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Freedom of Establishment within the European aviation sector



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Contents

- Introduction
- Nationality of air carriers
- Open Skies Judgements
- Conclusion

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Introduction

- Convention of Chicago 1944
- Traditional difference between
 - domestic air traffic,
 - foreign (international) air traffic
- Air service agreements
 - bilateral agreements: Open Skies agreements

General tenets relating to establishment

- Article 43 and 48 EC Treaty
 - Freedom of establishment
- Company Seat principle (Sitztheorie)
- Incorporation principle (Gründungstheorie)
- Which principle prevails?

Towards an internal European market

- Establishment of Air carriers in Europe
- Third liberalisation package;
 - Granting operating licences to air carriers (Regulation 2407/92)
 - Access for Community air carriers to intra-Community air routes (Regulation 2408/92)
 - Fares and rates for air services (Regulation 2409/92)

Nationality

- Nationality in the aviation sector
- “substantial ownership and effective control”-clause
- Consequences the freedom of establishment for Community air carriers

"Open Skies" Judgements of the ECJ

- European Commission
- Findings of the ECJ
 - Nationality clauses in air service agreements concluded by Member States infringed European law by limiting the freedom of establishment of Community air carriers.
 - Commission and the Member States were jointly competent with respect to Open Skies Agreements.

Consequences of the judgements

- Internal European market
- External international market
- Re-negotiations of the nationality clause in bilateral agreements
- Member States and Commission have to work together
 - Commission
 - Member States

Cooperation?

- Commission
- Member States
- Replacing the nationality clause
- European clause
- Alliances

Conclusions

- European law on free establishment depends on EC directives and national legislation
- One European Airspace: liberalised market in theory
- Re-movement of the nationality clause from bilateral agreements leads to free European market.

Questions?

