



Convergence with the Acquis Communautaire ? The Case of Air and Maritime Transport for Egypt

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Introduction

This chapter examines the potential benefits and costs for Egypt of a convergence of Egyptian regulations to the EC “*acquis communautaire*” (hereafter, the *acquis*) which is the body of laws progressively adopted by the EC since 1956. The *acquis* consists mainly of “Regulations” and “Directives”. Regulations are binding laws directly applicable in all the EC Member States (hereafter, ECMS). Directives are also binding acts as to the results to be achieved, but they leave the choice of form and methods to national authorities (as a result, directives need to be “transposed” into national law before they can be enforced). What follows uses the term “regulations” for both legal acts.

The chapter focuses on air and maritime transport, leaving aside “logistics” for two reasons. First, in the EC perspective, logistics (defined as a more efficient use of the various existing transport modes, from the door of the industrial plants to the warehouses before the stores) explains why logistics is seen as primarily a business-related activity and a task for industry (Commission Communication 2006) hence why there is no *acquis* specifically devoted to a “logistics” sector *per se*.² Second, more than 90 percent of Egyptian trade with the rest of the world is done by air and sea, suggesting that the rest of logistics remains largely a matter of Egyptian domestic (largely private) decisions.

The two sections on the airline and maritime sectors follow the same structure. First, they present the EC *acquis*. Second, they describe the possible contours of Egypt-EC agreements in air and maritime,

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² There is only one relatively old Directive (92/106) dealing with combined transport of goods which corresponds only to a subset of the logistic activities as defined today. The fact that logistics is credited of a huge share of the EC GDP (almost 14 percent) flows from the fact that this definition includes all the transport modes, warehouses, etc.

in case that such agreements are used as a way to ensure convergence. Third, they analyze the benefits and costs of the various EC regulations from an Egyptian perspective. Fourth, they present alternative options to an Egypt-EC agreement that could be preferable from the Egyptian point of view. Lastly, they present a few key recommendations. These two sections differ somewhat because the information available on the content of an Egypt-EC air agreement is more precise than the one on maritime. A last section summarizes the key principles behind the set of sectoral recommendations.

The key argument of the paper is that Egypt should not see convergence as a “take it or leave it” option, but as a policy that could deliver higher growth only if it generates more competitive markets and more robust institutions and regulations. Such a view is possible for several reasons. First, the definition of the *acquis* is remarkably fuzzy, revealing a larger degree of freedom than it seems at a first glance. Second, some parts of the *acquis* would have immediate net benefits for Egypt (under some conditions) while other parts would have immediate net costs. This is because some EC regulations impose costly norms. Hence, due consideration should be given by Egypt (and ideally by the EC) to the best timing for adopting EC-like regulations by countries that are much poorer than the (Western) ECMS—a lesson valuable for all the EC neighbouring countries. Third, there can exist better alternatives to an Egypt-EC agreement, as it happens to be the case in the airline sector. This option would, at least, give Egypt a better negotiating position vis-à-vis the EC, if it would still prefer to sign an agreement with the EC for reasons which go beyond the air and maritime sectors.

Section 1. The airline sector

The rich information on EC air transport regulations allows a detailed analysis showing both the fuzziness of the *acquis* and the precise contours of a potential Egypt-EC air agreement. It also allows to get a sense of the benefits and costs of the *acquis* for Egypt, and to compare them with an ongoing alternative—the so-called “Istanbul Process.”

1.1. The EC *acquis* in the airline sector: fuzzy

Table 1 presents the three available definitions of the *acquis* in the airline sector. It is important to note that all these definitions have been done by, or for, the Commission’s Directorate General in charge of transport (DGTren) meaning that they all can be considered as “official” documents. That said, Table 1 shows surprisingly vast differences both in the number of regulations (the largest definition including 49 regulations, the narrowest one 32) and, even more astonishingly, in the scope of the regulations included, as shown by the various domains covered.

Table 1 classifies the EC regulations in ten domains. The first five ones are the most important because they translate in the airline sector the four basic freedoms—freedom of capital and labor movement, freedom of establishment and services—which are established by the Treaty of Rome as the pillars of the European economic integration, and the fundamental principles of EC competition law (on anti-competitive practices and state aid). If Table 1 lists no specific regulation for airline under the freedom of capital, it includes, by contrast, several provisions under the freedom of labor movement, although three of them are not specifically related to the airline sector. The five other

Table 1. The fuzzy contours of the EC *acquis* in the airline sector

| Domains | BAH | ECC | MOR | Topics | Texts |
|----------------------|------|----------|----------------------------|--|------------------|
| 1 ToR 56 Capital | | | | | |
| 2 ToR 43 Establish. | A1 | 2.4 | Article 4bis | Licensing for air carriers | REG 2407/92 |
| 2 ToR 43 Establish. | A2 | 2.3 | | Insurance for air carriers & aircraft operators | REG 785/2004 |
| 3 ToR 49 Services | C1 | 1.1 | P:1-10,12-13,[4,8];AnI-III | Harmonisation of civil aviation rules | REG 3922/91 |
| 3 ToR 49 Services | A3 | 2.1 | Annexe 1 | Access for air carriers to intra-EC air routes | REG 2408/92 |
| 3 ToR 49 Services | A4 | 2.2 | | Allocation of time slots | REG 95/93 |
| 3 ToR 49 Services | A5 | 1.3 | Article 11 | Air fares and air cargo rates | REG 2409/92 |
| 3 ToR 49 Services | A7 | 1.5 | Article 8 | Groundhandling at EC airports | DIR 96/67 |
| 3 ToR 49 Services | A6 | 3.3 | P:1-22;An | Code of conduct for use of CRSs | REG 2299/1989 |
| 3 ToR 49 Services | B10 | 1,6; 5,7 | | Common charging schemes for air navigation schemes | REG 1794/2006 |
| 3 ToR 49 Services | B1 | 5,1 | P:1-4,6,9-14 | Framework for the Single European Sky | REG 549/2004 |
| 3 ToR 49 Services | B4 | 5,4 | P:1-11 | Organisation and use of airspace in the SES | REG 551/2004 |
| 3 ToR 49 Services | B6 | 5,5 | P:1-12 | Interoperability of the European air traffic management network | REG 552/2004 |
| 3 ToR 49 Services | B2 | 5,6 | P:1-19 | Provision of air navigation services in the SES | REG 550/2004 |
| 3 ToR 49 Services | B3 | | | Common requirements for air navigation services | REG 2096/2005 |
| 3 ToR 49 Services | B5 | | | Common rules for the flexible use of airspace | REG 2150/2005 |
| 3 ToR 49 Services | B5,2 | | | Airspace classification | REG 730/2006 |
| 3 ToR 49 Services | B7 | | | Notification and transfer of flights between Air Traffic Control Units | REG 1032/2006 |
| 3 ToR 49 Services | B8 | | | Flight plans in the preflight phase16 | REG 1003/2006 |
| 3 ToR 49 Services | H2 | 1.4 | | Statistical returns wr carriage of passengers, freight, mail | REG 437/2003 |
| 3 ToR 49 Services | H3 | | | Statistical returns wr carriage of passengers, freight, mail | REG 1358/2003 |
| 3 ToR 49 Services | H4 | | | Taxation of energy products and electricity | DIR 2003/96 |
| 3 ToR 49 Services | | 5,2 | | Creation of the Single European Sky | COM (11/12/1999) |
| 3 ToR 49 Services | | 5,3 | | Joint Undertaking SESAR | REG 219/2007 |
| 3 ToR 49 Services | | | P:1-9,AnI+II | Technical spec. for procurement of ATM | DIR 93/65 |
| 3 ToR 49 Services | | | P:1-3;AnI-III | Eurocontrol standards | REG 2082/2000 |
| 4 ToR 81 Competition | | 1.2 | | Guidelines on state aid for developing regional airports | COM (9/12/2005) |
| 5 ToR 39 Labor | B9 | 2.6 | | Air traffic controller licences | DIR 2006/23 |
| 5 ToR 39 Labor | F4 | 2.5 | P:1-8;An | Mutual acceptance of personnel licences | DIR 91/670 |
| 5 ToR 39 Labor | F1 | | P:1-16;18-19 | Improvements in safety and health of workers | DIR 89/391 |
| 5 ToR 39 Labor | F2 | | P:1-19;21-24,26-29 | Organisation of working time | DIR 2003/88 |
| 5 ToR 39 Labor | F3 | | P:1-5 | Working time of mobile workers in civil aviation | DIR 2000/79 |
| 6 Consumers | G6 | 3.2 | | Rights of people with reduced mobility | REG 1107/2006 |
| 6 Consumers | G5 | 3.4 | P:1-17 | Denied-boarding compensation system | REG 261/2004 |
| 6 Consumers | G4 | 4,6 | P:1-8 | Air carrier liability in the event of accidents | REG 2027/97 |
| 6 Consumers | G1 | | P:1-10 | Package travel and tours | DIR 90/314 |
| 6 Consumers | G3 | | P:1-34 | Processing of personal data | DIR 95/46 |
| 6 Consumers | G2 | | P:1-10;An | Unfair terms in consumer contracts | DIR 93/13 |
| 6 Consumers | | 3.1 | | Protection of air passengers | COM (21/06/2000) |
| 6 Consumers | | | All (annex?) | General product safety | DIR 92/59 |
| 7 Safety | C10 | 3,5;4,7 | | Aviation safety: informing passengers | REG 2111/2005 |
| 7 Safety | C2 | 4.2 | P:1-11,AnI+II | Occurrence reporting in civil aviation | DIR 2003/42 |
| 7 Safety | C5 | | P:1-4,An | Airworthiness and environmental certification of aircrafts | REG 1702/2003 |
| 7 Safety | C6 | | P:1-6, AnI+IV | Continuing airworthiness and environmental certification | REG 2042/2003 |
| 7 Safety | C7 | | P: 1-7, An | Organisation EASA | REG 104/2004 |
| 7 Safety | C8 | | | Fees and Charges levied by the EASA | REG 593/2007 |
| 7 Safety | H1 | | | Control of cabin luggage in intra-EC flight | REG 3925/91 |
| 7 Safety | C4 | 4.1 | P:1-57, AnI+II | European Aviation Safety Agency | REG 1592/2002 |
| 7 Safety | | 4,3 | P: 1-12 | Civil aviation accidents and incidents | DIR 94/56 |
| 7 Safety | C11 | 4,5 | | Third-country aircraft using Community airports | DIR 2004/36 |
| 8 Security | D1 | 4,4 | | Common rules in the field of civil aviation security | REG 2320/2002 |
| 8 Security | D2 | | | Implementation of basic standards on aviation security | REG 622/2003 |
| 8 Security | D3 | | | Common specifications for NCASQCP | REG 1217/2003 |
| 8 Security | D4 | | | Procedures for inspections in civil aviation | REG 1486/2003 |
| 8 Security | D5 | | | Common definition of critical parts of airport security | REG 1138/2004 |
| 9 Environment | E3 | 6,3 | P:1-15;AnI+II | Management of noise at Community airports | DIR 2002/30 |
| 9 Environment | E4 | | P:1-16;AnI-IV | Assessment and management of environmental noise | DIR 2002/49 |
| 9 Environment | E1 | | P:1-8 | Limitation of noise from civil subsonic airplanes | DIR 89/629 |
| 9 Environment | | 6,1 | | Clean Sky JTI | REG 71/2008 |
| 9 Environment | | 6,2 | | Integrating the environment into air transport | COM (11/12/1998) |
| 9 Environment | | 6,4 | | Aviation and climate change | COM (27/09/2005) |
| 9 Environment | | | P:1-11;An | Limitations of operation of aircrafts ICAO | DIR 2006/93 |
| 10 International | | 7,1 | | Agenda for the EC external aviation policy | COM (11/03/2005) |
| 10 International | | 7,2 | | Air services agreements between ECMS and third countries | REG 847/2004 |
| 10 International | | 7,3 | | Montreal Convention on air carrier liability | Dec 2001/539 |
| 10 International | | 7,4 | | Open Skies agreement between the EC and US | Dec 2007/339 |
| 66 | 66 | 49 | 37 | 32 | 65 |

Sources and notes: BAH: Booz, Allen and Hamilton (2007). Europa website (SCADplus files). TUR: the list of EC regulations tabled by the Commission in the Turkey-EC negotiations on Turkish accession. MOR: the list of EC regulations included in the Morocco-EC air agreement. ToR: Treaty of Rome (followed by a mention of the main Article for the domain). DIR: Directives. REG: Regulations. COM: Commission's communications. P: partial (followed by the number of Articles invoked). An: Annex.

domains listed in Table 1—consumers, safety, security, environment and international aspects—are not directly related to the fundamental Treaty principles. Rather, they express some intents that have been included by the ECMS in the successive versions of the Treaty of Rome—often in vague terms due to the complex internal EC negotiating process.

Such a fuzziness is crucial because it suggests that there is room for freedom for Egypt. Clearly, Egypt should think twice before rejecting regulations related to the basic principles of the Treaty, not only because it will face a complete opposition from the EC side, but—more importantly—because it will lose the main benefits from becoming part of a larger, more competitive market. Egypt should even make clear that it should benefit fully from such principles, a case that Egypt could not take currently as granted (see below the analysis of the Morocco-EC air agreement). In sharp contrast, some of the regulations mostly related to the five other domains raise serious questions. They often consist in setting norms and standards that have been developed by ECMS much richer than Egypt. It is thus important for Egypt to analyze their costs and benefits in the context of a much poorer economy.

1.2. The potential contours of an Egypt-EC air agreement

What would then be the contours of an Egypt-EC air agreement? They would be very similar to those of the Morocco-EC air agreement signed in 2006 because the Commission has repeatedly said that this text will be the template for Euromed air agreements (Commission 2008, page 4, recital 10). Indeed, the official title of the agreement with Morocco is the “Euro-Mediterranean Aviation Agreement.” However, as shown below (see the discussion of the EC Regulations in List A of table 2, below), this agreement is fundamentally a bilateral “hub and spokes” type of agreement—the EC being the “hub” of all the Euro-Mediterranean Aviation Agreements, but each Mediterranean country being a spoke unconnected with the other spokes.

That said, a couple of facts should be mentioned. First, the Morocco-EC agreement has been signed by the EC, but it has not yet been ratified by a dozen of ECMS. Opposition in the EC side comes from some EC flag carriers which fear that the agreement will pave the way to low-cost airlines (Air Transport World 2006) and from air workers who already opposed some EC regulations (for instance, on working time) seen as endangering their rights, and who feared that extending these regulations to “low-wage” countries would worsen the situation (in fact, such Directives tend to raise strong barriers to an effective Mode 4 between the ECMS since it imposes the host ECMS regulations to workers from another ECMS). Second, if the agreement has contributed to tourists’ growth (though less important than claimed, see Table 3), it has begun to show its limits, with the emerging dispute on new airlines, such as Air Arabia Maroc, jointly owned by Moroccan and non-Moroccan investors.

A cost-benefit analysis of an Egypt-EC air agreement

This section examines the case where Egypt's convergence with the *acquis* is achieved via an air agreement with the EC (not by an unilateral move from Egypt) duplicating the provisions of the Morocco-EC air agreement. For each regulation included in the Morocco-EC agreement, Table 2 briefly describes its objective(s), assesses its main benefits and costs for Egypt (those for the EC are not examined). Table 2 presents the regulations by decreasing order of "net benefits" (that is, their benefits minus their costs) for Egypt. Defining the benefits and costs is a difficult work. It relies on documents done by the Commission (the SCADplus website) or recognized by the Commission (the Booz-Allen-Hamilton report) and on interviews with experts in the airline sector.

Columns 6 and 7 of Table 2 summarize the estimated regulatory benefits and costs for Egypt by using four different levels: high, moderate, small, and unknown (often equivalent to very small). It is essential to realize that these various levels are not defined for ever, but for a definite period of time. It is so for several reasons—the most frequent one being that a regulation may bring net costs to Egypt which is too poor to afford them today (introducing this regulation in Egyptian law would impose a huge effort in human skills and physical capital, at the detriment of other sectors where these skills and capital would provide higher returns in the medium term). But the same regulation may bring net benefits once Egypt will be a developed country.

Table 2 suggests to divide the EC *acquis* into three subsets. List A includes the five EC regulations that should provide high benefits if—a big if which is not achieved in the Morocco-EC agreement—concessions are symmetrical, and to impose small or limited costs (be in terms of implementation or adjustment to more competitive markets) on the Egyptian air transport. The potential benefits are twofold. First, they would consist on improved market access. However, the benefits are likely to be asymmetrical during a first phase (if one follows the Morocco-EC case). More precisely, Egyptian airlines would benefit from the 3rd and 4th freedoms (see Annex) but not from the 5th to 9th freedoms, both within the EC and in the Egypt-EC traffic. By contrast, EC airlines enjoy all these freedoms within the EC, and—that is important—indirectly between Egypt and the EC (for instance, a British airline such as EasyJet could start a flight from Paris-Charles de Gaulle to Cairo). Membership to an alliance with EC airlines is not a long term solution: it condemns Egyptian airlines to the role of feeding EC airlines hubs (on the EC side) and it does not allow to exploit the benefits of the air agreements signed by Egypt with non-EC countries (see chapter 3). The Morocco-EC agreement anticipates to grant the 5th to 9th freedoms to Moroccan airlines in an undefined future. This progressive approach could be a solution if it is also adopted for Lists B and C regulations.

Table 2. Assessing the benefits and costs of the Morocco-EC air agreement for Egypt

| Domains 1 | MOR 2 | Topics 3 | Texts 4 | Brief description of the objectives, benefits and costs 5 | Benefits 6 | Costs 7 |
|---|----------------------------|---|---------------|---|----------------------------------|----------------|
| List A: EC regulations with clear net benefits for Egypt | | | | | | |
| ToR 49 Services | Article 6 | Groundhandling at EC airports | DIR 96/67 | Objectives: prevents discriminatory advantages by an air carrier by opening market access to ground services for airports above 2 millions passengers or 50,000 tons cargo. Key articles: 1, 4, 5, 6, 7, 8, 9, 11, 14, 15. Benefits: opens market access. Costs: requires strong implementation rules. | High | Moderate |
| Safety | P:1-11,AnI+II | Occurrence reporting in civil aviation | DIR 2003/42 | Objectives: harmonizes and enforces reports on accidents and incidents (mandatory reporting). Key articles: 4, 5, 6, 7. Benefits: aligns to EC norms. Costs: requires substantial efforts. | High | Moderate |
| ToR 49 Services | Annexe 1 | Access for air carriers to intra-EC air routes (third phase) | REG 2408/92 | Objectives: ensures open access to intra-EC air routes for any Community Air Carrier (non-discrimination in traffic rights, safety, environment, slots, etc.) and deals with possible situations of public service. Key articles: 3, 4, 5, 6, 7, 8, 9, 10, 11. Benefits: improves market access. Costs: simplifies largely the situation (no more authorisations necessary for air carriers). | High (under condition: see text) | Small |
| ToR 49 Services | Article 11 | Air fares and air cargo rates | REG 2409/92 | Objectives: allows air carriers to set freely prices (passengers and cargo) and imposes conditions for withholding fares approval by the ECMS (consumers' needs, competition level, preventing too high and too low prices). Key articles: 3, 5, 6. Benefits: improves market access. Costs: simplifies vastly the situation, but may favor soft competition in the long term. | High (under condition: see text) | Small |
| ToR 43 Estab. | Article 4bis | Licensing for air carriers | REG 2407/92 | Objectives: defines conditions for operating licences (EC majority-owned, effectively controlled), air operator certificates, and the many associated financial conditions. Certified/licensed carriers are entitled to operate without having to be designated by a government. Key articles: 3, 4, 7, 8, 9, 10, 11, 13, 16. Benefits: improves market access. Costs: requires considerable practical work. | High (under condition: see text) | High |
| List B: EC regulations with unclear net benefits for Egypt | | | | | | |
| ToR 49 Services | P:1-4,6,9-14 | Framework for the Single European Sky The "Framework" regulation | REG 549/2004 | Objectives: defines a package of measures for meeting future capacity and air safety needs, and making optimum use of SES. Creates National Supervisory Authorities independent of Air Navigation Services Providers. Harmonizes ATM via a mandate mainly to Eurocontrol. As ECMS sovereignty is inviolated, requires a complex system of safeguards. Key articles: 3, 4, 7, 8, 13. Benefits: aligns to EC norms. Costs: requires annual reports and monitoring of the infringements. | Moderate/High | Moderate |
| ToR 49 Services | P:1-11 | Organisation and use of airspace in the SES The "Airspace" Regulation | REG 551/2004 | Objectives: aims to create an efficient and safe airspace without frontiers, and to reduce a fragmentation of airspace control, with a Single European Upper Flight Information Region (EUR) recognised by ICAO and Functional Airspace Blocks (FABs). May also include airspace of non-EC countries. Key articles 2, 3, 5, 7, 8. Benefits: aligns to EC norms. Costs: requires annual reports and monitoring of infringements. | Moderate/High | Moderate |
| Safety | P:1-57, AnI+II | European Aviation Safety Agency | REG 216/2008 | Objectives: Two components: harmonization (from aircraft design to personnel schooling under national authorities) and airworthiness of aircraft (harmonized technical rules by EASA). Key articles: 1, 2, 4, 5, 6, 8, 9, 10-18, 31-42, 45, 46, 53. Benefits: aligns to EC norms. Costs: requires modification of existing certifications. | Moderate/High | High |
| Safety | P:1-4,An | Airworthiness and environmental certification of aircrafts | REG 1702/2003 | Objectives: defines the implementation rules for certification purposes following REG 216/2008 (EASA). Key articles: 2, 3, 4. Benefits: aligns to EC norms. Costs: requires very detailed documents. | Moderate/High | High |
| Safety | P: 1-12 | Civil aviation accidents and incidents | DIR 94/56 | Objectives: facilitate investigations into civil aviation accidents in order to improve air safety. Benefits: aligns to EC norms. Costs: unknown. | Moderate | Unknown |
| Consumers | P:1-8 | Air carrier liability in the event of accidents | REG 2027/97 | Objectives: harmonises rules on air carrier liability and improves compensation/protection of passengers in air accidents (based on ICAO regulations). Changes in contract terms for the airlines, to be checked by the authority issuing the operating licence. Key article: 3, 5, 6, Annex. Benefits: aligns to EC norms. Costs: unknown. | Moderate | Unknown |
| Environment | P:1-16;AnI+V | Assessment and management of environmental noise | DIR 2002/49 | Objectives: Harmonise and detail noise descriptions and noise maps (only for airports with more than 50,000 movements per year). Key articles: 5, 6, 7, 8. Benefits: aligns to EC norms. Costs: unknown. | Moderate | Unknown |
| ToR 49 Services | P:1-22;An | Code of conduct for use of CRSs | REG 2299/1989 | Objectives: ensures competition between air carriers and between CRSs (deconnection, non-discrimination). Key articles: 2, 3, 3a, 4, 4a, 5, 6, 8, 9, 9a, 10, 11-20, 21a, 21b. Benefits: initially high but declining (recently, CRSs have largely gone into non-airline ownership, allowing a possible simplification of the very detailed existing set of rules (correct?)). Costs: similar to competition rules. | Moderate | Small |
| Safety | P:1-6, AnI+IV | Continuing airworthiness and environmental certification | REG 2042/2003 | Objectives: expands REG 1702/2003. Key articles: 3, 4, 5, 6. Benefits: aligns to EC norms. Costs: moderate to small (depending on the scope of implementation). | Moderate | Moderate/Small |
| Environment | P:1-8 | Limitation of noise from civil subsonic airplanes | DIR 89/629 | Objectives: reduces noise made by air transport based on ICAO Chapter 2 standards, with some derogations. Key articles: 1, 2, 4 (5 no longer valid). Benefits: aligns to EC norms. Costs: small changes to approval of flight plans. | Moderate | Moderate |
| ToR 49 Services | P:1-12 | Interoperability of the European air traffic management network The "Interoperability" Regulation | REG 552/2004 | Objectives: harmonises system of certification for components and system (European standards). Very detailed regulation. Expected to lead rapidly to operational measures (contrary to the 3 other Regulations) based on the interoperability in the European Air Traffic Management network (EATMN). Key articles: 5, 6, and Annex II. Benefits: aligns to EC norms. Costs: moderate. | Moderate | Moderate |
| ToR 49 Services | P:1-19 | Provision of air navigation services in the SES The "Services provision" Regulation | REG 550/2004 | Objectives: sets out criteria and standards for the provision of air navigation services in the SES, establishes National Supervisory Authorities and licensing of controllers (in order to increase availability and promote mutual recognition). Leaves the ECMS in the driving seat but opens the door to a more integrated system. Key articles: 2, 4, 5, 6, 7, 8, 12, 14-16. Benefits: aligns to EC norms. Costs: requires inspections & surveys, possibly with neighbours; possibility of cutting costs by using "recognised organisations". | Moderate | Moderate |
| Environment | P:1-11;An | Limitation of noise from civil subsonic airplanes | DIR 2006/93 | Objectives: expands DIR89/629 to norms based on ICAO Chapter 3 standards, with some derogations (overseas departments). Benefits: aligns to EC norms. Costs: moderate. | Moderate | Moderate |
| ToR 39 Labor | P:1-19;21-24,26-29 | Organisation of working time | DIR 2003/88 | Objectives: expands DIR 89/391 on the working time issue by setting standards for working time, rest, breaks, leave, etc. Benefits: aligns to EC norms. Costs: high to moderate (depending on implementation). | Moderate | High/Moderate |
| Environment | P:1-15;AnI+II | Management of noise at Community airports | DIR 2002/30 | Objectives: allows more stringent noise standards. Key articles: 4, 5, 6. Benefits: aligns to EC norms. Costs: high. | Moderate | High |
| ToR 39 Labor | P:1-16;18-19 | Improvements in safety and health of workers | DIR 89/391 | Objectives: EC text said to be applied to all sectors. Concentrates on the obligation of employers. Key articles: 6, 7, 8, 9, 10, 11, 12, 16. Benefits: aligns to EC norms. Costs: high. | Moderate | High |
| List C: EC regulations with likely net costs for Egypt | | | | | | |
| ToR 49 Services | P:1-10,12-13,[4,8];AnI-III | Harmon. of civil aviation rules and procedures | REG 3922/91 | Objectives: harmonizes the operations and maintenance of aircraft, and of persons and organisations involved (Annex III). Safety but should also facilitate that aircrafts will be bought, sold and leased freely. Gradually to be taken over by the EASA (European Air Safety Agency). Key articles: 5, 6, 7, 8, 9. Benefits: aligns to EC norms (regulations to be repealed?). Costs: small (modification of existing certification, but not new documents). | Small | Small |
| Consumers | P:1-17 | Denied-boarding compensation system | REG 261/2004 | Objectives: establishes common rules on compensation/assistance to passengers in case of denied boarding and flights long delays. Opposed by airlines unhappy, especially low-cost carriers (compensations can be higher than the air tickets). Key articles: 3-9, 14. Benefits: aligns to EC norms (to be repealed?). Costs: small (though higher costs for low costs) and monitoring complaints (burden mostly on the airlines). | Small | Small |
| Safety | P: 1-7, An | Organisation EASA | REG 104/2004 | Objectives: purely organisational document. Benefits: aligns to EC norms. Costs: small. | Small | Small |
| ToR 49 Services | P:1-3;AnI-III | Eurocontrol standards | REG 2082/2000 | Objectives: creates technical specifications for procurement of ATM. Benefits: aligns to EC norms (regulation to be repealed?). Costs: unknown. | Small | Unknown |
| ToR 49 Services | P:1-9;AnI+II | Eurocontrol standards | DIR 93/65 | Objectives: creates technical specifications for procurement of ATM. Benefits: aligns to EC norms (regulation to be repealed?). Costs: unknown (could be high, depending on implementation). | Small | Unknown |
| ToR 39 Labor | P:1-5 | Working time of mobile workers in civil aviation | DIR 2000/79 | Objectives: may impose flight time limitations (pre-existed before DIR 2003/88) controversial even in the EC. Key articles: 8, 9. Benefits: aligns to EC norms. Costs: unknown (could be high, depending on implementation). | Small | Unknown |
| ToR 39 Labor | P:1-8;An | Mutual acceptance of personnel licences | DIR 91/670 | Objectives: defines conditions imposing an ECMS to accept licences to flight issued by others ECMS (detailed Annex on mutual acceptance of licences). Key article: 4. Benefits: aligns to EC norms. Costs: unknown (comparison of qualifications). | Small | Unknown |
| Consumers | P:1-10 | Package travel and tours | DIR 90/314 | Objectives: makes possible for a tourist with a wrong contract to get a fair compensation and go home. Key articles: 3, 4, 5, 7. Benefits: aligns to EC norms. Costs: unknown (monitoring complaints). | Small | Unknown |
| Consumers | P:1-10;An | Unfair terms in consumer contracts | DIR 93/13 | Objectives: deals with cases where a consumer faces a large firm to the point of the contract becoming "unfair". Key article: 3. Benefits: aligns to EC norms. Costs: unknown (monitoring complaints). | Small | Unknown |
| Consumers | P:1-34 | Processing of personal data | DIR 95/46 | Objectives: covers the case of individual information entered into large computer systems. This Directive should not be applied normally by aviation authorities. Benefits: aligns to EC norms. Costs: unknown (mostly on private businesses, possibly on the State in case of monitoring or legal suits). | Small | Unknown |
| Consumers | All (annex?) | General product safety | DIR 92/59 | Objectives: deals with general product safety. Benefits: aligns to EC norms. Costs: unknown. | Small | Unknown |
| 34 | 32 | 32 | 32 | 32 | 32 | 32 |

Sources and notes: BAH: Booz, Allen and Hamilton (2007). Europa website (SCADplus files). TUR: the list of EC regulations tabled by the Commission in the Turkey-EC negotiations on Turkish accession. MOR: the list of EC regulations included in the Morocco-EC air agreement. DIR: Directives. REG: Regulations. COM: Commission's communications.

The second source of potential benefits from the List A EC regulations is that they impose a clear distinction between Ministries, regulatory agencies and operators—hence, establish a set of agencies independent enough to ensure a sustainable and profitable market access, not only in air services, but also in air-related services, such as ground handling services. The main advantage of an agreement over an unilateral move is to offer to Egypt a stronger reason (to abide by the agreement) for building these new institutions which will require large political and legal efforts because they split powers that are currently—*de facto* or *de jure*—concentrated in Ministries, as emphasized in chapter 3.

List B includes 16 regulations which run the risk to impose net costs on Egypt. Although only a detailed analysis is necessary for a more robust assessment, the main reasons behind such a conclusion are manifold. In some cases, the current EC regulations are pro-competitive, but their forms are outdated or excessively cumbersome, as best illustrated by the regulation on the code of conduct for the use of the computerized reserve systems (CRSs). In other cases, the main merit of converging to the EC regulation would be to incorporate totally Egypt in the Single European Sky (SES) via the adoption of European standards, as illustrated by the Inter-operability Regulation (which aims at harmonizing components and systems by European standards). Such an option is not necessarily in the interests of Egypt which is located at the margin of the SES, and which has 40 percent of its air traffic being with non-EC countries (see the discussion of Table 3).

Once again, the above observations do not mean that Egypt should not adopt such regulations in the medium or long run. They mean that imposing these 16 regulations to Egypt in the immediate future without a thorough analysis would not be wise. That said, two alternatives should be examined: First, it could be the adoption of such provisions in the Egypt-EC air agreement, conditionally to the fact that Egypt is rich enough for affording European harmonization (for instance, when it will reach a pre-determined level of GDP per capita). Second, Egypt's regulatory framework should not prevent in any way Egyptian operators to adopt such regulations for enhancing their own reputation (see next paragraph).

Lastly, List C includes 11 regulations which would bring few benefits to Egypt, while imposing to Egyptian operators substantial costs in the medium to long term. Benefits are limited for various reasons. Adopting EC regulations on working time or training would not help Egyptian crews to find jobs in the ECMS. Harmonized operations and maintenance of aircraft may be already adopted by some Egyptian operators, but too expensive to others. Once again, more appropriate alternatives could be found. For instance, the independent Egyptian air agencies established in accordance to the regulations from List A could, for a transitory period, publish “black” or “white” lists. Black lists would collect the information on operators far away from the appropriate maintenance procedures,

whereas white lists would do the same for the operators that have autonomously decided to converge to the EC—or US—standards, or even to abide by them.

An alternative to an Egypt-EC air agreement: the “Istanbul” process

Egypt’s negotiations on an air agreement with the EC could benefit from an opportunity that was not available to Morocco. Since 2007-2008, a plurilateral process of liberalization has emerged in the airline sector, largely boosted by the US-EC “Open Skies” agreement implemented in 2008 which has notably increased pro-market forces on transatlantic air routes. Such improvements are captured by the airline liberalisation indicators (ALIs) designed by the WTO (2006, 2007). ALIs range from 0 (in the case of completely closed markets to 50 in the case of totally open markets). For instance, the ALIs on transatlantic routes have increased from 7 (the US-Sweden route which had the lowest initial ALI) prior to the EC-US Open Skies agreement to 32 after it.

In June 2008, the International Air Transport Association’s (IATA) Summit resolved to go further in market opening in the so-called Istanbul Declaration (Jomini, Achard and Rupp 2009). Following this Declaration, officials from fifteen economies (including Australia, Brazil, Canada, the EC, India, Singapore and the US) made proposals for expanding the commercial freedoms of airlines that would increase the ALIs to the level 34 for the fifteen participants to the “Istanbul Process”.

For Egypt, joining the Istanbul Process appears a more attractive alternative than an Egypt-EC air agreement for two reasons. First, it would increase the current ALIs on the Egypt-EC air routes to 34, instead of 32 with the Egypt-EC agreement. Much more importantly, it would involve key air routes in addition to the Egypt-EC routes since it would cover routes from and to the US, the United Arab Emirates, or Turkey, to name a few countries of prime importance for Egypt.

Table 3. The Egypt-EC air agreement vs. the Istanbul Process

| | Initial traffic [2005] | Share of countries involved [a] | Estimated increase in traffic | | |
|-----------------------|------------------------|---------------------------------|-------------------------------|-------|--------|
| | | | [b] | [c] | [d] |
| Egypt | | | | | |
| Istanbul process | 2782,9 | 78,1 | 254,8 | 447,9 | 724,3 |
| in percent | | | 9,2 | 16,1 | 26,0 |
| Air agreement with EC | 2164,3 | 60,8 | 177,2 | 310,4 | 479,9 |
| in percent | | | 6,4 | 11,2 | 17,2 |
| Morocco | | | | | |
| Istanbul process | 4789,6 | 90,3 | 410,9 | 722,3 | 1194,5 |
| in percent | | | 8,6 | 15,1 | 24,9 |
| Air agreement with EC | 4297,3 | 81,0 | 339,0 | 594,5 | 931,9 |
| in percent | | | 7,9 | 13,8 | 21,7 |

Sources: WTO (2006) Jomini, Achard and Rupp (2009). Notes : [a] Passenger traffic with countries involved in the agreement with Egypt or Morocco as a share of total Egyptian or Moroccan air traffic. [b] Based on the

lower estimate by Geloso-Grosso (2008a). [c] Based on the higher estimate by Geloso-Grosso (2008b). [d] Based on the higher estimate by Piermartini and Rousova (2008).

Table 3 presents the estimated increases in passenger traffic that could be expected from the Istanbul Process and from the Egypt-EC agreement. It gives three different sets of estimates, each of them being based on the various estimated coefficients of growth to be used (for detail, see Jomini, Achard and Rupp, 2009). The Istanbul Process would provide 40 to 50 percent more passengers than the bilateral air agreement with the EC—almost twice more than the gains it provides to Morocco.³ This result is largely explained by the fact that a relatively large share of Egyptian traffic is with non-ECMS.

It is important to underline that these estimates do not reflect a crucial point. Egypt's air traffic would be less distorted by the plurilateral Istanbul Process than by the bilateral EC air agreement. This is the usual lesson of the superiority of plurilateral (and, of course, multilateral) agreements, compared to bilateral ones. Under the Istanbul Process, Egypt would be open to more countries—hence would benefit from a wider range of opportunities and options.

Recommendations

Egypt could benefit from convergence with EC regulations within certain limits, some of which could be removed over time. If Egypt tries to achieve such a convergence via an air agreement with the EC (in order to get a stronger support for the domestic reforms needed) the Egypt-EC air agreement should not be a mere copy of the Morocco-EC air agreement that takes into account more the EC interests than Morocco's. The Egypt-EC air agreement should focus on provisions that improve market access in a symmetrical way, increase competition between all (Egyptian and EC) airlines, while minimizing the EC regulations setting norms that are of some interest to the rich (Western) ECMS, but (sometimes substantially) inappropriate to the still low Egypt's level of development.

A way for Egypt to make its voice heard in its negotiations with the EC would be to participate the Istanbul Process which happens to be an attractive alternative to the bilateral agreement with the EC. If the EC does want to revise deeply the current Morocco-EC agreement, in order to make it more appropriate to its relatively poor neighbours, the Istanbul Process would become Egypt's first choice.

That said, Egypt may want to adopt the option of an air agreement with the EC because it offers a firmer anchor for introducing the reforms necessary for a serious enforcement of pro-competitive

³ Results for Morocco are also interesting. They show that only a minority share of the increased traffic between Morocco and the EC is likely to be related to the air agreement (too often, official documents present implicitly the whole increase in traffic as the consequence of the agreement).

decisions. In this case, the Egypt-EC air agreement should definitively include provisions of List A (Table 2) but conditionally to symmetrical increases in market access (possibly in a progressive manner). A cautious approach should be adopted for the provisions pertaining to List B. After thorough examination, the enforcement of these provisions should be made conditional on Egypt reaching a pre-determined level of GDP per capita (or any other definition of an appropriate level of income making bearable for Egypt the costs imposed by these norms). Another possibility of a balanced pro-active approach would be to shape the Egyptian regulations as supporting the self-enforcement of EC norms by Egyptian private operators eager to enhance their reputation on a larger air market than the Egyptian, Mediterranean and Middle East markets.

A last point is that one of the four key EC pro-competition regulations (the one on air fares and cargo rates) includes provisions against too low or too high fares and rates. Such conditions may soften the pro-competition impact of this regulation, and discriminate against Egyptian airlines. Reducing such risks requires a strong competition policy. In December 2007, the Commission launched so-called “statements of objections” (charge sheets) to a number of airlines (among them, British Airways and Japan Airlines). Very recently (April 2009) the Commission launched an investigation into alliances of air carriers that could promote collusive practices on transatlantic routes. In short, an Egypt-EC air agreement or the Istanbul Process are unlikely to provide substantial benefits to consumers without Egypt being able to handle its own competition cases—be they involve Egyptian, EC or non-EC air carriers. Such risks are particularly high during the early stages of market opening. Support from the DG Competition (or from any other ECMS competition authority active in the air sector) would be most welcome.

Section 2. Maritime transport

The section focuses on international shipping, access to port infrastructures, auxiliary and port services, and only briefly evokes cabotage and inland waterways activities when appropriate.

The EC *acquis* in maritime transport

As in the airline section, Table 4 breakdowns the *acquis* in eight domains: the four basic freedoms, competition, safety, security, and environment (there is no provision on consumers’ protection and international agreements). In contrast with the airline case, there are only two sources giving some sense of the *acquis* in the maritime sector: the regulations listed in the SCADplus files of the Europa website, and those tabled by the Commission for the negotiations on Turkey’s accession to the EC. Focusing on international shipping and ports shows again notable differences between the two sources,

confirming the impression of fuzziness of the EC *acquis*, hence the degree of freedom for Egypt for picking up the regulations that could be the most beneficial, taking into account its development stage.

The key EC regulation on international shipping (REG 4055/86) states the principle of freedom to provide services to international maritime transport between the ECMS and also between the ECMS and third countries. Its Article 8 makes a reference to the principle of freedom of establishment, and it states the principle of national treatment for the temporary movement of natural persons. As in the air transport case, the *acquis* specific to maritime transport makes no reference to freedom of capital. Finally, the preamble of REG 3577/92 reaffirms the four freedoms in the cabotage market.

Box: The Liner Shipping Sector

The liner shipping industry has two specific features: maritime conferences and the UN Convention on Liner Code of Conduct (hereafter, the UN Liner Code). Maritime conferences are agreements between shipping companies. They aim at sharing the traffic and vessel capacity utilization on a given set of maritime routes operated by the firms. As a result, they generate price fixing and collusive agreements (up to full cartels) limiting trade and competition. Once a common practice, their role has substantially declined.

The UN Liner Code was adopted in 1974 and entered in force in 1983. It aimed at developing the shipping sector of developing countries which was made difficult by the anticompetitive practices of the existing maritime conferences. It established between the countries members of a given set of routes a system of “cargo reservation” based on shares, expressed in terms of trade volume/value, in fixed proportions (40 percent for the member at each end of the route, 20 percent for third countries). Of course, such a system restricted competition and also market access. But, contrary to its stated goal, the ultimate beneficiaries of the UN Liner Code were mostly the companies of the developed countries, simply because increasingly inefficient maritime companies from developing countries have pushed up prices, generating increasing rents for the more efficient developed countries’ firms.

Source : Fink et alii, 2002

Table 4 shows that the EC *acquis* in maritime has a similar structure than the one in air transport. Particularly, a large part deals with labor, security, safety, and environmental issues.

But, the EC *acquis* in maritime differs from the one in air transport in several respects. First, the frequent collusive practices in international shipping have triggered an increasing introduction of competition rules in the EC *acquis*. A Regulation adopted in 1986 tried to define the specific conditions under which shipping conferences could be exempted from the general prohibition on concerted practices stated by Article 81 of the Treaty of Rome, hence allowed to regulate capacities and to determine prices. This exemption pursues different objectives, such as the stability of the sector and the reliability of the service. However, evolutions of the sector made conditions and objectives of maritime conferences obsolete. As a result, a Regulation was adopted in 2006, prohibiting liner

Table 4. The EC *acquis* in the maritime sector

| Domains | ECC | TUR | Topics | Acquis |
|--|-------------|------|----------------|--|
| A. International shipping and ports | | | | |
| 1 | ToR 56 | | Capital | |
| 2 | ToR 43 | | Establish. [a] | Freedom to provide services to maritime transport within Member States (cabotage) |
| 2 | ToR 43 | | Establish. | The principle of freedom of establishment applies to technical-nautical services [c] |
| 3 | ToR 49 | | Services [b] | Freedom to supply international maritime transport services |
| 3 | ToR 49 | | Services | Free access to ocean trade |
| 3 | ToR 49 | 1.4 | Services | X Reporting formalities for ships |
| 3 | ToR 49 | 1.5 | Services | X Statistical returns for sea transport |
| 4 | ToR 39 | 3.1 | Labor | X Organisation of seafarers' working time |
| 4 | ToR 39 | 3.2 | Labor | X Organisation of hours of work on board ships using Community ports |
| 4 | ToR 39 | 3.5 | Labor | X Minimum level of training of seafarers |
| 4 | ToR 39 | 6.6 | Labor | Harmonisation of conditions for obtaining national boatmasters' certificates |
| 5 | ToR 81 | | Competition | Competition rules in maritime services (ToR 81 and 82) [d] |
| 5 | ToR 81 | 1.1 | Competition | Competition rules in maritime services (ToR 81 and 82) [e] |
| 5 | ToR 81 | 1.1 | Competition | Unfair pricing practices in maritime transport (ToR 82) |
| 5 | ToR 81 | 1.3 | Competition | State aid to shipbuilding (ToR 87) |
| 5 | ToR 81 | - | Competition | Tasks of general economic interest are subject to competition rules |
| 6 | Safety | 1.6 | | X Registration of persons on board passenger ships |
| 6 | Safety | 1.7 | | Transfer of cargo and passenger ships between registers within the Community |
| 6 | Safety | 4.1 | | X Intern'l standards for pollution prevention, shipboard living/working conditions, port state control |
| 6 | Safety | 4.10 | | Tonnage measurement of ballast spaces in segregated ballast oil tankers |
| 6 | Safety | 4.11 | | X System of mandatory surveys for regular ro-ro ferry and high-speed passenger craft services |
| 6 | Safety | 4.12 | | X Marine equipment |
| 6 | Safety | 4.13 | | X Rules and standards for passenger ships |
| 6 | Safety | 4.2 | | X Loading and unloading of bulk carriers |
| 6 | Safety | 4.3 | | Committee on Safe Seas |
| 6 | Safety | 4.4 | | International Safety Management (ISM) Code |
| 6 | Safety | 4.6 | | Accelerated phasing-in of double-hull oil tankers |
| 6 | Safety | 4.7 | | X Ship inspection and survey organisations |
| 6 | Safety | 4.9 | | X Community monitoring, control and information system for maritime traffic |
| 6 | Safety | | | X Pilotage of vessels by deep-sea pilots in the North Sea and English Channel |
| 6 | Safety | | | X Safety and health requirements for medical treatment on board vessels |
| 6 | Safety | | | X Identity card for inspectors carrying out port State control |
| 6 | Safety | | | X Specific stability requirements for ro-ro passenger ships |
| 6 | Safety | | | Establishing a European Maritime Safety Agency |
| 7 | Security | | | Procedures for conducting inspections in the field of maritime security |
| 7 | Security | 2.4 | | X Enhancing port security |
| 7 | Security | 4.14 | | Ship and port facility security |
| 8 | Environment | 2.3 | | X Facilities for ship-generated waste and cargo residues |
| 8 | Environment | 5.3 | | Prohibition of organotin compounds on ships |
| 8 | Environment | 5.4 | | Prevention of pollution from ships |
| 8 | Environment | 5.5 | | Ship-source pollution and criminal penalties |
| B. Inland waterways | | | | |
| 3 | ToR 49 | 6.2 | Services | Structural improvements |
| 3 | ToR 49 | 6.3 | Services | Community-fleet capacity policy |
| 3 | ToR 49 | 6.5 | Services | Non-resident carriers |
| 3 | ToR 49 | 6.7 | Services | Transport of goods or passengers by inland waterway between Member States |
| 3 | ToR 49 | 6.9 | Services | River information services |
| 4 | ToR 39 | 3.3 | Labor | Access to the occupation of carrier of goods by waterway and mutual recognition of diplomas |
| 4 | ToR 39 | 6.4 | Labor | Reciprocal recognition of national boatmasters' certificates for inland waterway navigation |
| 5 | ToR 81 | 6.8 | Competition | Conditions attached to chartering and pricing (ToR 88) |
| 6 | Safety | 6.10 | | Technical requirements for inland waterway vessels |
| 6 | Safety | | | X Reciprocal recognition of navigability licences for inland waterway vessels |

Sources: Europa website (SCADplus). TUR: EC regulations tabled by the Commission in the Turkey-EC negotiations on Turkish accession. Notes: [a] Refers also to ToR 39, 49 and 56. [b] Refers also to ToR 39 and 43. [c] i.e. pilotage and towage. [d] Repeals REG 954/79. [e] Repealing REG 4056/86 and 1/2003.

conferences on maritime routes to, or from, the ports of the ECMS (starting October 18, 2008). For consistency sake, the EC Regulation (adopted in 1979) which defined the various requirements to be fulfilled by the ECMS when ratifying the UN Liner Code was repealed in 2007. Concerning the disciplines on state aid, a Regulation stating the conditions under which aid could be granted for shipbuilding, conversion and repair through state resources was adopted in 1995.

The second difference with the air sector is that the maritime sector is the only service where the EC has developed a fully-fledged antidumping procedure (REG 4057/86 on “unfair” pricing). This regulation was developed as an effort to “manage” the competitive pressures emerging in the maritime

sector during the liberalization process starting in the early 1980s. But, as all antidumping regulations, this regulation has a strongly anti-competitive impact. As of today, it generated only one EC antidumping case on a relatively minor route of the Pacific Ocean. The main impact of this antidumping case was to eliminate the nascent competition on this route, sending a clear signal that “full” competition in maritime transport was not yet considered as acceptable.

Finally, there is no EC regulation concerning auxiliary and port services, if one excludes those (DIR 79/115) defining the skills required from pilots. The freedom of providing services and the freedom of establishment apply to auxiliary services which are considered as commercial services. Moreover, a Commission Communication on port services states that “*in the current state of Community law and jurisprudence, the Treaty principle of freedom of establishment applies to technical-nautical services*”. As such services (pilotage, towage, etc.) are generally considered as services of public interest, the Communication also states that “[...] *tasks of general economic interest are subject to the Treaty rules on competition and on internal market as long as the application of such rules does not prevent them from effectively fulfilling their tasks.*”

The potential contours of an Egypt-EC maritime agreement

Unfortunately, there is no template of a maritime agreement concluded by the EC that would be equivalent to the Morocco-EC air agreement, and that Egypt could use for defining its economic and negotiating strategy. By contrast, there are general provisions on maritime transport included in broad Free Trade Agreements (hereafter FTA) concluded by the EC. What follows focuses on the provisions included in the EC-Jordan FTA because they lay down the freedom to provide services, the right to establishment and national treatment in access to ports and related services issues. This is in sharp contrast with Article 51 of the Egypt-EC FTA (signed in 2001, entered in force in 2004) which deals with the maritime transport sector, but with a purely cooperative approach.

The Jordan-EC FTA suggests three observations. First, its Article 31 deals with the right of establishment. Parties shall apply the principle of national treatment for the key activities related to international maritime transport services (marketing, sales, purchasing, preparation of documents, etc...).

Second, its Article 39 defines the freedom in services. Article 39.1 states that “[...] *the Parties undertake to apply effectively the principle of unrestricted access to the international market and traffic on a commercial basis.*” It specifies that “[...] *Parties shall [...] abolish, upon entry into force of this Agreement, all unilateral measures, administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in*

international maritime transport.” Moreover, Article 39.2 mentions that “[..] Parties shall not introduce cargo-sharing arrangements in future bilateral Agreements with third countries concerning dry and liquid bulk and liner trade.” This article also includes two exceptions. The first one is explicit: this “[..] provision does not prejudice the rights and obligations arising under the United Nations Convention on a Code of Conduct for Liner Conferences [..].” A second clause recognizes implicitly the practice of maritime conferences: “Non-conference lines shall be free to operate in competition with a conference line as long as they adhere to the principle of fair competition”. These waivers may be due to the fact that the Jordan-EC FTA was signed before the EC ban of liner conferences.

Finally, Article 39 (recital 3) lays down the principle of non discrimination in access to port infrastructure and related services. It states that *“Each Party shall grant, inter alia, a treatment no less favourable than that accorded to its own ships, for the ships used for the transport of goods, passengers or both, sailing under the flag of the other Party or operated by its nationals or companies, with respect to access to ports, the use of infrastructure and auxiliary maritime services of those ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.”*

Table 5 shows that all these provisions are also included in the other FTAs recently signed by the EC with other countries such as Algeria, even if this FTA is more restrictive than the one with Jordan (these provisions are also included in the Chile-EC which is a more liberal FTA). As a result, it is likely that these provisions would be tabled by the EC in negotiations with Egypt.

As mentioned above, looking at the Turkey-EC negotiations on accession would (unsurprisingly) expand widely the scope of topics to labor, safety, security and environmental issues. In the maritime case, these provisions could be classified in two groups: those implementing international conventions and those that are strictly specific to EC.

A cost-benefit analysis of convergence to the EC *acquis*

In the absence of a template agreement, the cost-benefit analysis is more limited. Table 5 allows to draw three broad lessons.

Table 5. Assessing the benefits and costs for Egypt of convergence to the EC acquis

| Domains 1 | ECC 2 | TUR 3 | JOR 4 | ALG 5 | Topics 6 | Texts 7 | Brief description of the content 8 | Benefits 9 | Costs 10 |
|---|----------|----------|-------------------|---------------|---|-----------------|---|---------------|-------------|
| List A: EC regulations with clear net benefits | | | | | | | | | |
| ToR 49 Services | | | Art. 39.1 | Art. 34.3 [c] | Unrestricted access to the international market and traffic on a commercial basis | 4055/86 | Objectives: ensure free access to international shipping market between ECMS and between ECMS and third countries. Benefits: abolition of all unilateral measures. Costs: improve market access; abolish unilateral measures. | Mod/High | Small |
| ToR 49 Services | | | Art. 39 recital 3 | Art. 34.5 | National treatment in access to ports and related services | - | Objectives: No discrimination according to the vessel flag. Benefits: binding of a de facto situation. Costs: Simplify the collection of charges and dues | Moderate | Small |
| ToR 43 Estab. | | | Art. 31.2 | Art. 34.2 | National treatment in activities required for the provision of international shipping [a] [b] | - | Objectives: ensure national treatment in the right to establish activities for providing maritime transport services. Benefits: binding of a de facto situation. Costs: simplify the situation by no commitment in market access. | Moderate | Small |
| Competition | | | Art. 39.1 | Art. 34.3 | Competition is an essential feature of the dry and liquid bulk trade | - | Objectives: ensure competition in bulk transport. Benefits: recognize a de facto situation. Costs: Recognize the UN Liner Code and Conference practice. | Moderate | Small |
| List B: EC regulations with unclear net benefits | | | | | | | | | |
| Safety | 4.7 | X | | | Ship inspection and survey organisations | DIR 94/57 [d] | Objectives: ensure effective implementation of the international conventions on safety at sea. Set out measures to be taken by ECMS involved in ship inspection, survey and certification. Key articles: 1, 3, 4, 7, 9, 12, 14. Benefits: aligns to EC and international norms. Costs: require a high level of skills and facilities, complex procedures. | Mod/High | Moderate |
| Safety | 4.2 | X | | | Loading and unloading of bulk carriers | DIR 2001/96 [d] | Objectives: enhance the safety of bulk carriers calling at terminals in the ECMS. Harmonisation of the requirements for ships and terminals. Harmonisation of the procedures between ships and terminals. Key articles: 1, 2, 4-10, 16. Benefits: aligns to international and EC norms. Costs: equipment on board, in facilities in ports, complex monitoring procedures. | Mod/High | Moderate |
| Safety | 4.1 | X | | | International standards for pollution prevention and shipboard living and working conditions - Port State Control | DIR 95/21 [d] | Objectives: reducing substandard shipping in the waters under the jurisdiction of ECMS. Key articles: 1, 3, 4, 5, 6, 7, 8, 9, 11. Benefits: aligns to EC and some international norms. Costs: require skills in quality and in quantity, require facilities, procedures are complex. | Mod/High | Mod/High |
| Safety | 4.12 | X | | | Marine equipment | DIR 96/98 [d] | Objectives: uniform application of the international conventions relating to safety equipment. Ensure the free movement of such equipment within the Community. Key articles: 1, 3, 5, 8, 12, 13. Benefits: aligns to international and EC norms. Costs: equipment requirements, procedure of certification costly for government. | Mod/High | Mod/High |
| Safety | 4.13 | X | | | Rules and standards for passenger ships | DIR 98/18 [d] | Objectives: harmonisation of safety rules and standards for passenger ships engaged on domestic voyages. Define procedures for international negotiation with a view to harmonising the rules for passenger ships engaged on international voyages. Key articles: 1, 3, 5, 6, 10-13. Benefits: aligns to international and EC norms. Costs: costly equipment requirements for companies. | Mod/High | Mod/High |
| ToR 39 Labor | 3.5 | X | | | Minimum level of training of seafarers | DIR 2001/25 [d] | Objectives: define a minimum level of training for seafarers in the Community having regard to training standards agreed at international level. Benefits: aligns to international and EC norms. Costs: cost of training, complex control procedures. | Mod/High | Mod/High |
| Security | 2.4 | X | | | Enhancing port security | DIR 2005/65 [d] | Objectives: establishing a Community framework to guarantee a high and comparable level of security in all ECMS ports. Key articles: 1, 2, 5-9, 13, 17. Benefits: aligns to EC and international norms. Costs: require a high level of skills and facilities, complex documentation and procedures. | Mod/High | High |
| Environment | 2.3 | X | | | Facilities for ship-generated waste and cargo residues | DIR 2000/59 [d] | Objectives: reduce the discharges of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the Community, by improving the availability and use of port reception facilities. Key articles: 1, 3-8, 11, 13. Benefits: aligns to international and EC norms. Costs: require important investments - according to the current state of port infrastructures. | Mod/High | High |
| ToR 49 Services | 1.4 | X | | | Reporting formalities for ships | REG 2002/6 [d] | Objectives: standardisation of reporting formalities. Key articles: 1, 2, 4. Benefits: aligns to international and EC norms. Costs: require limited skills or facilities. | Moderate | Moderate |
| Safety | 1.6 | X | | | Registration of persons on board passenger ships | DIR 98/41 [e] | Objectives: enhance the safety and possibilities of rescue of passengers on board passenger ships operating to or from ports in ECMS. Key articles: 1, 4, 5, 6, 7, 8, 11, 12, 14. Benefits: aligns to EC norms. Costs: require skills and facilities for companies | Moderate | Moderate |
| Safety | 4.9 | X | | | Community monitoring, control and information system for maritime traffic | DIR 2002/59 [e] | Objectives: establish a Community vessel traffic monitoring and information system. Enhancing safety and minimising the environmental impact of shipping accidents. Key articles: 1, 2, 4-10, 12, 13, 16, 17, 19. Benefits: aligns to EC norms. Costs: require important IT facilities and skills. | Moderate | Mod/High |
| Safety | | X | | | Safety and health requirements for medical treatment on board vessels | DIR 92/29 [e] | Objectives: Define minimum level of medicine, medical equipment, doctor on board. Key articles: 2-6. Benefits: aligns to EC norms. Costs: require many equipments and skills. Implementation of controls. | Moderate | Mod/High |
| Safety | | X | | | Specific stability requirements for ro-ro passenger ships | DIR 2003/25 [e] | Objectives: Define a uniform level of specific stability requirements. Key articles: 1, 3-8. Benefits: aligns to EC norms. Costs: require equipment - according to the current state of the float. | Moderate | Mod/High |
| Safety | 4.11 | X | | | System of mandatory surveys for regular ro-ro ferry and high-speed passenger craft services | DIR 1999/35 [e] | Objectives: provide a greater assurance of safe operation of regular ro-ro ferries and high-speed passenger craft to or from ports in the ECMS. Right to conduct, participate in or cooperate with any investigation of maritime casualties or incidents on these services. Key articles: 1, 3-12. Benefits: aligns to EC norms. Costs: requirements in term of documentation for companies, procedure of certification costly for government. | Moderate | High |
| ToR 39 Labor | 3.1 | X | | | Organisation of seafarers' working time | DIR 1999/63 [d] | Objectives: protect the health and safety of seafarers by laying down minimum requirements with regard to working time. Key articles: 1, 2. Benefits: aligns to EC norms. Costs: restrictions on working hours, minimum of documentation. | Small/Mod. | Moderate |
| ToR 39 Labor | 3.2 | X | | | Organisation of hours of work on board ships using Community ports | DIR 1999/95 [e] | Objectives: provide a mechanism for the verification and enforcement of compliance by ships calling at ports of ECMS with DIR 1999/63/EC. Key articles: 1, 4, 5, 6, 9. Benefits: aligns to EC norms. Costs: restrictions on working hours, minimum of documentation. | Small/Mod. | Moderate |
| | | | | | | | | | |
| Safety | | X | | | Identity card for inspectors carrying out port State control | DIR 96/40 [e] | Objectives: Harmonization of identity cards. Key articles: 1. Benefits: aligns to EC norms. Costs: only documentation. | Small | Small |
| Safety | | X | | | Pilotage of vessels by deep-sea pilots in the North Sea and English Channel | DIR 79/115 | Objectives: ensure that vessels wishing to use the services of pilots in the North Sea and English Channel can call on adequately qualified deep-sea pilots. Promote the employment of such pilots in vessels flying the flags of ECMS. Benefits: aligns to EC norms. Costs: no obligations. | Small | Small |
| ToR 49 Services | 1.5 | X | | | Statistical returns for sea transport | DIR 95/64 [e] | Objectives: harmonization of the statistics in respect of carriage of goods and passengers. Key articles: 1, 3, 4. Benefits: aligns to EC norms. Costs: require a minimum level of skills and facilities. | Small | Moderate |

Notes: [a] marketing and sales from quotation to invoicing; purchase and use of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of an integrated service; preparation of documentation; provision of business; setting up any business arrangement, including participation in the company's stock and the appointment of personnel recruited locally. [b] Including intermodal activities with a sea leg. [c] Not applied to pilotage and towage. [d] Regulation derived from an international standard/convention. [e] Specific EC Regulations

First, the Egyptian maritime transport sector is relatively open, may be because of the small size of the Egyptian float. According to UNCTAD, the Egyptian float represented 1646 DWT in 2007, that is 0.16% of the world float. By comparison, the same year, the share of Egyptian trade represented 0.27 % of the world total (World Trade Indicators, World Bank). Thus, concerning the right to establishment, there is no impediment. The main condition is to establish an Egyptian firm in accordance to Law 159/1981 which states that all firms established in Egypt or use Egypt as a center for their business are Egyptian firms, even if they can be 100% foreign owned. In this

context, the adoption of a provision similar to Article 31.2 of the Jordan-EC FTA would deliver only the non negligible benefit of binding a unilateral reform.

Second, even if the whole maritime sector is relatively open, it remains some impediments in the international shipping segment. On cross border trade, Egypt imposes unilateral reservations for public cargoes. Egypt has also signed many bilateral maritime agreements (see Annex 4 of this Report) with most of them containing cargo sharing clauses which are clear impediments to market access and competition. Hence, the adoption of a provision similar to Article 39 of the Jordan-EC FTA would deliver substantial benefits to Egypt, while its costs of implementation and adjustment would be limited—all the more because only a modest share of maritime lines calling at Egyptian harbours is served by Egyptian vessels.

Lastly, with respect to regulations on working conditions, security, safety and environment, two issues must be addressed: vessels and ports. It is important to underline that, for most experts, one major problem in Egyptian maritime sector is the quality of its vessels. The mean age of vessels is more than 22 years (Alexandria Chamber of shipping). Moreover, according to the 2007 Paris Memorandum of Understanding (MoU)⁴ annual report, Egypt is included in the black list of flags. The inspection database of the organization provides more details. During 2007, the Paris-MoU Maritime Administrations realized 55 inspections. They resulted in 8 detentions (14,5 percent): by comparison, for the same year, for all flags, the average was 5,5 %. The lesser quality of the Egypt float prevents companies from being competitive and efficient because of the risks of delays, detentions or accidents. It confines Egyptian operators to a small and bad quality market. Even if the information on the quality of ports is more limited, a similar question is essential. In this segment, implementation of international Conventions and/or Standards is also determinant. To become or to stay attractive, ports have to be safe, secure and offer environmental facilities. This is particularly important for major Egyptian ports of which a declared goal is to stay or become a regional hub. The cost-benefit analysis of such regulations is more complex (as in the airline case). Comments in Table 5 take into account the cost of the implementation of the measures for the government, the agencies and the companies in terms of skills, infrastructure and equipments. It also takes into consideration the costs of monitoring the measures.

Such criteria suggest to break down the regulations into three lists. List A includes four regulations that are expected to provide net benefits. The FTA provision on market access will provide the

⁴ The Paris MoU on Port State Control (PSC) is an organization aiming to eliminate sub-standards ships. Twenty-seven Maritime Administrations realize inspection on board foreign ships ensuring that ships meet international safety, security and environmental standards, and that crew members have adequate living and working conditions. It covers the waters of the European coastal States and the North Atlantic basin from North America to Europe. <http://www.parismou.org/ParisMOU/Inspection+Database/Basic+Search/default.aspx>

highest benefits because it addresses a remaining restriction to trade—even if it includes a costly exception for past bilateral cargo sharing agreements. Other provisions on market access and national treatment are seen as moderately beneficial because they reflect an incomplete binding of former Egyptian reforms. That said, all these regulations are not as deep as they could—and should be.

List B includes 16 regulations with unclear net benefits for Egypt in case of adoption. The eight top regulations may have relatively high benefits if they are fully developed and enforced, but then, their costs are likely to be far to be negligible. Most of them relate to the implementation of International Conventions. As shown by Table 6, Egypt is a party to some of them, but rarely fully enforces them. However, it remains that, even in these cases, the adoption of the EC regulations is not relevant. First, most of these EC regulations are derived from International Conventions, but are more stringent than the international texts. Moreover, most of them are not applicable outside the context of the European internal market. As a result, the problems faced by the Egyptians would not best be addressed by the adoption of the *acquis*, but rather by the adoption of International Conventions. The most important for Egypt would thus be to ratify and/or apply international regulations and to be recognized as such. The other regulations in List B require huge investments in infrastructure, skills and administration.

Table 6. International conventions on maritime transport ratified by Egypt

| Convention | EC Text | Topics | Implementation by Egypt |
|------------------|-------------|--|-------------------------|
| FAL Convention | REG 2002/6 | Reporting formalities for ships | - |
| Marpol 73/78 [a] | DIR 2000/59 | Facilities for ship-generated waste and cargo residues | Not fully enforced [c] |
| MoU on PSC [b] | DIR 95/21 | Port State Control | - |
| ILO Convention | DIR 1999/63 | Organisation of seafarers' working time | - |
| SOLAS [a] | DIR 96/98 | Marine equipment | Not enforced [c] |
| SOLAS [a] | DIR 2001/96 | Loading and unloading of bulk carriers | Not enforced [c] |
| SOLAS [a] | DIR 98/18 | Rules and standards for passenger ships | Not enforced [c] |
| SOLAS/ISPS [a] | DIR 94/57 | Ship inspection and survey organisations | Not enforced [c] |
| SOLAS/ISPS [a] | DIR 2005/65 | Enhancing port security | Not enforced [c] |
| STCW [a] | DIR 2001/25 | Minimum level of training of seafarers | Unknow |

Source: Egyptian Ministry of Transport Website, EU Action Plan. Notes: [a] Convention of which Egypt is party. [b] Regional agreement for monitoring and coordination of International Conventions. Egypt is party of the MoU for Mediterranean countries. [c] According to EU Action Plan.

It remains that, for most of the List B regulations of Table 5, the immediate net benefits for Egypt adopting them are moderate because they are very costly - they reflect the preference of EC consumers/citizens for a high level of safety, security and environmental norms. Even if we do not consider the impact of positive externalities on welfare for the whole Egyptian (and world) society, the adoption of key international convention would be beneficial: for maritime companies in terms of competitiveness of their float and in term of port attraction. In the short term, it could rely on the willingness of private firms or ports to enforce them, possibly coupled with a public recognition of the best practices (“white” lists) or of the worst ones (“black” lists).

Finally, List C contains 3 regulations on the harmonization of documentation that require substantial investments in their management and monitoring while providing limited benefits.

Recommendations

Contrary to the air transport sector, there is no available alternative to an autonomous adoption by Egypt of the most profitable regulations, or, alternatively, to an agreement with the EC as a way to facilitate and buttress the necessary regulatory reforms in Egypt.

Focusing on an agreement with the EC, the commitments included in the Jordan-EC FTA could be a starting point of negotiations for Egypt. But, in contrast with the air case, these provisions should be boosted. Adopting these provisions would only lead to bind unilateral reforms undertaken since the nineties. Egypt should aim at negotiating more liberal clauses than those included in the Jordan-EC FTA, particularly concerning the phasing out of former cargo sharing agreements.

In the same vein, some crucial regulatory reforms are not substantially addressed by the Jordan-EC FTA maritime provisions. As underlined in the Chapter 3 of this report, major pending issues concern the management or port organization, state aid to ports and shipbuilding. An agreement between Egypt and EC including provisions concerning these fields would be welcome.

Concerning key International Convention or standards on safety, security or environment, the adoption of EC regulations do not seems to offer the right legal framework. Rather, an effective implementation of the international standards would seem the best target. That said, technical support from the EC, or from the ECMS showing the best practices in these fields, should help Egypt to implement such international practices.

Concluding remarks

There is no doubt that converging to the EC *acquis* in air and maritime sectors would provide huge benefits to Egypt if—a big if—such convergence focuses on the pro-competition provisions of the *acquis*, and if—another big if—it takes into account the fact that Egypt is a much poorer country than the ECMS, hence much less able to adopt the part of the EC *acquis* that sets costly EC norms.

Picking up the pro-competitive provisions of the *acquis*, and leaving aside its costly norm-setting provisions would be relatively easy, would Egypt choose to make unilateral autonomous reforms. But such an approach is politically difficult since the current Egyptian regulatory framework has created deep entrenched interests, as described in the chapter 3 of this report.

Consequently, Egypt could opt for the support of external agreements with the EC, even in the air sector where a more profitable plurilateral alternative is available. Then, the key problem raised by such agreements is that Egypt will have hard time to convince the EC to recognize the crucial difference between pro-competition and norm-setting provisions—simply because the EC has a deep appetite for harmonization, even if it uses the more diplomatic term of “regulatory convergence.”

It is important to stress that recognizing the crucial difference between pro-competition and norm-setting provisions does not imply that costly norm-setting regulations should be definitively excluded from agreements with the EC. It simply means that their enforcement should be made conditional to Egypt reaching some level of income per capita—be the GDP per capita, or any other indicator of Egypt’s capacity to afford the costs of such regulations. Moreover, such an approach should not inhibit Egyptian private businesses to adopt more rapidly EC norms, if it is good for their business and reputation and if they can afford it. Creating Egyptian independent agencies in the air and maritime sectors could be extremely helpful in this perspective. If they enjoy a good reputation, they could make public “white” lists (of Egyptian private operators adopting the best practices) or “black” lists (of Egyptian private operators turning their back to the best practices) hence accelerating the speed of affordable reforms.

Last but not least, the benefits to be gained from a convergence process should not hide the fact that the EC *acquis* is far to be perfect—even its pro-competition provisions. As a result, extracting the highest benefits from a convergence process requires an active competition policy. In this domain, Egypt would vastly benefit from technical support from competition authorities (be from the EC or from ECMS) which have pursued an active agenda in these two sectors.

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