

## Executive Summary

### - US Cargo operators' traffic rights in Europe -

UPS and FedEx operate in Europe under the Open Skies agreements signed between the European Union and the United States.

These agreements were negotiated in several stages. Stage 1 was ratified on 30 April 2007.

The key elements of stage 1 were<sup>(1)</sup>:

- Authorisation granted to European airlines to operate to the US from anywhere in the European Union;
- 3rd, 4th and 5th freedoms<sup>(2)</sup> for all European and US airlines;
- 7th freedom<sup>(3)</sup> for 'all-cargo' services operated by European operators, but **no additional 7th freedom for US airlines<sup>(4)</sup>**;

Indeed, Annex 1, Section 3 limits the rights of US airlines in Europe.

#### Annex 1 - Section 3

Notwithstanding Article 3 of this Agreement, **US airlines shall not have the right to provide all-cargo services, that are not part of a service that serves the United States, to or from points in the Member States**, except to or from points in the Czech Republic, the French Republic, the Federal Republic of Germany, the Grand Duchy of Luxembourg, Malta, the Republic of Poland, the Portuguese Republic, and the Slovak Republic.

Stage 2 negotiations started on 15 May 2008 in Ljubljana, Slovenia. On 25 March 2010, the negotiators concluded discussions on the second part of the Open Skies agreements between the EU and the US.

Stage 2 focused on<sup>(5)</sup>:

- Further liberalisation of traffic rights (e.g.: **7th freedom for US 'all-cargo' operations in Europe**);
- Deeper cooperation on regulatory issues in the areas of safety and security;
- A joint statement on environmental issues;

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007D0339>

<sup>2</sup> [https://en.wikipedia.org/wiki/Freedoms\\_of\\_the\\_air](https://en.wikipedia.org/wiki/Freedoms_of_the_air)

<sup>3</sup> the 'seventh freedom' is the right to carry passengers or cargo between two foreign countries without continuing service to one's own country

<sup>4</sup> The agreement allows EU airlines to operate unlimited 7th freedom cargo services (although there will be no additional 7th freedom all-cargo rights for US airlines on top of those previously granted by 8 EU countries)

<sup>5</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010D0465>



- An early stage project for a social framework.

However, the granting of the **7th freedom for US 'all-cargo' services in Europe is conditional to the abolition of barriers on the takeover of an airline from the other Party** (Stage 1 - Annex 4 - Article 1<sup>(6)</sup>).

Article 21 - Further Expansion of Opportunities

3. Upon written confirmation by the Joint Committee [...] that the laws and regulations of **each Party permit majority ownership and effective control of its airlines by the other Party** or its nationals:

- a) **Section 3 of Annex 1 to the Agreement shall cease to have effect;**

To date, neither have Europe nor the US modified the legal provisions limiting the control by the other party of its airlines. **Section 3 of Annex 1 is therefore still fully applicable and US cargo operators, such as FedEx and UPS, do not have the right yet to provide 'all-cargo' services in Europe that are not part of a service serving the US, except for the 8 Member States mentioned.**

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<sup>6</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007D0339>



## European Commission's Position

In December 2012, BeCA demonstrated to the European Commission that a parcel sent from Helsinki (HEL) to Madrid (MAD) by UPS was transported through Cologne (CGN) hub, with US airplanes and crews, in contradiction with the Open Skies agreements.

The Commission reacted and tried to justify these infringements citing a new concept of **5th virtual freedom flights**.

The parcel is transported in a UPS airplane between HEL and CGN, but virtually continues to the US (flight in 5th virtual freedom)	On the <u>same night</u> , the parcel virtually comes back from the US to CGN and is transported to MAD in a UPS airplane (2nd flight in 5th virtual freedom)
 A map of Europe and North America showing a flight route. A red dashed line starts at HEL (Helsinki) in Finland, goes to CGN (Cologne) in Germany, and then continues across the Atlantic to PHL (Philadelphia) in the US.	 A map of North America and Europe showing a flight route. A red dashed line starts at PHL (Philadelphia) in the US, goes to CGN (Cologne) in Germany, and then continues to MAD (Madrid) in Spain.

Thanks to this new concept, which was invented out of the cloth by the European Commission, **US cargo operators enjoy de facto a full 7th freedom, without modifying their protectionist legislation on the control of their airlines.**

When the European Cockpit Association (ECA) asked the US administration whether this concept could apply to European cargo operators in the US, calling upon a virtual hub in Canada, they clearly responded that such a concept of virtual flights can obviously only be applied in Europe...

## Consequences

The consequences of such a decision are very important for the cargo industry in Europe:

- All restrictions on 'all-cargo' services of the Open Skies agreements are **bypassed**;
- European cargo operators are subject to direct competition from US cargo airlines in Europe, **without having reciprocal access** to the US domestic market.
- Thanks to very favourable social agreements with their employers, an increasing number of US pilots are based in Europe and **are threatening European jobs**, as

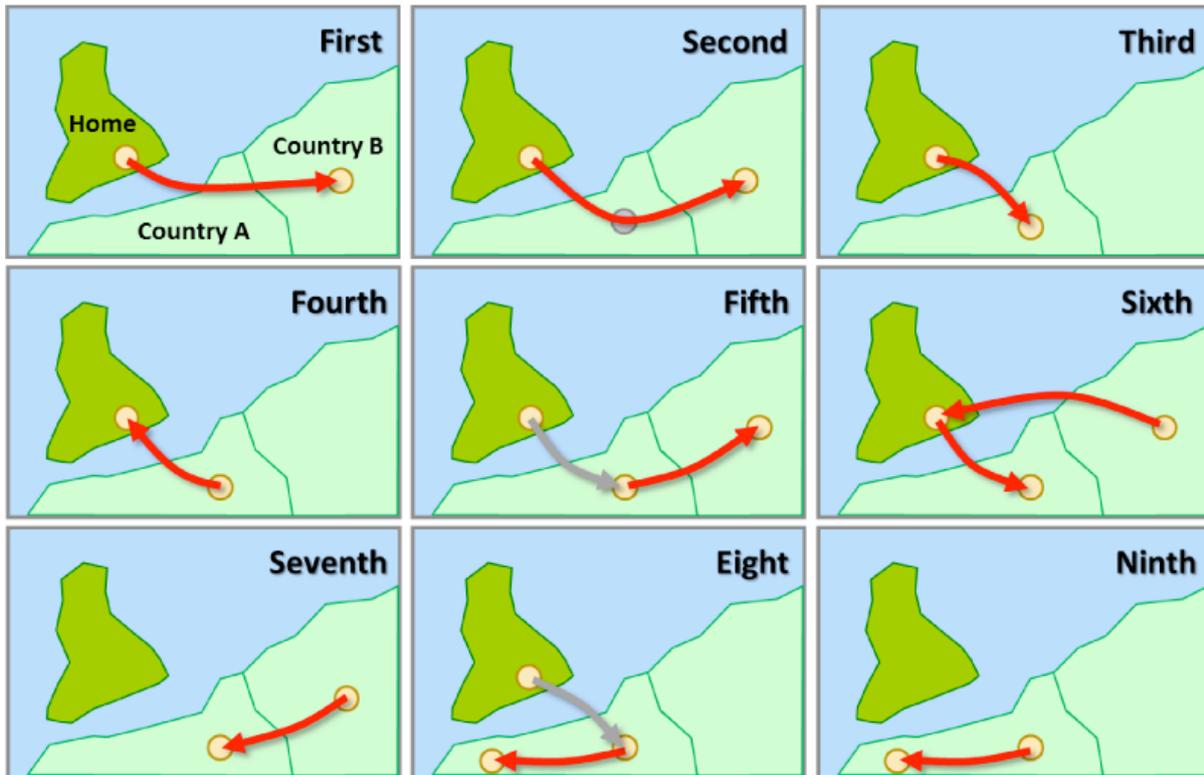


they operate intra-European transport.

- Little by little, Europe loses control over this strategic sector in the transport area and becomes dependent on US monsters of the sector.

**There is an urgent need for Member States to put pressure on the European Commission to ensure implementation of the agreements it negotiated on their behalf.**

### Annex 1 - Freedoms of the Air (ICAO definitions)<sup>7</sup>



**First Freedom of the Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a First Freedom Right).

**Second Freedom of the Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes (also known as a Second Freedom Right).

**Third Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (also known as a Third Freedom Right).

<sup>7</sup> <http://www.icao.int/Pages/freedomsAir.aspx>



**Fourth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (also known as a Fourth Freedom Right).

**Fifth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State (also known as a Fifth Freedom Right).

ICAO characterizes all "freedoms" beyond the Fifth as "so-called" because only the first five "freedoms" have been officially recognized as such by international treaty.

**Sixth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States (also known as a Sixth Freedom Right). The so-called Sixth Freedom of the Air, unlike the first five freedoms, is not incorporated as such into any widely recognized air service agreements such as the "Five Freedoms Agreement".

**Seventh Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e the service need not connect to or be an extension of any service to/from the home State of the carrier.

**Eighth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State (also known as a Eighth Freedom Right or "consecutive cabotage").

**Ninth Freedom of The Air** - the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State (also known as a Ninth Freedom Right or "stand alone" cabotage).

