

# The Impact of EU Law on the Regulation of International Air Transportation

by *Martin Bartlik*

Dr. Martin Bartlik wrote this book in 2007, a year that is marked by a number of fascinating developments in international civil aviation. As far as his study is concerned, the EU-US air transport agreement came into effect on 30 March 2008, marking a new era in international aviation relations. On the intra-Community side, proposals are underway for the establishment of a new, integrated internal market regulation, which will replace the regulations that have served so well during the past 16 years.

Review by Pablo Mendes de Leon

The title of his book is intriguing: his approach focuses on the impact of EU law on international air law, rather than the other way around. There are arguments for adopting this approach as Community law has a major influence on the development of international aviation relations. However, such relations are not only affected by EU law, but are also affected by the conduct of aviation policy, in the words of the language of the author: “Realpolitik”, and existing instruments of international air law.

These introductory remarks reflect the questions that I had when I read this very well documented and thoroughly researched study.

The central theme or, to use a word from the author’s native language, the Leitmotiv appears to be the decisions of the European Court of Justice in the well known Open Skies cases of 2002. Those decisions gave rise to comments from many sides: policymakers, lawyers, academics and practitioners. The author discusses those comments, and draws his own conclusions, which are dominated by reflections on Community law. This discussion, which forms Part 1, is followed by an analysis of the question of distribution of traffic rights in Part 2. There is a certain logic in following this methodology, but other options would also have been available.



I am a bit hesitant to conclude that he strikes the right balance between the two fields of law. Whereas, in my view, Community law is very much a matter of the rule of law, this is not necessarily the case with international air law, in which, as stated above, international policy relations play a dominant role. The question therefore is whether a “legalization” of the present subject does justice to its complexity and multifaceted character of the questions addressed by the author.

I also want to put forward a remark on the interpretation of international air law. For instance, on page 77, the author writes that “The Chicago Convention and the Transit Agreement usually limit this [grant of traffic rights] to the third, fourth and fifth freedom.” I am not sure whether I agree with this quite fundamental standpoint, as the Chicago Convention does not “usually” grant traffic rights, whereas the Transit Agreement only deals with the transit, as opposed to traffic (3rd, 4th and 5th) Freedom rights. Hence, I was puzzled, as this point comes back throughout his study.

Mr. Bartlik is “surprised” about the criticism Professor Wassenbergh has with regard to the Open Skies decisions of the European Court of Justice of 2002, as, according to the author, Dr. Wassenbergh ignores that the ECJ can base its judgments only on EC law (p.102). This statement surprises me as the ECJ must ensure that “the law” is ensured (Art. 302 EC), which, as

confirmed by case law, does not only include Community law, but also national and international law.

As to Community law, the author takes the ERTA Judgment on implied powers as a central concept. There are certainly arguments for doing so, but I have a different interpretation of the above-mentioned ECJ judgments in the Open Skies decisions: If the ECJ had followed the implied powers doctrine as consequently as Mr. Bartlik is, it would, in my view, had arrived at different, that is, more “Community-oriented” conclusions.

I liked the second part, probably more than the first part. He approaches the subject of allocation of traffic rights from a very broad perspective, taking into account the various options (beauty contest, auctions and others), which are followed by an analysis of the regulations laid down in a number of states, including, but not limited to, Australia, UK and Germany. These chapters contain a lot of very interesting materials and thoughts, such as the references to environmental considerations. Consumer protection arguments could have been yet another one.

The summary contains a notion that I do not understand. I cannot see why the European Union can conclude the air service agreement alone, whereby the fifth freedom must be included in the agreement. EU member states alone remain responsible if no fifth freedom rights are exchanged. That puzzles me.

I am not sure why the author did not pay more attention to the 2007 EU-US agreement, which, as said above, came into effect in 2008, which would have enhanced the topicality of the study. In addition, he might have fine-tuned a few of his observations following an analysis of that landmark agreement.

*“...approaches the subject of allocation of traffic rights from a very broad perspective...”*

Scholars and practitioners may find this book handy and, hopefully, inspiring to consult as it brings together many interesting ideas and documents on a present day subject.

The author has strong opinions about how to move forward, which may serve as a source of inspiration for further thinking. Last but not least, the book is complete in the sense that it has a bibliography, list of cases, publications and decisions.

**About the Author**

Martin Bartlik studied law at the Johann Wolfgang Goethe University in Frankfurt, Germany, graduating in 2002. Following this he studied for his Ph.D. under Prof. Dr. Dr. h.c. Manfred Zuleeg, a former judge of the European Court of Justice and a Professor at the University of Frankfurt. While completing his doctorate, Martin was also studying at the Institute of Air and Space Law at McGill University in Montreal, Canada, graduating with a Master of Laws (LL.M.) in Air and Space Law.

**About the Reviewer**

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**About the Book**

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