

## OPEN SKY AGREEMENTS BETWEEN THE EU AND MEDITERRANEAN COUNTRIES:

## A New Form Of Deep Integration Bypassing The European Neighborhood Policy

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INTRODUCTION

Much of the hopes that Morocco, Tunisia, Jordan and Israel had put on the adoption of a European Neighbourhood Policy (ENP) by the EU in 2003 and its application to them have vanished since. As is well known, the initial enthusiasm with which the new and quite revolutionary initiative at the time was received, for instance, in Israel was warranted by the fairly rapid adoption of Action Plans (AP) one or two years later, a decade ago. But it vanished slowly, rather than quickly, when negotiations started timidly with the nitty-gritty, after realizing that “all but the institutions” was only meant by the EU as a stimulating slogan. It is worthwhile reminding here, for example, the famous sentence of Mrs. Livni, the then-Israeli Foreign Minister in 2006, whereby in EU-Israel relations “the sky is the limit”. It seemed later on to Israeli leaders that the wish of the EU to exchange access to parts of the Single Market against adoption of the *acquis communautaire*, a deal accepted by Israel, was set aside for the moment, because Israel’s rejection of some kind of EU political conditionality (e.g. a freeze in settlement activity), that Israel thought, maybe naively, did not exist in relation to the ENP (as compared to the 1995 Barcelona Process, for example).

This being said, the simple reality is that very significant progress in deepening relations with the EU was made out of public sight not only regarding Israel, but also Morocco and Jordan were concerned.<sup>1</sup> A substantial role in this invisible up-grading of relations was due to the initiative of some Directorates at the EU Commission to proceed with so-called “sectorial agreements”. The most significant were so-called Open Sky agreements (OSA in what follows).

The paper will proceed as follows:

As it is important for the reader to understand from where the idea of the EU of signing OSAs with its Southern and Eastern neighbours originates, a short review of the international regime regarding air transport services is warranted first. It follows then by a sum-up of the current intra-EU state of the Internal Market in civil air transport passenger and cargo services. The paper proceeds then to explain why selected EU neighbours decided to accept the EU’s Commission’s proposals in the last decade to have the incumbent Commissioner sign with them bilateral OSAs. The contents of a typical OSA with a EU neighbour is then analyzed. It follows with a survey of the negotiations leading to the OSA between the EU and Israel, which is selected as a case study, including a review of the key actors, vested interests, difficulties encountered and reasons explaining the length of time that the negotiations took. A tentative

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<sup>1</sup> The unease of the EU regarding the Ben Ali regime in the years preceding the Arab Spring which started in Tunisia as a matter of fact in late 2010 left Tunisia way behind.

assessment of the outcome of the 2013 EU-Israel OSA is presented. Finally, the paper explores the relations that OSAs might have with the original and the revised versions of the ENP.

#### WORLD REGIME:THE CONCEPT OF OPEN SKIES

Quoting from the WTO's Guide to the GATS (2001), bilateral aviation agreements are based on negotiations of three Pillars, namely Routes (i.e. traffic rights), Capacity and Tariffs. The most important of the three in the context of this paper is the first. Practitioners speak of eight types of "freedoms" or authorized flights:

1<sup>st</sup> freedom: the right of an airline of one country to fly over the territory of another country without landing;

2<sup>nd</sup> freedom: the right of an airline of one country to land in another country for non-traffic reasons, while en route to another country (technical stopover);

3<sup>rd</sup> freedom: the right of an airline of one country to carry traffic from its country of registration to another country;

4<sup>th</sup> freedom: the right of an airline of one country to carry traffic from another country to its own country of registration;

5<sup>th</sup> freedom: the right of an airline of one country to carry traffic between two countries outside its own country of registration as long as the flight originates or terminates in its own country of registration;

6<sup>th</sup> freedom: the right of an airline of one country to carry traffic between two foreign countries via its own country of registration (a combination of 3<sup>rd</sup> and 4<sup>th</sup> freedoms)

7<sup>th</sup> freedom: the right of an airline to operate stand-alone services entirely outside the territory of its home state, to carry traffic between two foreign states;

8<sup>th</sup> freedom: the right of an airline to carry traffic between two points within the territory of a foreign state (so-called "cabotage").

The concept of open skies agreements, according to GATS(2001), p.77, relates specifically to Pillar One in bilateral aviation agreements, namely "Routes"(or traffic rights), whereby any town or airport of either of the two participating countries can be an entry point for a carrier of the other country.

#### THE REGIME INTRA-EU

Intra-EU opens skies policies date back to 1997 including 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8th Freedom rights (i.e. intra-EU and intra-MS cabotage). It is part of the White Paper and the Completion of the Internal Market program . It was as from then that Low Cost Carriers (LCCs in what follows) developed in the EU (e.g. Easy Jet, Ryanair). By 2005 already 26% of intra-EU traffic by volume was done by LCC when in 1992 it was less than 2 %. In those early years growth is about 25% per year. Of the 450 mo passenger transported between points inside the EU, 120 were done by LCC in 2005.Incumbent

airlines remained meanwhile relatively speaking stagnant in absolute numbers. By 2002 the ECJ declared that only the EU Commission could negotiate with third countries as from then on bilateral aviation agreements; individual MS aviation agreements had to be phased out and replaced by a single EU bilateral agreement with a given third country. This legal but very significant integrative step would require then to painfully negotiate so-called “horizontal agreements” before starting to consider significant new steps of air transport service liberalization with third countries.

#### THE WHO'S WHO BEHIND OPEN SKY AGREEMENTS IN THE EU AND IN THE MEDITERRANEAN PARTNER

The first country engaging in deregulation of domestic air transport services was the US under President Reagan's administration already in the 1980s. Nothing of the sort was tried beyond the borders of the US. It took the EU until 1997 to reach the US record achieved domestically more than a decade before.

It goes without saying that the tourist industry, consumer associations, business communities, international trade and cargo operators were all pushing since long time in Europe for such a step. Flag carriers, as well as workers' unions (including pilots) were against or reluctant to the deregulation of scheduled services. The latter accepted at most and since the 1960s already charter flights. For them this was enough.

Since the end of the 1990s the share of air transport in an intra-EU tourist total travel expenditure is going continuously down, and this in spite of the oil price going typically up during the same period; two reasons are given for that : planes are bigger; and charter flights have been progressively substituted by low cost carriers.

The Southern neighbors of the EU are very dependent on tourism income, sometimes disproportionately. The examples of Morocco and Tunisia come to mind. Once intra-EU air transport liberalization was achieved, all these countries saw the danger of tourism trade diversion in favor of Southern Europe. They had to act. They found a ready ally in the EU, namely the new LCCs.

For a while governments in EU neighbors adopted a wait and see attitude, given that being relatively new independent countries , they saw the national flag carrier (e.g. Royal Air Maroc, El Al, Tunis Air, Royal Jordanian) as a guarantee to national independence both real or imagined; something to be proud about. Of course they were strongly supported by the national carriers themselves, their workers and sometimes parts of the defense establishments.

While in the EU, the share of air transport expenditures in a typical tourism package were reduced to less than one third, the price of flying from the EU to the Southern neighbors kept being stubbornly about 50% of total outlays, the same indeed as when flying from the US.

In the case of Israel, statistics show that until mid-2014 the share of air transport from Europe was slightly less than the share of accommodation, the old “rule-of-thumb” for tourism operators. This is bound to change with the progressive application of the OSA (see later).

There is no need to stress the importance of tourism originating in the EU in total tourism flows. It is substantially more than two thirds for Morocco and Tunisia , but even in the case of Israel it

reached 49% in 2014. When including domestic tourism, the EU represents between one third and two thirds of total tourism ( as domestic tourism is small in Morocco, Tunisia, Jordan). The penetration of BRIC-originating tourism is still very slow, the case of Russia notwithstanding.

Given all this it is not astonishing that when the EU Commission came up in the early years of the last decade with the project of renegotiating individual bilateral agreements that the four Southern neighbors had with individual MS and then proceed to sign an OSA with them, they were quite receptive. Open skies policies were becoming slowly the rule in the OECD; they had to arrive sooner or later anyway to the Mediterranean partner countries of the EU, so it was thought. The first to be convinced were the Finance, Tourism , Economic and Foreign Ministries. Most reluctant not surprisingly were Ministries of Transport, standing more for the producers than for the consumers of air transport services. And the latter wanted clearly not only an increase of flights frequencies but more significantly the establishment of new routes from the Southern neighbor to new destinations in the EU, favoring thus point-to-point routes over flights to European hubs. In this they coincided with the business model of the European LCCs , a model very much resisted by large national carriers such as Lufthansa and Air France.

It is worthwhile to illustrate this point with the example of the Hotel Association of Israel, which argued successfully that it could not rely on a fleet such as El Al's with 30 to 40 planes; or double as much including the European flag carriers according to existing bilateral agreements. It stressed that unlike Spain, Israel tourism was totally dependent on air transport which in turn was dependent on a tiny company called El Al. They stressed also that Israel being an end destination, it was very attractive for European air carriers, as Israelis also tend to travel more than average.

#### TYPICAL CONTENTS OF EU OSAS WITH NEIGHBOURS

The official name given to this type of document is "Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the government of ..... of the other part".

The aviation agreements provide for an unlimited duration and almost without exception for so-called third-, fourth and fifth-freedom rights regarding air transport between the Mediterranean partner country and the 28 EU member states. That means granting to each side's air transport carriers unlimited number of flights, without capacity restrictions and number of carriers, between points in the territory of the Mediterranean partner within its EU-recognized borders and any point in the territory of the EU(now at 28).

The gradual liberalization is always scheduled to happen over a transitory period after the entry into force of the agreement on a progressive basis(e.g. in the case of Israel 5 years from 2013 through 2018); meaning that the number of flights, frequencies and routes is being expanded progressively until full freedom in those numbers is achieved. It means total free competition between the Mediterranean partner- and EU-based air companies, including low-cost ones. This is economically-speaking very significant as the EU accounts for the highest percent of international air travel from the Mediterranean partner(e.g. in the case of Israel about 57%). Normally there are already before the new OSA air travel connections between the Mediterranean partner and some of the 28 EU member states but that clearly can change with the advent of the agreement (e.g. back in 2014 there were air travel connections between Israel

and only 17 of the 28 members states). The right of an EU carrier, such as Lufthansa, to transport from a third state (for instance Italy) passengers that are destined to the Mediterranean partner is not allowed. However the right of , e.g., Lufthansa, having a route Frankfurt-Athens-the Mediterranean partner and taking passengers from Greece to the latter, is also granted. That holds of course also for the Mediterranean country's carrier, e.g. Royal Air Maroc flying the route Casablanca-Madrid-Paris. Not only that. Intermediate points can include Swiss and EEA states non-members of the EU. Of course what is called in the jargon "cabotage" is excluded, namely the right for a EU or Mediterranean partner carrier to operate domestic air routes in the latter or inside a EU member state respectively. That mean e.g. that EU LCC cannot operate flights between Casablanca and Marrakech or that RAM cannot fly between Nice and Paris. Observe that both parties recognize in the respective agreements the benefits of regulatory convergence, i.e. by that meaning basically the one of the Mediterranean country towards the one of the EU (namely adjusting to the *acquis*). They also subsume the agreement in the context of the Barcelona process (hence the reference in the title of a "Euro-Mediterranean" agreement), wishing to contribute to the creation of a real Euro-Mediterranean aviation area (but observe that the ENP is not mentioned). Subsidies by the Mediterranean partner or the EU to their own air carriers are forbidden, but for the exception of those that are security-related.

Regarding the territorial scope of the agreement as far as the EU is concerned it is worthwhile mentioning that the agreement excludes the airport of Gibraltar, because of the on-going conflict between Spain and the UK.

To prevent that one side unduly rejects the application made by an air carrier of the other side to operate a new route there is mutual recognition of regulatory determination regarding the air carrier fitness and nationality with some minor exceptions(e.g. passengers security). In other words, if the EU states that Ryanair is a company fit to fly passengers and cargo, the Mediterranean partner cannot say that for it this is not the case and that Ryanair shall be excluded from the Mediterranean country skies.

The OSA asserts also that the competition rules of the EU-Mediterranean Association agreement signed in the context of the EMP apply. As is well known, the latter in fact are mimicking EU's own competition rules. It is worthwhile to illustrate what this implies in a concrete example. In the case of Israel (see below case study), its government is authorized by the other side to increase from 80% to 97% its contribution to security expenses of Israeli air carriers, but the latter must reflect only the excess cost incurred genuinely by them compared to the costs incurred by non-Israeli ones, because otherwise there would be unfair competition (actually a form of state aid) in favor of the former.

Note that OSAs are from the EU's legal viewpoint so-called mixed agreements (shared competence). Individual MS play still a big role in that they are still the ones allocating slots in airports.

## A CASE STUDY : THE OPEN SKY AGREEMENT BETWEEN THE EU AND ISRAEL

### A) THE NEGOTIATIONS: COMPLICATING ISSUES

The central actor on the Israeli side was the Director General of the Ministry of Transport and the Civil Aviation Authority, depending on that Ministry, which took the lead as from 2006. From the beginning the agreements to be signed were considered by Israel (and actually by the EU Commission itself) to be technical, hence to be negotiated on the Israeli side by the Israeli Ministry of Transport and by DGTRAN on the EU side. However because officially it was only the Ministry of Foreign Affairs that could sign aviation agreements, the latter had to give power of attorney to the Ministry of Transport. In return, the latter consulted after each step with and get feedback from not only the Ministry of Foreign Affairs but also with and from all the other members of the Standing Committee created to that effect, including Ministries of Tourism, Justice and Finance. Curiously there was no representative of the Ministry of Trade and Industry. Representatives of Israeli air carriers El Al, Arkia and Israir but also the local air cargo company, CAL, were there only as observers, but not the tourist sector nor the Histadrut (Israeli labor union), something odd..

At the beginning of negotiations, the EU Commission seemed to be pressed for time. The Israeli Finance and Tourism Ministries showed immediate interest in the matter. The latter ordered a study to Ernst and Young. A seminar-workshop organized for all the public officials or representatives of the air service companies and the tourism sector extensively informed about the EU proposal in 2007. At that workshop it was expected that negotiations would “only” last four years. They started the same year with the formal issue of substituting individual bilateral agreements with one with the EU, the so-called global agreement, signed in December 2008. This early negotiation conditioned the one to come of the OSA, properly speaking. Observe however that already this early agreement is the one inciting Easy Jet to open routes from the EU to Israel. Still stopping at this stage would not have been enough to attract LCCs permanently because the global agreement was still conditioned of what the previous Israel’s bilateral aviation agreements were stipulating, e.g. Italy strongly limiting flights to Italy. With OSA this barrier would be eliminated as well. The negotiation of the OSA properly speaking lasted, then, from 2009 to 2011, but the signature (with no need for ratification on the Israeli side) by Israel and the EU Commission taking two more years. There were a large amount of negotiations rounds. From interviews made by the author, it appears that Israel sought in negotiations reciprocity, gradualism and respect for its security concerns regarding national carriers. The CAA worked constantly to give time to El Al, Arkia to adjust; gradualism was the motto. Apparently El Al was the most worried Israeli air carrier. The Ministry of Transport was for more competition but not at all costs. The Ministry of Foreign Affairs wanted it to be a voluntary process and “this takes time”. On the other hand, it appears that over time the EU’s DGTRAN lost interest and was not pressed to get results. However there is no evidence that this was due to the general context of Israel-EU relations (see below).

Israel delayed initialing the agreement because the out-going government feared it could lose votes in the scheduled elections of 22 January 2013 for the 19<sup>th</sup> Knesset. After the elections the agreement was initialed and presented for signature to the new government, which approved it in April 2013, after quite a few demonstrations by El, Arkia and Israir manpower as well as the Histadrut. The latter asked for a new postponement of the signature and actually reopening negotiations with the EU, something bluntly refused by the Israeli government. Due to the

demonstrations strikes led to the suspension for two days of all El Al, Israir and Arkia flights causing pandemonium at BG airport, but to almost no avail for the protesting groups .The only concession made by the (new) government to the latter was to raise the participation of the State of Israel to security costs borne by El Al from the 80 percent to 97 percent, officially to establish a level playing field between El Al on the one hand and other air travel companies operating from Ben Gurion Airport on the other hand<sup>2</sup>.

The agreement was initialed in March 2013; the decision by Israel to sign was taken in May and the signature took actually place in Luxembourg in June. The OSA supersedes several other bilateral agreements . The signatories were the Minister of Transport on the Israeli side and the Vice-President of the Commission on the EU side. The OSA has been provisionally applied as actually contemplated in the agreement itself (an exception for the Israeli side which almost never accepts provisional application); hence it should be in place by 2018.

Note that the EP and the European Council as well as most MS must still ratify the OSA at the time of writing. This could take more than a decade. However and quite separately of the above, the ECJ is currently debating if in these type of agreement the MS must also give their consent. If not, then the process of ratification might take less time.

## B) OUTCOME FOR REGULAR PASSENGER SERVICES

First, it is interesting to report about what was expected *ex-ante*. Whereas economists rightly expected the existing national air carriers exporting services (such as El Al) to shed manpower and adjust to increased competition from EU-based carriers, it was expected that there would be an increase in the number of European air carriers deservng airports in Israel and in the EU and also operating from new airports not currently connected to airports in the EU and from Israel airports to any new destination. For instance as explained later, the OSA between Israel and the EU is likely to lead faster than otherwise the opening of new scheduled international routes from an existing airport used now for military aircraft and that should be expanded, Ramat David , in the North of Israel. It is likely that among other uses it would be devoted to new stand-alone short-leg tourist destinations such as Cyprus and Greece. With the agreement nothing prevents low-cost European carriers incorporated in these two countries to operate from this airport. Another expectation was that thanks to the OSA many Israelis unable to travel overseas until the implementation of the agreement, basically for price reasons, would be able to fly afterwards. Moreover a net increase of about 650000 tourists annually from the EU was expected until 2017 (nowadays amounting to 1 to 1.3 million people yearly). Reich(2015) mentions a study made by the EU Commission which estimates that the total economic benefit would be 350 million euros per year once market opening was complete. Other studies were made by the Bank of Israel in 2005 and one by well-known economist Ezra Sadan. They arrived to the same qualitative conclusions as the Ernst and Young study and the EU Commission. Finally an official Israeli commission concluded in 2007 that Israeli consumers would win between 70 and 105 Mo\$ per year compared to losses for Israeli carriers of 50-75 Mo \$. The gains from incoming tourism would be in the range of 80 to 240 Mo \$ per year. Many studies predicted that there would be an increase in the quality of service. Curiously no study evaluated whether and by how

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<sup>2</sup> Information collated from local Israeli press

much tickets to and from Israel would be affected, in the view of this author the most important final outcome after all.

What have been then the results on the ground? First, the reader should take notice that the agreement entered into force in June 2013; the second stage was in April 2014 and maybe the most relevant, although the Gaza War in the summer made some airlines to backtrack. From January to June 2014 there was a 15% growth in the number of flights. In other news, Haaretz stated after the summer that Germanwings (later renamed Eurowings), a LCC operated by Lufthansa, would be starting to fly from BG at the end of October 2014 while Air Berlin was adding more flights to Berlin and opening also a Dusseldorf-Tel Aviv line competing with Germanwings. Another unexpected concrete result of the liberalization of air transport was that Scandinavian airlines started to fly again to Israel after SAS had quitted deservng Ben Gurion airport many years before. At present they are represented widely by cheap flights operated by Norwegian and Wow Air to Denmark, Sweden and Iceland. According to some Israeli sources, even the old European flag airlines, such as Alitalia, have changed their attitude towards the Israeli market. El Al itself has created its own LCC, called Up, as a reaction to the increasing penetration of European LCCs. Not only that, established carriers have increased frequencies from their hubs in concordance with rights given by the OSA. The number of destinations by established companies has increased as a result of suppression of strict reciprocity and Europe now being taken as a single country. That has been the case of Easy Jet that has added since 2013 three new routes between Israel and Europe and is bound to add a fourth and of course the arrival of LCCs in BG airport not present before such as Wizz Air, Transavia, Air Europa and Norwegian. There is apparently something to come yet and that is an increase of tourism from the US that will use a European airport as a stopover to Israel, using two LCCs, maybe even only one (e.g. Norwegian has now low-cost flights over the Atlantic). That would be tantamount as *de facto* application of 6<sup>th</sup> Freedom rights. Still and before being carried away, the reader should take note that the share of low-cost carrier's traffic in BG was still very low (6 to 8 percent) as late as 2015 compared to what is the rule for European countries where it reached 50 percent.

From a report by the CAA of December 2014 on developments in traffic between Israel and the EU the following figures are worthwhile mentioning:

TABLE 1: Total Passenger Traffic by Airline nationality at BG Airport on Israel-EU routes

		% of Israeli airlines
Number of passengers(Millions):	2010 6.7	46.3
	2012 7.1	42.3
	2014 8.1	43.5



TABLE 2: Total Passenger Traffic by Routes at BG Airport (Millions)

Total passenger traffic from and to BG and Share of EU

		% of EU
Number of passengers:	2010 11.5	58.3
	2012 12.4	57.3
	2014 14.2	57.3

In EU-Israel routes weekly frequencies jumped from 383 to 431 from November 2012 to November 2014; more significant is that LCCs increased from 15 to 45 (three time more routes in 2 years) while other airlines grew from 368 “only “ to 386. There was a major increase in flights to Berlin and Paris (6 and 7 additional flights) respectively and then London, Munich, Budapest, Larnaca and Katowice with an increase of 4 to 5 flights per week. Easy Jet jumped from having 8 flights a week (all EU-bound flights included) in 2012 to an estimated 28 flights a week; Wizz Air from none to 27 in the same period; Norwegian from 1 to 5. More significantly if in the summer 2011 only 6 EU routes were served from BG airport by three or four airlines (on passenger scheduled service) the number increased to 15 in the summer of 2014.

Furthermore, according to the agreement the increase contemplated in the OSA in the current quotas is highly significant for some routes where before the agreement in 2013 Israeli airlines (e.g. El Al) had a large share of total traffic (Paris, Madrid, Frankfurt, Munchen, Barcelona, Milano, Berlin, Athens, Bucharest, Amsterdam, Brussels and Budapest). Very significant is the fact that after the agreement and already as from 2013, 7 more flights can be legally added by EU-based carriers between Paris and Tel Aviv; then 10 in 2014 and 13 in 2015. The corresponding quota does not take off until 2014 for Rome, Frankfurt, Brussels and Larnaca. Even so caution continues to be applied for Rome, Paris, Frankfurt and Madrid and for EU carriers regarding London-Heathrow. However in an interview by the author with CAA officials it appears that as from 2015 the quota applied still on some routes is larger than what actually demand requires according to traffic forecast. Hence in spite of the fact that legally speaking all quotas are to be eliminated only in the future by 2018, *de facto* the liberalization already reflects all possible effects since 2016. Illustrating the above, in November 2014 Haaretz reported that Easy Jet was studying the possibility of opening flights between several destinations in Europe and Eilat. Furthermore this carrier added regular flights in July 2014 between Hamburg and Tel Aviv. However negotiations between Israel and Ryanair which if succeeding would be considered a real breakthrough by Israel did not prosper for a long while. In a press release on 26 August 2014 in Haaretz a Ryanair spokesman expressed disappointment with the dilatory tactics applied apparently by the CAA, at a time the former had declared that it wanted BG airport to become a hub for flights to Western and Central Europe. In fact, according to the CAA, the real reason for the suspension of negotiations was that Ryanair did not want to pay airport fees to the Israel's Airport Authority to be able to use “only” the old and now secondary terminal, as Wizzair and Easy Jet actually do. Later, Ryanair declared that it had decided to concentrate on Russia and not make of Tel Aviv a hub for flights between Western and Eastern Europe. But with the oil price debacle which accelerated at the end of 2014 affecting Russia negatively, the press stated that Ryanair might decide to consider back Israel sooner rather than later. In fact it seems that Ryanair shifted the focus progressively to the exploitation of the Europe-

Eilat route. In 2015 already, Ryanair let know that it would start flying from the new Eilat Ramon International airport in Timna (named after the late Israeli astronaut Ramon) to Europe whenever it would open in 2017. Even so, Ryanair continued to show interest for Tel Aviv in view of the continuing boom in the low-cost market. And so it decided to start flying also from BG Airport to a short term destination, namely Paphos in Cyprus and will add new flight routes to Germany, Italy and Poland in October 2017. So after many years of hesitation, Ryanair is entering the Israeli market as it did much before in Morocco, competing head-on with Easyjet at BG airport and pioneering EU-based LCC flights from Europe to Eilat also in 2017.

### C) OUTCOME FOR CHARTER FLIGHTS

Unscheduled flights from or to Israel were important in traffic with Paris, Amsterdam and Barcelona until the OSA, but will now progressively disappear in favor of regular low-cost flights. It is however difficult to ascertain whether their demise is linked to the OSA or to the emergence of LCCs in general.

### D) OUTCOME FOR CARGO FLIGHTS

According to experts consulted by this author there will be no influence on the number of cargo flights but the OSA will increase cargo capacity with the increase of flights in passenger carriers as a by-product. The Israeli cargo company CAL will maybe benefit from the agreement as it has a niche in cargo flights considered to require special care. Nowadays CAL does this sort of flights only to a few destinations (e.g. Liege in Belgium). With the agreement and provided there is demand it could decide to add other destinations. Note that CAL is not involved in the market of express flights dominated by US companies such as UPS, FEDEX or DHL. The latter are submitted to the US-EU agreement and the US-Israel agreement. They have 5<sup>th</sup> freedom rights in both cases. They fly with small planes only express mail to their hubs and from there elsewhere.

The fact that cargo issues have not been an issue in OSA negotiations is not a mystery, as the firms supplying air transport services that have been pushing for the signature of OSAs were not the established national carriers in Europe but LCCs, flying with narrow-body planes with small cargo capacity. Only in the case of wide-body planes (such as the Boeing 747 or Airbus 340) is there substantial cargo capacity and then only about 15% of the total load; hence even in that case new cargo capacity is a by-product. Only Lufthansa, Swiss, Alitalia, Turkish and British (sometimes Air France and KLM as well) operate wide-body planes in routes to and from Israel with 6 to 7 Tons of cargo capacity. Narrow-body planes carry less than 1 ton freight, something insignificant for cargo operators. Additionally, LCCs tend to fly from small airports that do not have large cargo facilities to operate. Hence it seems that for the time being, cargo traffic will continue to take place between Ben Gurion Airport and big cargo hubs in Europe such as Frankfurt, Liege and London, with CAL also operating in Amsterdam. Mixed cargo-passengers planes have all but disappeared (so-called combis) mainly because of security concerns; for cargo-users what is important is capacity, price and frequency. But frequency is fixed for large national carriers; not so for LCCs; so Israeli cargo users will continue to rely on flag carriers for cargo.

#### E) THE LIKELIHOOD OF BECOMING A MEDITERRANEAN HUB

El Al is not part of an airlines alliance (e.g. One World) in spite of the fact that it would have wanted to be part of one. The reason it has never succeeded is because El Al cannot offer anything interesting to any of the three big alliances. Basically BG airport has not been and is not a hub, because Israel is officially at war with Syria and Gulf countries. El Al cannot compete with Turkish or Jordanian airlines in flights from Europe to India, since the flight from Tel Aviv to Bombay takes three additional hours than if run e.g. from Jordan. Hence the position of El Al in negotiations with other airlines has been traditionally defensive as Israel is a terminal destination. However as indicated before, Ryanair has been considering Israel as a possible hub for short-haul flights between points in Western Europe and points in the Eastern neighborhood of the EU. What is clear is that the situation could change dramatically should the Arab Peace Initiative be taken as a basis for negotiations to solve the Palestinian-Israeli conflict. It suffices to remind here the very different position adopted by RAM at the time an OSA with the EU was being negotiated and later signed already in 2006. This Moroccan air carrier saw already then a possibility of making of Casablanca a hub for flights between Europe and Africa, something that has materialized since.

#### F) CONSTRUCTION OF NEW OR TRANSFORMATION OF OLD AIRPORTS

A rocket launched from Gaza during the war in July-August 2014 landing in a location several kilometers from BG airport led to its closing during more than 24 hours. It led to calls for the opening of the Ramat David military air base to regular flights as a substitute of BG. In fact it is being used in emergency cases (e.g. closures of BG due to smog). These calls overlap with those calling for opening in the future of a second international airport in Israel to take care of the increasing traffic. Clearly the OSA will give more force to these calls. But once a new airport would be open nothing would prevent of developing new point-to-point routes from Israel to the EU.

What is said above, applies as well to Eilat. In spite of the many difficulties in selecting and deciding about an appropriate location for a new airport (as the old is considered to be too small and close to the town) for reasons not connected to the subject of this paper, and the recent leaking of a pipeline close to the new construction site, the OSA has given a push to the project of opening the new site for operation by 2017. Easy Jet has indicated that it is studying the possibility of opening new direct flights from Europe to Eilat and this is also an indirect outcome of signing the OSA.

#### G) DISPROPORTIONATE BENEFITS FOR TOURISTS THAT ARE EUROPEAN CITIZENS , ARAB ISRAELIS AND PALESTINIANS RESIDING IN JERUSALEM

It is well known that most non-Jewish European tourists visiting Israel choose overwhelmingly already to fly with non-Israeli air carriers, largely to prevent the security hassles and annoyance inherent in flying with Israeli carriers. If as forecast, the agreement is likely to increase the

number of non- Israeli air carriers deserving BG airport and also operating from new airports not currently connected to BG airport in the EU, this raises mechanically the choice open to the non-Jewish European tourist wishing to visit the West Bank and East Jerusalem. The same applies to all Arab citizens of Israel which currently use Ben Gurion airport and that on average tend to use non-Israeli airlines more than Jewish Israelis for different reasons. There is another reason for expecting Arab Israelis (i.e. Palestinians with Israeli citizenship) to benefit disproportionately of the new agreement. At present large quantities of them choose to travel to Eilat for their vacations basically for economic reasons, as they are earning relatively low income below average. As said, prices of transport inside Israel are not expected to change as a result of the agreement whereas air transport to destinations competing with Eilat in Greece, Cyprus, Croatia and Italy is likely to become substantially cheaper. There is still another reason for expecting Palestinians with Israeli citizenship to benefit disproportionately of the new agreement nobody has spoken about until now and that this author thinks is bound to happen. The new agreement is likely to lead to the opening of scheduled international routes from a new airport close to Haifa, , precisely to short-leg tourist destinations such as Cyprus and Greece. With the agreement nothing prevents low-cost European carriers incorporated in these two countries to operate from Ramat David (see above). If that is the case this will be a boon for Palestinian with Israeli citizenship as they live in their majority in the Galilee and the Northern part of Israel. Just think why a resident of Umm-El-Fajm would continue travelling with the whole family for the Arab festivities to Eilat if he can reach much quicker and cheaper Larnaca or Heraklion?

#### H) LARGER LIKELIHOOD THAT NEW SLOTS WILL BE OFFERED TO ADDITIONAL AIR CARRIERS

One of the expectations of the actors behind OSAs( LCCs, European and Israeli flag carriers) was that out of new competition, countries with incumbent carriers holding preciously air terminal time slots would have to release part of them to new competitors. While it is too soon to tell what will be the outcome in the case of the Israel- EU OSA, Royal Air Maroc is complaining that 10 years after the EU-Morocco entered in force it has not received new time slots in EU airports.

#### OSAS AND THE EUROPEAN NEIGHBORHOOD POLICY

There is almost no doubt that OSAs were proposed to some EU neighbors as a natural follow-up to the 1997 emergence of a EU Single Market for aviation services. They were considered to be good both to EU-based LCCs and to EU consumers. OSAs were proposed to Mediterranean neighbors independently of the original ENP and even more so of the revised one in 2011. Proof of the latter is that OSAs are done according to a unique model not differentiating between the Eastern and Southern Neighborhood, whether it is Georgia or Morocco. The Revised ENP must address issues that are pertinent to the Arab Spring. Countries selected by the EU for concluding an OSA have not been among those under focus in the Revised ENP. At most one could say that signing an OSAs with Morocco and Jordan helps the two monarchies to show to other Arab countries that economic reforms in the form of OSAs can improve the economic lot of their citizens. Of course one could stretch the argument and state that insofar as OSAs allow more of local citizens travel to Europe, as a result of cheaper tickets and abundant supply of routes and frequencies, they will contribute to more exposure to the EU model. In the opinion of this

author OSAs are pretty revolutionary in economic terms, but only mildly subversive politically and this in the long run, insofar as they increase transparency. Hence there might be some spill-over from the economic to the politic. But in the short run, OSAs actually can be linked to the concept of DCFTAs, Deep and Comprehensive Free Trade Areas offered to southern neighbors. They are a concrete application of the initial offer of Romano Prodi , the president of the EU Commission in 2003 to have Mediterranean neighbors to have a “stake in the Internal Market”. *De facto* the EU negotiates OSAs with countries of the neighborhood that have changed the less and have remained politically stable. It is precisely those countries that strive all the time vis-à-vis the EU to separate economics from politics. Institutionally as well, we have seen that in negotiating OSAs it is DGTRAN of the Commission that negotiates and not the EEAS. Also the intervention of the EP in approving the agreements does not seem to pose problems as OSAs are considered to be technical agreement (until now at least).

### OSAS AND ACTION PLANS

Are OSAs part of the Action Plans quickly drawn between several Mediterranean partners and the EU between 2003 and 2005? Reich(2015) has studied thoroughly the case of the 1995 EU-Israel Association Agreement, which entered into force in 2000. He says that liberalization of trade in services between the EU and Israel was a goal already included there. Of course the Action Plan mentions it in note 7, paragraph 2.3.4, subparagraph 2. And the Israel-EU Action Plan added that it will take account of the specific nature of the Israeli economy. An OSA, however, is not mentioned, while financial services are. The ENP Progress Report of March 2014 states that there were no substantial regulatory changes in the areas of establishment , company law, services and financial services, and ignores the OSA. For most services it is still the GATS that governs EU-Israel relations but curiously enough because of the bilateral EU-Israel OSA, treatment received by Israel goes beyond GATS treatment in the case of aviation services. But this achievement cannot be attributed neither to the ENP and even less so to the Action Plan. On the Israeli side, it was said to this author that the OSA was part of the upgrade of relations between the EU and Israel during the period that Mrs. Livni was Foreign Minister under Prime Minister Ehud Olmert. It is not clear however what the link between the “upgrade” and the old ENP was. Other sectorial agreements were achieved during the same period such as the ACAAs agreement and the agricultural FTA. Among these three, clearly the most favorable to EU interests was the OSA. What seems also clear is that at the time of negotiations on the OSA the Israeli Ministry of Foreign Affairs, consulted for this paper, thought it was a stand-alone agreement ; officials at the Ministry state that at the time the EU side did not say it was not. In other terms , nobody mentioned a link and actually nobody mentions currently any link of the OSA with other agreements.

### OSAS AND THE CONCEPT OF ONE NEIGHBORHOOD

In some sense sectorial agreements, such as the OSAs studied in this paper, erase the difference made in Brussels between the Eastern and the Southern Neighborhood. This might have some practical importance. By way of example, in negotiating such agreements in the future if proposed by the EU to the Ukraine, it is going to look at the Israeli and Moroccan precedents, not only at the Moldovan and Georgian precedents. In other words sectorial agreements pay

tribute to the concept of "one neighborhood" (although on the other hand OSAs may be offered in the future to Asian or African countries not in the neighborhood as well).

## CONCLUSIONS

It appears from the analysis done, that OSAs with EU neighbors extend the Single Market for aviation services to them, with the intention of benefiting both EU suppliers and consumers of these services as well as EU neighbors consumers. They are stand-alone agreements pretty unconnected to the conventional EU external action in the neighborhood (e.g. the original ENP, the revised ENP, the UfM). Quite unexpectedly, the only apparent link is with the old EMP (see above Contents)

OSAs are directly handled principally by the specialized DGs in the Commission rather than by the services of the EEAS. In the short run, that could lead to some friction for lack of coordination between different parts of the Commission. Of course that could change in the future, but not yet, as in theory at least the EEAs strives for horizontal coherence between politics and practical implementation in technical areas.

Finally, OSAs pay lip service to the concept of differentiation, so cherished by the original and revised ENP. On the one hand they are being offered only to countries that are eager and able to deepen their economic relations with the EU; but on the other hand, the agreements are not really substantially tailored to the needs of the neighbors but follow from close what was achieved in intra-EU air service trade liberalization and are tailored to the needs of LCCs, mostly incorporated in the EU.

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