions, social protection, and social dialogue.<sup>xxviii</sup> Though finally, the parties under Arts 22(3-4) reaffirm their commitment, in accordance with their obligations deriving from their membership in the International Labour Organization and its framework.<sup>xxix</sup>

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- i See Case C-466/98, *Commission v. United Kingdom*, 2002 E.C.R. I-9427; Case C-467/98, *Commission v. Kingdom of Denmark*, 2002 E.C.R. 9519; Case C-468/98, *Commission v. Kingdom of Sweden*, 2002 E.C.R. 9575; Case C-469/98, *Commission v. Republic of Finland*, 2002 E.C.R. 9627; Case C-471/98, *Commission v. Kingdom of Belgium*, 2002 E.C.R. 9681; Case C-472/98, *Commission v. Grand Duchy of Luxembourg*, 2002 E.C.R. 9741; Case C-475/98, *Commission v. Republic of Austria*, 2002 E.C.R. 9797; Case C-476/98, *Commission v. Federal Republic of Germany*, 2002 E.C.R. 9855. In these decisions, so-called ‘nationality clauses’ were deemed to infringe Art. 43 TEU (now Art. 49 TFEU) as they were inconsistent with the single European market for air transport, and also because the agreements infringe the exclusive external competence of the EU because in areas where EU legislation affects third countries, only the EU can enter into international commitments.
- ii European Commission, External Aviation Policy, [https://transport.ec.europa.eu/transport-modes/air/international-aviation/external-aviation-policy\\_en#:~:text=EU%20external%20aviation%20policy%20was,with%20EU%20law%20-%20Horizontal%20Agreements%20](https://transport.ec.europa.eu/transport-modes/air/international-aviation/external-aviation-policy_en#:~:text=EU%20external%20aviation%20policy%20was,with%20EU%20law%20-%20Horizontal%20Agreements%20).
- iii ASEAN, Joint Press Release on the Signing of the ASEAN-EU Comprehensive Air Transport Agreement (17 Oct. 2022), <https://asean.org/joint-press-release-on-the-signing-of-the-asean-eu-comprehensive-air-transport-agreement/>.
- iv Similar EU comprehensive air transport agreements have been signed with other partner countries, namely the United States, Canada, Qatar, the Western Balkans, Morocco, Georgia, Jordan, Moldova, Israel, Ukraine and Armenia.
- v ASEAN-EU CATA, Arts 1(1-2).
- vi ASEAN-EU CATA, Art. 3(3).
- vii ASEAN-EU CATA, Arts 3(3)(e-f).
- viii ASEAN-EU CATA, Art. 3(8).
- ix ASEAN-EU CATA, Art. 8.
- x Contrary to ASEAN-EU CATA, Art. 8(2)(c).
- xi Contrary to ASEAN-EU CATA, Art. 8(2)(d).
- xii Contrary to ASEAN-EU CATA, Art. 8(6).
- xiii ASEAN-EU CATA, Art. 17.
- xiv ASEAN-EU CATA, Art. 18.
- xv ASEAN-EU CATA, Art. 19.
- xvi ASEAN-EU CATA, Art. 20.
- xvii ASEAN-EU CATA, Art. 21.
- xviii ASEAN-EU CATA, Art. 22.
- xix See A.K.J. Tan, *The New ASEAN-EU Bloc-to-Bloc Comprehensive Air Transport Agreement (CATA)*, 48 *Air & Space Law* 205 (2023); J.W. Lee, A. Lykotrafiti & M. Gergely, *The EU-ASEAN Comprehensive Air Transport Agreement (2022): From Regional to Inter-Regional to Global?*, 89 *The Journal of Air Law and Commerce* 391 (2024)
- xx *Ibid.*
- xxi The Joint Committee composed of representatives of the Parties shall be responsible for overseeing the administration of this Agreement and ensuring its proper implementation. See ASEAN-EU CATA, Art. 17.
- xxii See M.D.D. Bin Mohamed Anuar *et al*, *Investigating the impacts of ASEAN-EU comprehensive air transport agreement on the carriers’ competitive dynamics*, 124 *Journal of Air Transport Management* 102739 (2025).
- xxiii *Ibid.*
- xxiv *Ibid.*
- xxv See A.K.J. Tan, *supra* n. 19.
- xxvi ASEAN-EU CATA, Art. 18(2).
- xxvii ASEAN-EU CATA, Art. 18(4).
- xxviii ASEAN-EU CATA, Art. 22(1).
- xxix ASEAN-EU CATA, Art. 22(4).