

air service agreements, liberalisation, liberalisation measuring

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## TOWARDS TO LIBERALISATION MEASURING IN AIR TRANSPORT

**Summary.** The paper discusses bilateral Air Service Agreements (ASAs), their origin and history, detailed description of the first bilateral agreement ever between United States of America and United Kingdom named Bermuda I, that was agreed in 1946. Paper also explains principles and content of the bilateral agreements, the role of liberalization of Air Service Agreements within overall liberalization wave in air transport industry. Comparison of liberal ASAs and protectionist ones is made in the paper and special attention is given to measurement of ASAs' liberalization degree.

## W KIERUNKU LIBERALIZACJI POMIARÓW W TRANSPORCIE LOTNICZYM

**Streszczenie.** Artykuł rozważa dwustronność Porozumień o Usługach Lotniczych (ASAs), ich pochodzenie oraz historię, szczegółowy zapis pierwszej umowy dwustronnej pomiędzy Stanami Zjednoczonymi a Zjednoczonym Królestwem nazwanej Bermudy I, zawartej w 1946 roku. Artykuł wyjaśnia również zasady oraz istotę umów dwustronnych, rolę liberalizacji Umów o Usługach Lotniczych w ramach ogólnej fali liberalizacji w sektorze transportu lotniczego. Przedstawiono również porównanie liberalnych ASAs oraz protekcjonistycznych. Specjalną uwagę skupia się na pomiarze stopnia liberalizacji ASAs.

### 1. HISTORY OF ASAs

International air transportation has been modified since 1944 by Air Services Agreements – ASAs, whose task is to facilitate the international air traffic.

On 11 February 1946 was in Bermuda's capital city Hamilton signed agreement between United States and United Kingdom. This agreement known as Bermuda I was the first signed bilateral agreement between two countries and the principles of restrictive measures such as limits on pricing, capacity and airline designation to protect the flag carrier, has become a model for other countries and their bilateral agreements on the following decades. Bermuda I added three more Air Freedoms to two Air Freedoms from Chicago Conference of 1944.

In 1977 Bermuda I was replaced by the Bermuda II agreement, which limited the number of available seats between the United States and United Kingdom. This new agreement was to promote greater competition by opening the trade to other airlines and new routes between countries to achieve lower prices and better services. Air transport between United States and United Kingdom remained tightly regulated until the late 20th century.

## 2. WHAT BILATERAL AIR SERVICES AGREEMENTS EXACTLY ARE?

ASAs define legal relation between two countries or group of countries in field of providing air services. Two countries, which would like to realize civil aviation between each other, must follow the terms of concluding bilateral agreements on air services. Bilateral agreements provide rules for the commercial dimension of aviation relations between two countries. Countries based on these bilateral agreements, are negotiating with either of the ICAO standard contract (point by point negotiate a separate contract), or based on their general template. ASAs are based on the principle of reciprocity, ie “The equal rights of exchanges between countries with different market potential, different geographical conditions, different economics interests and power of different airlines.” (Zhang, 1999)

Every Air service agreement is a unique agreement and in terms of action to liberalize international trade in air transport services is critical to the following requirements.

1. Grant of rights
2. Capacity clause
3. Geographical designation
4. Airlines designation
5. Pricing

Grant of rights is a group of nine well-defined traffic rights (air freedoms) granted to each signatory to bilateral agreement. Under current law, and especially the 1944 Chicago Agreement, international air transport is governed by the principle of national sovereignty, and this places legal restrictions on air traffic (Barcik, Czech, 2008). To remove these restrictions, liberalisation involves establishing a number of freedoms as defined in legal literature and, in some cases, international agreements. These freedoms are usually identified by an ordinal number, rising according to the degree of liberalisation. Capacity clause is restriction of passenger traffic and flights made between parties to a bilateral agreement. Geographical designation presents geographic or explicit definition of the points available for use in air transport between the two countries. This is an opportunity to permit the implementation of air service between any airport in one country, as well as any other airport in the country. Pricing in this case represents conditions under which the fixed fare airline becomes binding, respectively valid for airlines and other countries. The most used is double approval or rejection system.

## 3. HOW TO MEASURE LIBERALISATION OF ASAs?

Liberalisation of ASAs came into the spotlight of the World Trade Organization (WTO) as the guarantor of liberalizing international trade agreements, despite the fact, that ASAs are bilateral or plurilateral nature and do not fall directly under the “contracting agenda” of the WTO. In 1996 World Trade Organization conducted Quantitative study of Air Service Agreements Review (QUASAR), which assesses the liberalisation of the ASAs and place typology in terms of the degree of liberalisation. QUASAR uses the information contained in World Air Service Agreements Web Database (WASA), as well as information obtained from the International Air Transport Association (IATA). To create QUASAR methodology was needed in several steps: evaluation of the bilateral air services in terms of freedom of market access; categorization of bilateral air service agreements; statistic weighting of bilateral agreements, introducing an element of “reality check” by comparing the business data. In addition, the WTO Secretariat has applied the same methodology to plurilateral ASAs. To identify the main features of the approach in terms of freedom of access bilateral ASAs to market, the WTO Secretariat uses a database, which includes more than 2500 bilateral agreements. Since the ICAO Contracting States have not always fulfil reporting obligation, the database WASA is not accurate and current status of bilateral agreements and also WASA includes agreements that are no longer actual and are invalid. WASA database is nevertheless the best homogeneous database of bilateral ASAs and according to experts’ estimates; WASA database contains 60% of all ASAs in the world (Scott, 2006). Based on index ALI, statistics QUASAR assesses the degree of liberalisation of the ASAs. ALI index is used to determine the extent degree of liberalisation thru giving the points to seven components of the bilateral agreement, such as grant rights, capacity clause, national clause,

designation, statistics, tariffs and cooperation agreements. ALI index ranges from 0 to 50 points, where 0 represents the most restrictive agreement and 50 indicate the most liberal agreement. Picture shows index WALI of selected European states, which represents average levels of ALI index of signed ASAs. The highest WALI index has Germany (16.4), Denmark (15.3) and Netherlands (14.8) which means, that these countries signed more liberal ASAs, than other countries. On the other hand, there is still a lot of place to liberalize ASAs.

Table 1

## Air Freedoms

1 <sup>st</sup> freedom	the right to fly over a foreign state, without landing there
2 <sup>nd</sup> freedom	the right to refuel or carry out maintenance in foreign state on the way to another state
3 <sup>rd</sup> freedom <sup>1</sup>	the right to fly from one's own state to another
4 <sup>th</sup> freedom	the right to fly from another state to one's own
5 <sup>th</sup> freedom	the right to fly between two foreign states during flights while the flight originates or ends in one's own state
6 <sup>th</sup> freedom	the right to fly from a foreign state to another one while stopping in one's own state for non-technical reasons
7 <sup>th</sup> freedom	the right to fly between two foreign states while not offering flights to one's own state
8 <sup>th</sup> freedom	the right to fly between two or more airports in a foreign state while continuing service to one's own state
9 <sup>th</sup> freedom	the right to fly inside a foreign state without continuing service to one's own country

Source: *Manual on the Regulation of International Air Transport*

#### 4. ASAs TYPOLOGY

QUASAR has introduced a typology of ASAs as it was mentioned before. The different types of A to G, where type A is considered the most restrictive type of ASA granting only third and fourth Air Freedom, limited designation, double approval of tariffs and predefined capacity. On the other hand, type G is considered as most liberal agreement allows unlimited designation, grants third, fourth a fifth Air Freedom, free pricing and undefined capacity. The most liberal type G covers 3.5% of all agreements while the second most liberal type F 7.5%, which implies, that approximately 12% of a bilateral air service agreements can be considered liberal compared to the remaining 88%.

#### 5. COMPARISON OF LIBERAL AND RESTRICTIVE ASAs

Despite the trends towards liberalisation of the Air Services Agreements, the existing agreements are generally different in terms of their liberalisation content. Bilateral agreement which grant first,

<sup>1</sup> *Third and Fourth Freedoms are the basis for direct commercial services, providing the rights to load and unload passengers, mail and freight in another state. They are commonly reciprocal agreements.*

second and third Air Freedom is considered as protectionist agreement, on the other hand, bilateral agreement which grant five or more Air Freedoms shall be considered as liberal agreement (Guman, 2011).

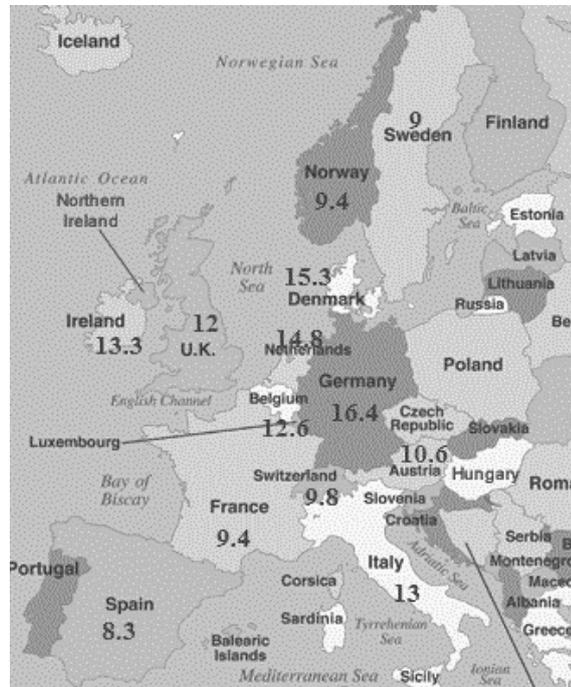


Fig. 1. WALI of European states  
Rys. 1. WALI państw Europejskich

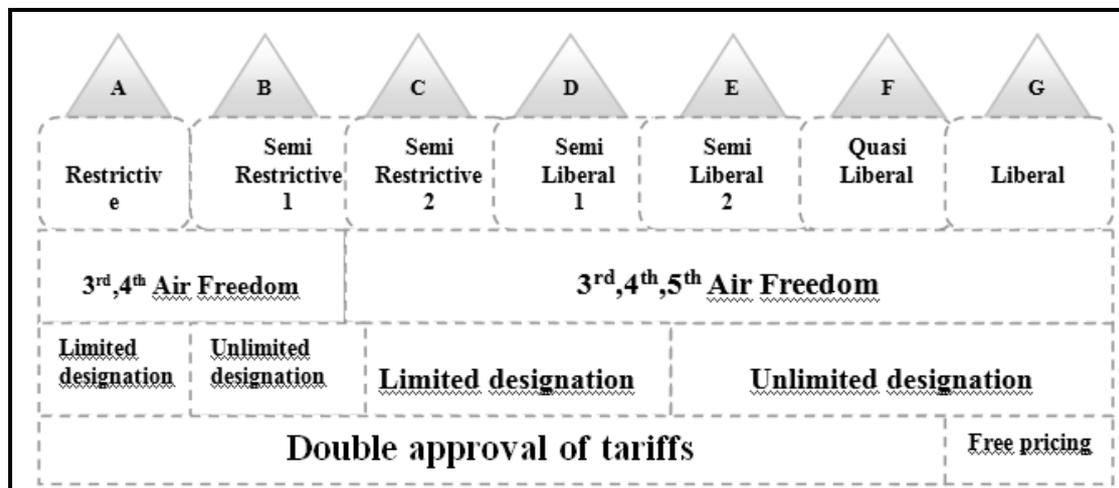


Fig. 2. Types of ASAs  
Rys. 2. Rodzaje ASAs

## 6. CONCLUSION

Based on data available from the QUASAR study, it's clear, that the scope for further liberalisation of bilateral air service agreements and the liberalisation of the international market for air transport services is available. But the question is how high the degree of liberalisation of ASAs can get. Two countries can grant all of the Air Freedoms by signing a bilateral agreement, but if they restrict one of the requirements of the contract such as capacity, designation, pricing and so on, ALL index automatically decreases and thus reduces the degree of liberalisation.

Table 2

## Liberal vs. Protectionist ASAs

<b>Protectionist ASAs</b>	<b>Liberal ASAs</b>
The exact definition of airports and allowed routes	The possibility of flying between any points in countries
Limited airline designation	Possible elimination of national clauses
Ethnic clause	Unlimited airlines designation
Established capacity limits	No capacity limits
Dual approval, IATA tariffs	Free pricing

Liberalisation itself allows the release of trade and gives the opportunity to every subject of international trade. It tries to break down the restrictive measures that limits and do not allow free trade in aviation services. Thanks to liberalisation, there is a “competitiveness growth, product and services diversifying and also leads to pressure on downward prices and production factors” (Guman, 2011).

As liberalisation has positive aspects, it also has the negative, associated with the transfer of the negative impacts of the global economy, pressure to reduce domestic production and rising unemployment. Therefore, in addition to examining the extent of liberalisation on international aviation should be paid attention to other issues. One is the question of form and trends intra-industry component of international trade in air transport services and positions the world’s key players in it.

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